
No. 15-1950

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

HOWARD E. NEASE AND NANCY NEASE,
Plaintiffs-Appellees

v.

FORD MOTOR COMPANY,
a Delaware Corporation
Defendant-Appellant

On Appeal From The United States District Court
For the Southern District of West Virginia at Huntington
The Honorable Robert C. Chambers
Case No. 3:13-cv-29840

**JOINT APPENDIX
VOLUME VI OF VI
(JA2930–JA3498)**

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TABLE OF CONTENTS

<u>ECF No.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
<u>VOLUME I</u>		
N/A	Docket, <i>Nease v. Ford Motor Co.</i> , No. 3:13-cv-29840 (S.D. W. Va.)	JA0001
1	Complaint (Nov. 22, 2013)	JA0028
75	Motion by Ford Motor Company to Exclude Expert Testimony of Samuel J. Sero, P.E. and all attached exhibits (Exhibits A-J) (Dec. 18, 2013)	JA0046
80	Memorandum by Plaintiffs in Opposition to Motion to Exclude Expert Testimony of Samuel J. Sero, P.E. and all attached exhibits (Exhibits 1-20) (Jan. 19, 2015)	JA0156
100	Motion by Ford Motor Company <i>in Limine</i> to Exclude Evidence of Other Incidents of Alleged Unintended Acceleration and all attached exhibits (Exhibits A-I) (Feb. 2, 2015).....	JA0301
103	Motion by Ford Motor Company <i>in Limine</i> to Preclude Plaintiffs from Introducing Undisclosed and/or Unsubstantiated Expert Opinions and all attached exhibits (Exhibits A-D) (Feb. 2, 2015)	JA0409
109	Motion by Plaintiffs <i>in Limine</i> to Exclude Certain Opinion Testimony of Defendant Ford's Expert Lisa Gwin (Feb. 2, 2015).....	JA0448
144	Reply by Ford Motor Company in Support of its Motion <i>in Limine</i> to Exclude Evidence of Other Incidents of Alleged Unintended Acceleration and all attached exhibits (Exhibits A-D) (Mar. 2, 2015).....	JA0483
172	Memorandum Opinion and Order granting in part and denying in part Motion by Ford Motor Company to Exclude Expert Testimony of Samuel J. Sero, and Motion for Summary Judgment (Mar. 13, 2015)	JA0524
174	Order denying in part Motion by Ford Motor Company <i>in Limine</i> to Exclude Evidence of Other Incidents of Alleged Unintended Acceleration and all attached exhibits (Mar. 13, 2015)	JA0528
N/A	Proposed Jury Instructions by Plaintiffs (Mar. 15, 2015).....	JA0530
177	Supplemental Memorandum of Law by Plaintiffs in Support of Motion <i>in Limine</i> to Exclude Certain Opinion Testimony of Defendant Ford's Expert Lisa Gwin (Mar. 17, 2015).....	JA0572

<u>ECF No.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
182	Order denying Partial Motion for Summary Judgment (Mar. 17, 2015)	JA0577
186	Memorandum Opinion and Order denying Motion by Plaintiffs <i>in Limine</i> to Exclude Certain Opinion Testimony of Defendant Ford's Expert Lisa Gwin (Mar. 19, 2015).....	JA0580
216	Jury Verdict (Apr. 3, 2015).....	JA0582
219	Amended Judgment Order (Apr. 3, 2015)	JA0588
<u>VOLUME II</u>		
221	Transcript of Proceedings of Trial Testimony of Witness Samuel J. Sero, held on March 26, 2015 (Apr. 10, 2015).....	JA0589
222	Transcript of Proceedings of Excerpt of Jury Trial - Day 4 (Rule 50 motion), held on March 27, 2015 (Apr. 10, 2015).....	JA0743
223	Proposed Jury Instructions by Ford Motor Company (Apr. 2, 2015).....	JA0759
227.13	Trial Exhibit P007E, Samuel Sero CV (Apr. 2, 2015)	JA0802
227.19	Trial Exhibit P011, October 1987 FMEA (Apr. 2, 2015).....	JA0808
227.20	Trial Exhibit P014 June 9, 2004 FMEA (Apr. 2, 2015)	JA0810
227.21- 227.24	Trial Exhibit P015, FMEA Handbook (Apr. 2, 2015).....	JA0950
227.25	Trial Exhibit P022, St. Albans Crash Report (Apr. 2, 2015).....	JA1148
227.26	Trial Exhibit P025, Aug. 9, 1994 Shop Drawing for Boot (Apr. 2, 2015)	JA1156
227.27	Trial Exhibit P046, CQIS Reports (Apr. 2, 2015)	JA1157
<u>VOLUME III</u>		
227.28	Trial Exhibit P047, MORS Reports (Apr. 2, 2015).....	JA1176

<u>ECF No.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
227.31	Trial Exhibit P086, SAPD Photos of Crash Scene (Apr. 2, 2015)	JA1195
227.41	Trial Exhibit P099, Image of CD Containing Annotated Trial Testimony of James Engle (Apr. 2, 2015)	JA1198
227.42	Trial Exhibit P101, List of Drugs (Apr. 2, 2015)	JA1417
227.43	Trial Exhibit P102, Excerpts to the 30(b)(6) Deposition of Phillip Moore (Apr. 2, 2015).....	JA1418
227.44	Trial Exhibit P103, Designations of the 30(b)(6) Deposition of Jonathan Sprunger (Apr. 2, 2015).....	JA1447
228.36	Trial Exhibit D018B, ¹ Image of CD containing Stopschinski Video Exhibits (Apr. 2, 2015).....	JA1578
228.37	Trial Exhibit D020, Plaintiffs' Answers to Ford Motor Co.'s First Set of Interrogatories and Requests for Production of Documents (Apr. 2, 2015).....	JA1579
229.25	Trial Exhibit D168.1, Ford Compliance Demonstration Plan and Report (Apr. 2, 2015)	JA1615
229.26	Trial Exhibit D208.1, Dr. G. Mark. Moreland Treatment Records of Plaintiff Howard Nease (Apr. 2, 2015).....	JA1654
<u>VOLUME IV</u>		
229.28	Trial Exhibit D286, eCMAC ED Evaluation Dual Sign (Apr. 2, 2015)	JA1704
229.29	Trial Exhibit D287, eCMAC Medical History and Physical Dual Signature (Apr. 2, 2015).....	JA1713

¹ A copy of this CD is attached to Volume III of the bound version of the Joint Appendix.

<u>ECF No.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
232	Transcript of Proceedings of Jury Trial - Day 6, held on March 31, 2015 (Apr. 14, 2015)	JA1723
234	Transcript of Proceedings of Jury Trial - Day 5, held on March 30, 2015 (Apr. 27, 2015)	JA2014
235	Transcript of Proceedings of Jury Trial - Day 7, held on April 1, 2015 (Apr. 27, 2015)	JA2309
<u>VOLUME V</u>		
242	Transcript of Proceedings of Jury Trial - Day 4, held on March 27, 2015 (May 5, 2015)	JA2333
245	Response by Plaintiffs in Opposition to Motion for a New Trial and all attached exhibits (Exhibits A-C) (May 13, 2015).....	JA2537
246	Transcript of Proceedings of Jury Trial - Day 3, held on March 26, 2015 (May 15, 2015)	JA2584
249	Transcript of Proceedings of Jury Trial - Day 2, held on March 25, 2015 (May 26, 2015)	JA2725
250	Sur-Reply by Plaintiffs in Response to Motion for a New Trial (May 27, 2015).....	JA2924
<u>VOLUME VI</u>		
252	Transcript of Proceedings of Final Settlement Conference, held on March 23, 2015 (June 4, 2015)	JA2930
253	Transcript of <i>Voir Dire</i> Proceeding, held on March 24, 2015 (June 9, 2015)	JA2999
254	Transcript of Proceedings of Jury Trial - Day 1, held on March 24, 2015 (June 19, 2015)	JA3289
255	Transcript of Proceedings of Pretrial Conference, held on March 16, 2015(June 23, 2015)	JA3360
256	Memorandum Opinion and Order (July 24, 2015)	JA3476
258	Second Amended Judgment Order (Aug. 5, 2015).....	JA3494
262	Notice of Appeal by Ford Motor Company (Aug. 19, 2015)	JA3496

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware corporation,

Huntington, West Virginia
March 23, 2015

Defendant.

TRANSCRIPT OF FINAL SETTLEMENT CONFERENCE
BEFORE THE HONORABLE ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

JA2931

1 Monday, March 23, 2015, at 9:32 a.m. in open court

2 THE COURT: All right. Are we ready to proceed?

3 MR. JAVINS: We are, Your Honor.

4 MR. COOKE: Yes, sir.

5 THE COURT: Well, let's deal with some of the
6 easier -- hopefully easier things first. We provided Friday
7 proposed voir dire and proposed preliminary instructions.
8 Let's start with the proposed voir dire.

9 Does the plaintiff have any objection or request to
10 change anything?

11 MR. O'DELL: Your Honor --

12 THE COURT: Why don't you use the microphone if you
13 don't mind.

14 MR. O'DELL: Yes, Your Honor. A couple of things.
15 Where the term "accident" is used, if we could use the word
16 "collision." And --

17 THE COURT: Why is that? I mean, it's clear we're
18 talking about when the car hit the wall, and it's only --

19 MR. O'DELL: Your Honor --

20 THE COURT: -- that. I don't think that's going to
21 be --

22 MR. O'DELL: -- it's not an objection. It's a
23 request --

24 THE COURT: Okay.

25 MR. O'DELL: -- just because they changed the

1 word -- they took the word "accident" out of Uniform -- they
2 don't call them accident reports. They call them Uniform
3 Crash Reports.

4 THE COURT: Okay.

5 MR. O'DELL: So there's a reason for that, because
6 sometimes the word "accident" connotes you couldn't stop it,
7 whereas --

8 THE COURT: All right. So you just want to
9 substitute the word --

10 MR. O'DELL: The word "collision."

11 THE COURT: I'll do that.

12 MR. BIBB: Your Honor, and another -- either
13 "collision" or "crash." If you want to make it consistent
14 with the report, I'd use the word "crash," but "collision" is
15 fine too.

16 THE COURT: Well, which do you all prefer?

17 MR. O'DELL: Either one is fine with me, "crash" or
18 "collision."

19 THE COURT: Let's find it somewhere and see if it
20 matters in the context.

21 MR. BIBB: Page 2, paragraph 2, Your Honor.

22 MR. O'DELL: Yes.

23 MR. BIBB: And where the paragraph is saying, "This
24 case involves a motor vehicle accident," just say, "This case
25 involves a motor vehicle crash."

1 THE COURT: All right. We'll change it to "crash,"
2 then.

3 MR. BIBB: And then it happens again later in that
4 paragraph.

5 THE COURT: Right.

6 MR. O'DELL: Your Honor, also, on some of the
7 medical, there's also multiple back surgeries in this case.
8 We would like to see something about back surgeries that
9 people have experienced or family members who have had leg
10 pain.

11 Oh, I'm sorry. This is just about the instructions,
12 right?

13 THE COURT: Well, no. I thought we were on the voir
14 dire first.

15 MR. O'DELL: Okay. Yeah, that's one of the things.

16 Another thing is, I think, you know, the defendant is
17 going to be --

18 THE COURT: Well, let's start with that, then. So I
19 know you proposed to address it in the draft. Let's see how
20 you addressed it there.

21 MR. BIBB: Your Honor, I think in paragraph F2 on
22 page 7, the appropriate date of back surgeries in there, along
23 with a litany of other health concerns.

24 THE COURT: All right. You just want to refer to
25 back surgery?

1 MR. O'DELL: Back surgery, leg pains from --

2 THE COURT: Well, let's be more specific about leg
3 pain, you know.

4 MR. O'DELL: Leg pain -- back pain that causes
5 leg -- back injuries or back pain that radiates to the legs.

6 MR. COOKE: I'm just hesitating, Your Honor. We
7 don't have objection to the concept. I'm just trying to think
8 how we should describe it. I think back surgery is
9 appropriate, and low back pain and radiating leg pain is
10 appropriate.

11 MR. O'DELL: I'm fine with those too, Your Honor.

12 THE COURT: All right. So we'll add a reference to
13 back surgery or low back pain, including low back pain
14 radiating into the legs.

15 MR. O'DELL: Yes, Your Honor. Thank you.

16 Another is he was hospitalized for an extended period of
17 time. So we would like to ask questions about whether anybody
18 has had family members they -- close family members been
19 hospitalized for extended periods of time, because lots of
20 things happen in the hospital during those time periods. It's
21 another thing we would like to --

22 THE COURT: Well, how does that relate to anything
23 about this case, then? I mean, my understanding is that
24 you're stipulating to the medical bills. How long was he
25 hospitalized?

1 MR. O'DELL: He was hospitalized from January --
2 from November the 20th till February the 8th. So he was in
3 there a long time. And when he was in there, there's a whole
4 cascade of events that happened, you know, from blood clots
5 to --

6 THE COURT: That you expect will come out in the
7 testimony?

8 MR. O'DELL: Absolutely, Your Honor.

9 THE COURT: What says the defense?

10 MR. COOKE: Your Honor, I think it should be limited
11 in light of the stipulation, but I think some general
12 description or background is fine, but we can get to that in
13 the evidence of the case. And so I don't care whether it's in
14 here or not, but I think that because of the stipulation, the
15 presentation of that part of the case should be very limited.

16 THE COURT: Well, all right. I'll add a question,
17 then, if they or members of their family had an extended
18 hospitalization as the result of an injury.

19 MR. O'DELL: Yes, Your Honor.

20 Your Honor, based on the ruling about Lisa Gwin being
21 able to talk about prescription medications, we have a list of
22 medications that Mr. Nease was on. He was on Zantac. He was
23 on a couple of blood pressure medications, some anti-
24 cholesterol medications. He was on a drug he took at night
25 for restless leg. He was on a drug that he took at night to

1 help sleep occasionally.

2 And so I have a list of those drugs. And they're going
3 to bring in with them what they believe the side effects of
4 those drugs are. So I think that's something we should -- you
5 know, most people take -- a lot of people take high blood
6 pressure medication. A lot of people take anticholesterol
7 medication. Those are things that I think we are going to
8 need to get into.

9 THE COURT: Has it been established any -- in the
10 discovery somewhere what medications he had taken that day?

11 MR. O'DELL: They asked him in his deposition, and
12 he told them he may have taken -- that he takes restless leg
13 at night. He didn't take it the day of the crash. But he
14 took -- he may have taken Elavil because he took it
15 occasionally to help him sleep. He doesn't know.

16 THE COURT: He doesn't know whether he took it the
17 night before?

18 MR. O'DELL: He doesn't know whether he took it the
19 night before. He could have. He said, "I don't know." But
20 it doesn't affect him in the daytime, and this was, you know,
21 noon the next day.

22 He was on high blood pressure medication. He did take
23 his high blood pressure medication, some hydrochlorothiazide.
24 And he was on Zantac, and he was on Zocor.

25 THE COURT: Had he taken those that day?

1 MR. O'DELL: Yes. Those were his blood pressure and
2 cholesterol --

3 THE COURT: Are any of those medications among those
4 that would have side effects of drowsiness?

5 MR. O'DELL: Your Honor, when you look at the list
6 of drug side effects, every single one of them says that. I
7 mean, but -- and so that's what we're going to be getting
8 into, Your Honor, because we're going to be talking about
9 that.

10 If they have a drug that they say he took that likely
11 caused it, then, you know, we could be talking about it. But
12 I don't think they have any evidence. We're talking about a
13 long list, a laundry list of side effects that we're going to
14 be dealing with in this case. And we're going to be up on a
15 side note trying to prove something that we shouldn't have to,
16 in my opinion.

17 THE COURT: Well, so does the defense believe that
18 you would be permitted to elicit testimony from Dr. Gwin as to
19 the possible side effects of anything other than that which he
20 testified in deposition he took the morning of this event?

21 MR. COOKE: Your Honor, there was an interrogatory
22 response that was marked as an exhibit at the deposition and
23 it was verified and it has a list of the drugs and when he
24 took them and how many, what the dosage was.

25 And so that's -- then there were some questions about

1 those at the deposition. And he -- and there was a variation
2 from the evidence. So the evidence -- the list is a little
3 bit different. So there was Mirapex and Neurontin that I
4 recall. And I think maybe Ativan you mentioned.

5 THE COURT: That he'd taken that day?

6 MR. COOKE: Yes, sir. Well, there were -- in the --
7 but the interrogatory I believe asked within the last 48
8 hours, and the --

9 THE COURT: Well, here's what I'm getting to:
10 You're going to attempt to elicit expert testimony from
11 Dr. Gwin about the side effects of any medications that the
12 evidence shows he had taken in a time period that's relevant
13 to the possible side effect that your expert will have to
14 establish.

15 So what I'm getting at is simply this: Presumably,
16 anything he took that morning could be subject to your expert
17 saying this particular drug has this particular side effect
18 and the evidence is that it was taken that morning.

19 Now, if your expert either can't establish a relevant
20 time period or can't establish that he took a drug within a
21 relevant time period prior to the crash that has these side
22 effects, then we don't need to get into asking about or having
23 testimony about all these other drugs and medications he may
24 have been on.

25 So I guess that's what I'm trying to see, if that's

1 pretty clear in the discovery record, so that we needn't be
2 concerned about the whole laundry list of medications that
3 Mr. Nease may have been taking during this period of his life.
4 Rather, it should be narrowed to just those medications that
5 there -- that he says he took that day or in close enough
6 proximity to the crash that the expert could testify he took
7 this within the time period of possible side effects.

8 So is there some -- does that help narrow the list?

9 MR. COOKE: I think it does, Your Honor. And I
10 haven't committed to memory which ones he took at night and
11 which ones he took in the morning. Some he took at different
12 times during the day.

13 Your Honor, there's one other point about the medicine.

14 THE COURT: Okay.

15 MR. COOKE: For example, Neurontin is a nerve pain
16 medicine, and I believe that we may hear some evidence that
17 after his fourth back surgery, Mr. Nease's, he was all better.

18 And so but he still takes Neurontin up until the day of
19 this accident. And so there's another reason why that might
20 come in other than this issue that -- of side effects.

21 THE COURT: Well, you just lost me. So did he have
22 back surgeries prior to this crash? Is that what you're --

23 MR. COOKE: There were four back surgeries.

24 THE COURT: Prior to this crash?

25 MR. COOKE: Yes, sir.

1 THE COURT: All right. And you're saying that he
2 took Neurontin for some period of time after these back
3 surgeries.

4 And was it immediately before the crash?

5 MR. COOKE: According to the interrogatory
6 response --

7 THE COURT: Okay.

8 MR. COOKE: -- it was immediately before. It was
9 within the 48-hour time period, and it was a regular daily
10 dose.

11 THE COURT: All right. And so what's different
12 about the Neurontin -- you said this is a --

13 MR. COOKE: Only that that's not only relevant to
14 whether it had side effects, but it's also relevant as to
15 whether he still was experiencing the symptoms of pain
16 radiating down his leg to his right foot.

17 THE COURT: All right. Whether he had a physical
18 condition at the time of the crash that may have interfered
19 with his ability to operate the vehicle.

20 MR. COOKE: Yes, Your Honor. For example, Neurontin
21 would definitely be one of the drugs that we would want to --
22 should be voir dire on for the jury because it's -- it has --
23 there's multiple reasons why it may come into evidence.

24 MR. O'DELL: Your Honor, first of all, he hadn't had
25 a prescription of Neurontin since his last back surgery in

1 March. So we're talking nine months. And that's going to be
2 the evidence in the case. And if they can show doctor -- in
3 his deposition, he said he didn't believe he had a
4 prescription for that then. And if they can show me a single
5 doctor's record -- and they had a release to get everything.
6 If they can show me a record that he had a prescription for
7 Neurontin in the last several months before this crash, I
8 think it's fair.

9 THE COURT: All right. Okay. So here's what we're
10 going to do, then: With respect to the voir dire, I want you
11 all to agree upon the list of medications that he was -- that
12 he had prescribed that he took that day prior to the crash,
13 and we'll include those in this question to the jury, and
14 I'll -- and include Neurontin. However, whether it actually
15 comes out or not, we'll see.

16 But for these purposes, I don't mind including those as
17 questions to ask the jury about whether they or members of
18 their family have taken those, been on those medications for
19 any significant period of time.

20 MR. O'DELL: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. O'DELL: Your Honor, if I may, another issue is
23 that, you know, I don't think they're going to say it, but
24 they're going to intimate that, you know, because Mr. Nease
25 was an older driver, that he just had his foot on the wrong

1 pedal. And obviously they're talking about drugs and
2 sleepiness.

3 And so one of the things I want to get to is basically
4 just ask these people how they feel about older people driving
5 and what that age -- what that age is; do they believe people
6 should have to be retested at certain ages.

7 And I think it's amazing to talk to millennials and hear
8 what they have to say about those kinds of topics. So I think
9 that's something they bring into the courtroom as well. So
10 that's another issue we would like to get into in voir dire.

11 THE COURT: Well, so tell me specifically what it is
12 you want me to ask.

13 How old was Mr. Nease at the time?

14 MR. O'DELL: He was 71.

15 "When you hear an older person was involved in a car
16 collision, what's the first thing to come to your mind?"
17 Something like that. Or "What have you heard about older
18 people being dangerous drivers?" That would be a couple of
19 potential questions.

20 "Do any of you believe older people should have to be
21 tested to make sure they're safe drivers? If so, what is the
22 age? Are there any of you who don't drive?" You know, if
23 there are people that -- bringing them to -- bringing them
24 here because they don't drive anymore, that would be
25 something --

1 THE COURT: Let me ask, is that -- the don't drive
2 question, was that in there?

3 MR. O'DELL: I don't remember now. I don't think
4 so.

5 THE COURT: Well, I certainly don't mind asking the
6 jurors if they're -- any of them don't drive for any reason,
7 voluntarily or otherwise. I'm not inclined to ask any more
8 than that.

9 You know, to be blunt, first, I don't think it's
10 necessary or even appropriate to be asking the jurors
11 questions about different facets of the case. I mean, we
12 could think of a million things that I'm sure everybody --
13 that you all would like to know, but the Court doesn't believe
14 that that's necessary or proper for voir dire. We're -- our
15 effort is to get a fair and impartial jury that's a cross-
16 section of the community.

17 It's not -- voir dire is not intended to allow the
18 parties to whittle down a jury so that you each have one or
19 more members of a jury who you have screened in terms of every
20 opinion or belief that they may have such that they're
21 perceived by you all as likely leaning in a favorable
22 direction about something. That's -- in the Court's judgment,
23 that's -- you're not entitled to that.

24 So I think that there's absolutely nothing uncommon about
25 a 71-year-old man driving. And I don't think that asking an

1 open-ended question about whether the jurors have concern
2 about an older driver gets us anywhere. I'm sure they're
3 going to say, yeah, probably. I mean, I think everybody would
4 say, yes, there's an age at which we don't think people should
5 be driving or they should be retested. But we're likely to
6 get, you know, 30 different opinions.

7 And frankly I see no reason to believe that Mr. Nease's
8 age at the time that he was driving would be viewed by
9 prospective jurors as past the age that one reasonably should
10 be driving without being tested. So I'm not going to ask
11 that.

12 MR. O'DELL: Your Honor, if I may. One of the
13 reasons, you know, for voir dire is so that we can exercise
14 intelligent peremptory strikes.

15 THE COURT: Sure.

16 MR. O'DELL: And people do bring prejudices into the
17 courtroom. For example, when you focus-group with older
18 people about older drivers, this is a quote from a focus
19 group, "Rx plus AARP equals accident." So we need to know if
20 those people have those prejudices coming in.

21 And I think by not asking those questions, really it
22 doesn't allow us to find out about a deep-seated prejudice
23 that some people may have, and it doesn't allow us an
24 intellectual chance to exercise our peremptory strikes, which
25 is part of the reason for voir dire and part of the reason for

1 a fair trial in just about every case you can read.

2 THE COURT: All right. Well, I understand that. I
3 appreciate your concern, but I'm not convinced that the Court
4 should go that far into these sort of things on every possible
5 subject about this case. So I'm not going to grant that.

6 What else have you got from the plaintiffs?

7 MR. O'DELL: Your Honor, I meant to hit this
8 earlier. On other medical issues, could we put "significant
9 abdominal surgery"? And I think if we have that one, we would
10 probably be fine.

11 THE COURT: All right. And is -- was there
12 significant abdominal surgery before this crash, after this
13 crash?

14 MR. O'DELL: He had had laparoscopic surgeries
15 before the crash. In this one, he had two very fast, in
16 succession, pretty big abdominal surgeries in this case, and
17 the jury is going to see his abdominal scar in this case.
18 It's quite amazing.

19 THE COURT: All right. I'll add --

20 MR. COOKE: No objection, Your Honor.

21 THE COURT: -- significant abdominal surgery.

22 MR. O'DELL: Your Honor, the only other thing is you
23 also have peripheral neuropathy on there as something he had.
24 Mr. Cooke took all the depositions of the doctors, and
25 peripheral neuropathy is when you don't have good circulation

1 in your feet, and there was one equivocal EK -- or EEG/EMG
2 that was done on his leg that said -- and Dr. Deer said it was
3 equivocal but he never said he had it.

4 So no one says he has that. And, you know -- and, again,
5 he doesn't have any peripheral neuropathy, and there's no
6 evidence of that other than an EMG from back in 2009, I
7 believe, that said equivocal. So I don't think that's a topic
8 that needs to be in there.

9 THE COURT: All right. Mr. Cooke?

10 MR. COOKE: Your Honor, I think there is more
11 evidence about the peripheral neuropathy. It is -- there's
12 two ways you can have peripheral neuropathy. One is vascular,
13 and that's not the situation here. But the other is nerve
14 related.

15 And Dr. Kebaish, who is a specialist at Johns Hopkins,
16 described the nerve damage in 2012, which is about seven
17 months, eight months before the accident, and that that was
18 permanent and that that's why they did surgery, because it
19 radiated down his leg and prevented him from being able to
20 move his foot.

21 THE COURT: So, first, I assume that doctor's
22 testimony is going to be presented at trial.

23 MR. COOKE: By deposition.

24 THE COURT: And did he use the term "peripheral
25 neuropathy" in diagnosing this condition or --

1 MR. COOKE: I believe in the deposition testimony,
2 he was asked about that, and he had said, That's why -- I
3 think that term doesn't appear in the records, but he said,
4 That's why we did this surgery.

5 THE COURT: Well, I'll leave it in. And this is
6 just asking the jury whether they have the condition. We'll
7 wait and see if there is evidence.

8 MR. O'DELL: Thank you, Your Honor.

9 THE COURT: All right. That's all from the
10 plaintiff?

11 MR. O'DELL: Yes, Your Honor.

12 THE COURT: How about the defense?

13 MR. COOKE: Very, very quickly, Your Honor. And
14 this is not critical, but for counsel who will be here, this
15 is on page 2 of the voir dire --

16 THE COURT: Yeah.

17 MR. COOKE: -- counsel listed for the defendant,
18 Mr. Bonasso is not participating in the case --

19 THE COURT: Okay.

20 MR. COOKE: Mr. Chapski is not participating in the
21 case.

22 THE COURT: Okay.

23 MR. COOKE: And Ms. Romaine, she's actually one of
24 my partners, but she will not be participating in the case.

25 THE COURT: All right. So it's just going to be

1 you, Mr. Bibb, and Ryan Clark?

2 MR. COOKE: Yes, sir.

3 THE COURT: Okay.

4 MR. COOKE: And also in E, Section E, I think you've
5 got bracketed for a corporate representative. We have a
6 corporate representative here today, but we might not have one
7 throughout the trial.

8 THE COURT: All right. Okay.

9 MR. COOKE: And that's it for the voir dire,
10 Your Honor.

11 THE COURT: All right. Let's look at the proposed
12 preliminary instructions.

13 Plaintiff have any objections to the proposed preliminary
14 instructions?

15 MR. O'DELL: Your Honor, the same thing I think with
16 the word --

17 THE COURT: You want "crash" instead of "accident"?

18 MR. O'DELL: Right. Right.

19 THE COURT: Okay.

20 MR. O'DELL: The rest of it, I think we're okay.

21 THE COURT: Okay. How about the defense?

22 MR. BIBB: Yes, Your Honor. I think if you turn to
23 page 3, paragraph B1A, the theory, as I understand, in this
24 case is that the plaintiff's Ranger contained a defective
25 speed control cable, not accelerator cable. They're two

1 separate cables on this vehicle.

2 THE COURT: All right. We'll change that to speed
3 control cable.

4 MR. BIBB: And that appears, Your Honor --

5 THE COURT: Probably in every one of the --

6 MR. BIBB: It's about, like, three or four times in
7 here. It's in paragraph 2A on the top of page 5 and in
8 paragraph 3A at the very first line on page 6.

9 THE COURT: All right. So we'll change "accident"
10 to "crash" and remove a reference to "accelerator cable" and
11 put "speed control cable."

12 MR. BIBB: The only other item that I saw in here,
13 Your Honor, again, it's on page 5 in paragraph 2A, where
14 the -- it's the second sentence there, "The plaintiff alleges
15 that the Ford Ranger contained a defective or dangerous speed
16 control cable" now. I think that should be -- read "defective
17 or unreasonably dangerous speed control cable" to fit with
18 West Virginia law.

19 THE COURT: What does the plaintiff say?

20 MR. JAVINS: If we're going with West Virginia law,
21 then perhaps it should say "not reasonably safe."

22 MR. BIBB: That's true. Let's do it that way.

23 MR. JAVINS: But I don't have a problem with the
24 concept.

25 THE COURT: All right. We'll use the phrase "not

1 reasonably safe." So it will be both "defective or not
2 reasonably safe."

3 And we all agree that that's really the same thing.

4 MR. JAVINS: Yes.

5 MR. BIBB: Yes, Your Honor.

6 That's all we had, Your Honor.

7 THE COURT: All right. All right. The next area I
8 want to discuss is the plaintiffs' evidence of prior similar
9 or otherwise events. And to help me get a grasp of it, what
10 I'd like the plaintiffs to do is just to outline, first, the
11 categories of evidence you have.

12 It seems clear that one category of evidence are these
13 reports made to Ford through dealers or service technicians,
14 the two reporting systems with the acronyms. So my
15 understanding is that those are reports that were generated
16 after the manufacture and sale of this vehicle but prior to
17 the accident. So that's one category.

18 I understand that you have either by deposition or by
19 live witness -- it's not clear to me yet which -- other
20 drivers who would testify as to some similar problem with
21 their control of the vehicle and that you would expect them to
22 offer that testimony that it's the same problem that you
23 allege here.

24 I take it that you expect to want to ask your expert,
25 Mr. Sero, about the -- his inspection of the vehicles in *Huber*

1 and *Olson*.

2 So, first, are there other categories of this type of
3 evidence?

4 MR. JAVINS: I think that's a correct summarization.

5 THE COURT: So let's start with the first, then, the
6 complaints made through the system. As we discussed, one of
7 my big problems with the plaintiffs' theory as to the
8 admissibility of those is that if they're admissible as to
9 going to notice or knowledge on the part of Ford, which I
10 think they could be, then the question is, how do they come in
11 when it's after the fact of design and manufacture?

12 MR. JAVINS: Well, we had a good conversation the
13 last time we were here, Your Honor, and Andy and I had a good
14 conversation about that. And while there may be some -- I
15 understand your position on the pure product theory, that
16 we're interested in the state of art at the time the component
17 was designed, and so post design notice would not -- we get --
18 I get that.

19 THE COURT: Well, do you mean, then, that you agree
20 that the post design and manufacture complaints would not be
21 admissible even as to notice with respect to the strict
22 liability theory?

23 MR. JAVINS: I personally don't think *Morningstar*
24 makes that clear. As a matter of fact, my associate pulled an
25 article on post sale notice written by Mr. Cooke which seems

1 to indicate that post sale notice and strict liability is fair
2 game.

3 THE COURT: Is he going to be one of your witnesses,
4 then?

5 MR. JAVINS: He is.

6 MR. COOKE: And I'd be happy to testify for the
7 plaintiffs.

8 MR. JAVINS: But I say I don't understand the
9 concept, but I understand where you're coming from. I don't
10 personally believe *Morningstar* is a -- provides a bright line
11 analysis. I think it's -- I get the concept, but I don't
12 think there's a clear authority.

13 But certainly when it comes to the negligence theory, I
14 think that it's wide open that here under a negligence theory,
15 we're concerned about the conduct of the party who designed
16 the part, and the post sale -- post sale duty to warn is
17 fundamental in any negligence claim. And so I think that's
18 embodied in the negligence claims, so --

19 THE COURT: All right. So you -- I guess you don't
20 want to really concede that these complaints are inadmissible
21 as to your strict liability claim, but you don't have any more
22 to offer, I guess.

23 With respect to the negligence claim, you believe they
24 are admissible --

25 MR. JAVINS: Yes.

1 THE COURT: -- and that there's a duty to warn or
2 correct?

3 MR. JAVINS: Continuing duty, because it's the
4 conduct of a party.

5 THE COURT: Your third claim was breach of implied
6 warranty.

7 MR. JAVINS: Correct.

8 THE COURT: Do you claim that these complaints would
9 be admissible as to that claim?

10 MR. JAVINS: Yeah, because it's the duty --
11 ultimately it's a contract, and that's a condition that would
12 change the terms of the contract. One party of the contract
13 has a post sale or post contractual duty to notify the user or
14 recall, fix, repair, what have you. So I think it's fair game
15 under the warranty theory too, Your Honor.

16 THE COURT: So who's going to testify as to these
17 duties?

18 MR. JAVINS: Two other things, though, if I may.

19 THE COURT: Okay. Sure.

20 MR. JAVINS: Embedded -- not embedded, I mean, chief
21 among the defense in this case is Karl Stopschinski. I think
22 he's probably Ford's chief defense opinion witness. And on
23 page 12, he finds there are no complaints. The truth is, I
24 think -- I think the rest of the story is Ford didn't provide
25 him with complaints. And so if that's embodied in his

1 opinion, I think, much like when Mr. Sero talks about the
2 brakes, I suppose we could try to get this in after they close
3 on rebuttal, but it would be basically a peremptory rebuttal
4 of Mr. Stopschinski's opinion.

5 THE COURT: Well, the first thing that occurs to me
6 is that if -- as to use of these prior -- of these post
7 manufacture, pre-accident or crash complaints would come in as
8 a result of your cross-examination or to impeach
9 Mr. Stopschinski, then it seems to me that it's limited to
10 that purpose. So at least in that instance, it's pretty easy
11 that -- I agree with you. I think you could probably use that
12 as impeachment, but I think that that's the limited use of it.

13 And so I think I'd have to tell the jury this doesn't
14 help the plaintiff prove its theories. This evidence as to
15 that expert only can be used to consider the credibility of
16 the expert, so --

17 MR. JAVINS: Agreed. I'm trying to help you write
18 your order.

19 THE COURT: Okay.

20 MR. JAVINS: When you say it's admissible for
21 negligence and warranty in addition to which, but also for the
22 same reason Mr. Engle, the sponsoring witness, Ford's
23 corporate representative who talked about the FMEA, failure
24 mode effects analysis process, I think it's 104, but don't
25 hold me to it. But in his deposition, when I asked him about

1 a binding cable, he says that's a hypothetical, which is a lot
2 of what we addressed before, which, again, I agree would be
3 limited.

4 THE COURT: Well, and so with respect to that last
5 point, then, so Ford has maintained that this potential
6 failure modes analysis is, in some fashion, intended to be
7 only a theoretical exercise and is a theoretical conclusion
8 that you would want to impeach by evidence that there's this
9 defect that's happened. So it seems to me that's the
10 complaints that we're talking about.

11 This first category of evidence doesn't go to that
12 because this first category of evidence is merely that people
13 complained about something, not that Ford -- I don't think you
14 can use their complaints to prove that, in fact, this wasn't
15 just a theoretical exercise, it's happened and it's happening.
16 Those complaints don't prove that.

17 MR. JAVINS: That's -- this is a good exercise,
18 Judge, between you and me.

19 THE COURT: Yes.

20 MR. JAVINS: I think that's a fair point.

21 THE COURT: All right. So then we're back to this,
22 I guess --

23 MR. JAVINS: Negligence and warranty.

24 THE COURT: So you think they come in as to
25 negligence and warranty. You have no further arguments that

1 they could come in under strict liability.

2 Let's start with that category. What's the defendant's
3 response.

4 MR. COOKE: Your Honor, we agree that there's no
5 authority that they would come in under strict liability.

6 With respect to negligence, in the *Johnson v. General*
7 *Motors* case, the West Virginia Supreme Court had an
8 opportunity to recognize a post sale duty to warn in a product
9 liability context and declined to do so. And in the footnote,
10 it says, "doesn't -- hasn't found any case law in
11 West Virginia that supports it."

12 So it's -- and this was something that was researched
13 thoroughly in that products liability article that was --
14 Mr. Javins referenced, and there is no post sale duty to warn
15 that the West Virginia Supreme Court has recognized as a cause
16 of action.

17 So it sounds to me like they're trying to get in through
18 a negligence theory a post sale duty to warn. I think that's
19 not what the law is in West Virginia as it stands right now,
20 and that would be inappropriate.

21 THE COURT: Well, *Johnson* didn't address that --
22 didn't address a negligence theory. As I recall, it was
23 strictly confined to a strict liability theory which --

24 MR. COOKE: Your Honor, the *Johnson* case was like
25 all product liability cases. I believe there was a breach of

1 warranty claim, a negligence claim, and a strict liability
2 claim, but the court -- the footnote does say that they
3 declined to do an analysis under negligence.

4 But there's no other -- there's nothing since that time
5 where a court has -- where our court has said that a post sale
6 duty to warn has been recognized in the negligence context.
7 So for that reason, I think it would be inappropriate, and it
8 is inconsistent with, you know, with the body of strict --
9 with product liability law in West Virginia.

10 THE COURT: Okay. Let's go, then, to the next
11 category of evidence, and that's either by deposition or live
12 testimony, a witness who purportedly will describe an event
13 similar to Mr. Nease's claim where their accelerator pedal
14 doesn't seem to return to idle, resulting in a loss of driver
15 control over the speed.

16 What's the -- do you think that those are inadmissible?

17 MR. COOKE: I do, Your Honor. And just so I'm
18 understanding the Court's question, we're talking about in the
19 context of the claims that are made in this case --

20 THE COURT: Right.

21 MR. COOKE: -- all of the claims.

22 And so we have to know -- the purpose I -- the purpose I
23 presume would be offered would be notice or knowledge.

24 THE COURT: Well, not just that. I mean, I think
25 there's authority for proof of the alleged defect having

1 occurred in other instances. When it's a design defect claim,
2 I think it can go to prove the defect.

3 MR. COOKE: And, Your Honor, I'm familiar with and
4 we cited the *Hershberger v. Ethicon* case which does a fairly
5 thorough analysis. And so what that decision says, in the
6 Southern District, is that the proponent has to establish that
7 the products are similar, that the alleged defect is similar,
8 that causation related to the defect is -- there's a causation
9 related to the defect, and has to exclude all reasonable
10 secondary explanations as to the cause of the other incidents.

11 And in this case and with the incidents that they have
12 proposed, they -- none of them are substantially similar in
13 terms of the speed control cable product --

14 THE COURT: Well, let's stop there for a moment.

15 How do you intend to prove that the speed control cable
16 in these other events is, as a practical matter, that similar
17 to this one?

18 MR. HEISKELL: Through the testimony of Ford's
19 own --

20 THE COURT: Perkins?

21 MR. HEISKELL: Yes, Your Honor. And also I believe
22 the Adams'. They -- they have said since the first FMEA when
23 they said it applies to all Ford products across model lines,
24 whether it's Lincoln Town Cars or Ford trucks, it's
25 essentially the same cable.

1 And then when you get into the finer points of the
2 similarity of the Hackney vehicle, which was a Ranger pickup,
3 to the Nease vehicle, a Ranger pickup, the Woddail Explorer,
4 which is a Ford light truck built on the Ranger platform,
5 those similarities are within all of Ford's parameters
6 substantially similar.

7 THE COURT: Okay. Is your expert going to testify
8 about that?

9 MR. HEISKELL: Yes, Your Honor.

10 THE COURT: Well, it's one of the difficulties of
11 trying to sort this out is that, you know, you've each quoted
12 from the same witnesses where they've, frankly, to some degree
13 contradicted themselves. It's difficult for me to sort that
14 out because, to be quite blunt about it, I haven't tried to
15 read the entire deposition. So I don't know nearly as well as
16 the lawyers do the context of some of these comments.

17 Perkins says both things. And some answers seem to
18 generally suggest that the design is the same; and in other
19 questions, he seems to respond that, no, there are
20 differences.

21 So I agree with what Mr. Cooke outlined as far as what
22 you've got -- the plaintiff has to show. You've got to show
23 that it was a similar product, meaning you've got to show and
24 have testimony from, I assume, your expert that the relevant
25 parts of the speed control cable system are identical or

1 substantially similar.

2 And then you've got to show that the complaint of
3 whatever the driver says is happening is consistent with the
4 way that Mr. Nease has described this, not the cause of
5 something else. I know there's some -- at least I was
6 confused about it. It seems that in at least one of these
7 other people having a complaint, they indicated that they had
8 their cruise control on and that the cruise control wouldn't
9 go off.

10 Now, if that means that literally the light -- the lights
11 that say your cruise control is on are on and wouldn't go off,
12 I don't think that that gets in because I don't think that
13 establishes that it was a mechanically bound speed control
14 cable; rather, it certainly could be that it's the electronic
15 speed control system was the malfunction. So that's an
16 example.

17 And I think you're going to have to show through the
18 testimony of these people that this seemed to be the same as
19 Mr. Nease experienced; and I think if you do that, then the
20 rest of it, the causation and probably even the no other
21 reasonable explanation are sufficiently met that I'm going to
22 tell the jury they can consider it.

23 I think the jury has to evaluate those factors to decide
24 if they think that it is -- what weight should be given to
25 that evidence. But I think those things come in, even though

1 I agree with you that at trial, the plaintiff is going to have
2 to establish sufficient evidence as to those four points to
3 make it fair for the jury to consider the evidence.

4 MR. COOKE: So that would include all four of those
5 points because we haven't even talked about the other -- what
6 the accident circumstances were. I mean, I --

7 THE COURT: Well, we can talk about that as well.
8 Yeah, I think that they have to show that. To me, that's the
9 easier showing. I don't think they have to -- I don't know
10 what the differences are, so I don't want to speculate and say
11 what might be similar enough in terms of the event and the
12 accident itself or the crash itself, but --

13 MR. COOKE: Your Honor, my -- just one -- and I
14 apologize if I've said this before. But the testimony from
15 Mr. Perkins that it all suggests similarity, the talking --
16 the question was asked, I think artfully, about the Next
17 Generation speed control.

18 THE COURT: I agree, and I knew what you were going
19 to argue. And about all I can say is I think the jury is
20 going to have to sort that out because Mr. Perkins -- to me,
21 you can juxtapose those two pieces of testimony and determine
22 that he just contradicts himself.

23 And so I don't think he gets to eliminate this discussion
24 by later in his deposition saying, well, you know, the -- only
25 the electronic part of the Next Generation system is actually

1 the same; all these other things are different.

2 I mean, he says both things, I think, and I think the
3 plaintiffs can use that and then, with whatever other
4 testimony they have, can argue that these are similar defects.

5 MR. COOKE: Your Honor, so it seems that we get
6 right into the heart of a 403 problem because we can't unring
7 this bell when we spend a bunch of trial time trying to
8 explain something that never should have been admitted and
9 is -- doesn't meet the *Hershberger* standards. And that's the
10 problem that the appellate courts have had with other
11 incident evidence, not to mention consumption of time about
12 matters that really aren't this matter that this jury is to
13 decide.

14 THE COURT: Is it clear to the defense what Mr. Sero
15 is going to testify to when he testifies about any of the
16 specific vehicles involved in these other incident claims?

17 MR. COOKE: Your Honor, it was very clear at his
18 deposition as to what he said; and so he now comes in and had
19 he said, well, the Huber accident or the Woddail accident are
20 similar, we would have asked the questions so that we could
21 understand why he said that. He said none are similar.

22 So now we're left with having to cross-examine a pretty
23 slippery witness if he's going to all of a sudden change his
24 testimony about an issue like this, which is very prejudicial
25 in a case -- in a products liability case.

1 THE COURT: So let me -- so let's talk about Perkins
2 first. It does seem to me that he contradicts himself. And I
3 am concerned, if that's the primary basis by which you believe
4 these other people's events comes in, that is troubling.

5 MR. HEISKELL: That's just the foundation of it,
6 Your Honor. There's a whole lot more. First of all, Perkins
7 in the later statement that they're not all the same, all he's
8 referring to are minute differences in how cable is routed
9 over parts of the engine. They had right-hand drive
10 Explorers.

11 THE COURT: Well, is that apparent from his
12 testimony?

13 MR. HEISKELL: I think it is in the context. And
14 forgive me, Your Honor, but there -- in those two prior cases,
15 *Huber* and *Olson*, it just seems so well established after all
16 the Ford witnesses' testimony came in that it was one system,
17 it was one cable with minor variations, none of which are
18 relevant to the stuck cable problem that we have here.

19 THE COURT: And how are you going to get in all of
20 this evidence from the *Huber* and *Olson* cases?

21 MR. HEISKELL: It's -- we're not -- we're not
22 needing to do that except that these witnesses testified in
23 those cases. Adams and Perkins, Ford witnesses, testified.

24 THE COURT: Okay. Isn't that what I've been reading
25 as their -- the -- their testimony, either by deposition or

1 live --

2 MR. HEISKELL: Yes, Your Honor.

3 THE COURT: -- at those trials?

4 MR. HEISKELL: Right.

5 THE COURT: And I mean, you've seen what Mr. Cooke
6 and Mr. Bibb have filed in reply. I mean, he -- there's
7 certainly language that Mr. -- by which Mr. Perkins kind of
8 reverses field on the extent to which there's -- this is the
9 same speed control cable configuration.

10 MR. HEISKELL: Right. And Mr. Sero can identify
11 each of those cables and --

12 THE COURT: And why did Mr. Sero testify that there
13 were no similar complaints, no similar events or accidents, no
14 similar findings with respect to another vehicle?

15 MR. HEISKELL: Your Honor, I -- all I know is he has
16 previously testified that they're all similar, that the Huber
17 cable was similar. He has testified in each of those previous
18 cases, *Huber* and *Olson*, that the Woddail incident was
19 substantially similar.

20 THE COURT: But I think you also said that you would
21 expect for Mr. Sero to testify that in addition to the
22 vehicles in *Huber*, *Olson*, and *Nease*, that the vehicles in one
23 or more of these other similar event witnesses would be the
24 same.

25 But it sounds like that wasn't really ever disclosed,

1 wasn't part of his opinion, and wasn't even permitted to be
2 discussed in his discovery deposition because he denied there
3 were any other events that seemed to be the same.

4 MR. HEISKELL: Well, he has since supplemented with
5 an affidavit what he thought the question was and what he
6 intended his answer to be. He has said, before and after his
7 deposition, that those incidents are substantially similar.
8 And he can explain that, and it is a matter of fact for the
9 jury's -- that the jury ought to hear.

10 It's not -- there's no way to interpret the overall
11 substance of his deposition in this case as being
12 contradictory of any of his prior deposition testimony.

13 THE COURT: Well, you know, honestly I have gone
14 round and round in reading everything that both sides have
15 filed with this because it is fairly circular.

16 The bottom line is, I really think that it's the jury's
17 question to determine. And so because of that, I'm going to
18 let them use this evidence but certainly instruct the jury
19 that the weight, if any, that they should give to it must be
20 based upon plaintiff establishing to their satisfaction that
21 it was the same or similar product design, the same or similar
22 problem or alleged defect with the other incidents, and then
23 the other factors, that they think that the defect caused the
24 event that the witness is describing and that there isn't some
25 other reasonable explanation.

1 And I think once -- I think if the jury is instructed
2 that way, the jury can decide what weight to give to these.

3 MR. HEISKELL: Thank you, Your Honor.

4 THE COURT: So then --

5 MR. COOKE: Your Honor, may I, just for purposes --

6 THE COURT: All right.

7 MR. COOKE: -- of the record --

8 THE COURT: Sure.

9 MR. COOKE: -- just may I -- I'd like to submit a
10 photograph. I don't believe this is in the record, of the
11 *Olson v. Ford* speed control cable.

12 THE COURT: Okay.

13 MR. COOKE: If I may approach.

14 THE COURT: You may. Let Lee see it. Let Lee see
15 it first.

16 MR. COOKE: I'm sorry. I apologize.

17 MR. JAVINS: Okay.

18 MR. COOKE: This is from the 1998 Ford Explorer, and
19 this was -- I'd just like to make a record with --

20 THE COURT: All right. So this has been -- what's
21 it marked as? Exhibit A by the defense?

22 MR. COOKE: Yeah. It could be tied to the motion
23 which was Number 100.

24 THE COURT: Okay.

25 MR. COOKE: And, Your Honor, this speed control

1 cable from the Nease Ranger, the 2001 Ford Ranger, will be in
2 evidence in the case and I will offer it as part of the
3 evidence in the case. I only have one of them. I can submit
4 a picture as Exhibit B for this record.

5 THE COURT: All right. And then you --

6 MR. JAVINS: So you're saying that's an exemplar?

7 MR. COOKE: Yes. Exemplar, yes.

8 THE COURT: All right. And then --

9 MR. COOKE: And the only other point I wanted to
10 make, Your Honor, is imagine a situation where an engineer is
11 designing a 2001 Ford Ranger and just goes and grabs a part
12 from a speed control cable from a 1998 Explorer and then tries
13 to put it in the Ford Ranger, and it can't be done.

14 And so what we're asking -- you know, we are now on a
15 clear way that's very prejudicial to the defense in this case
16 of doing something that no engineer would ever do in designing
17 a vehicle, or if they do -- if they did, it would be
18 negligence.

19 And we're now introducing evidence at a standard that is
20 not the standard of engineering, and we've now got to spend
21 all this time explaining that, and it is -- I just feel that
22 it is very prejudicial.

23 THE COURT: Well, again, I mean, it's for the jury
24 to determine. I can see Exhibit A and compare it to your
25 exemplar and certainly I can see differences. The problem is,

1 I need a context for that. I think that's what the evidence
2 that the plaintiff claims they have will supply.

3 And that context is that although they have physical
4 differences, they're the same design and they are subject to
5 the same potential failure mode, subject to the same actual
6 failure mode in this case, according to Mr. Sero, and similar
7 to the failure that he claims that he observed when he looked
8 at the Huber and Olson cable.

9 So it's all going to go to the jury.

10 While I'm on the subject of that, I do want to make clear
11 that with regard to the *Huber* and *Olson* cases, I have no
12 problem with, first, the expert testifying about his
13 inspection of those cables and being examined and cross-
14 examined about the extent to which they're relevant -- for all
15 relevant purposes the same or different.

16 Do you expect to have anyone else testifying about the
17 *Huber* or *Olson* cases in any way, shape, or form? I assume
18 you're not going to bring in a driver from one of those
19 incidents who would describe having the event; is that right?

20 MR. HEISKELL: That's correct, Your Honor.

21 THE COURT: So is it just your expert testifying
22 that he examined the cables in those two vehicles and here's
23 what he found?

24 MR. HEISKELL: That's correct, Your Honor.

25 THE COURT: Then I think it's clear, then, that it

1 would be impermissible to elicit testimony from him or anyone
2 else about the trial of those cases or the result of those
3 cases.

4 The Court has obviously ruled that you're not entitled to
5 a collateral estoppel effect from those, and it would be
6 unfairly prejudicial to elicit any testimony about how those
7 cases turned out.

8 MR. HEISKELL: Yes, Your Honor. We certainly
9 concede that.

10 THE COURT: Okay.

11 MR. HEISKELL: Your Honor --

12 THE COURT: Yes?

13 MR. HEISKELL: -- it just occurred to me -- I'm
14 sorry, that 10-second delay is my processing -- the only way
15 that it could conceivably come up is if as the evidence
16 develops in this case, if Your Honor were to revisit Your
17 Honor's ruling on the issue of punitive damages, the notice to
18 Ford of the *Huber* and *Olson* cases, the two fatalities there
19 prior to the Nease accident, as a result of this cable, that
20 their own engineers gave a severity occurrence to as 10, that
21 would be a legitimate context to talk about *Huber* and *Olson*.

22 I understand the Court's ruling stands at this point, but
23 I think if, as this case progresses, if evidence develops that
24 warrants revisiting that ruling, we might not want to exclude
25 *Huber* and *Olson*.

1 THE COURT: All right. Well, if you think that
2 somehow at any point that that -- the evidence is such that
3 the Court ought to revisit its ruling, then you can raise it.

4 MR. HEISKELL: Thank you, Your Honor.

5 THE COURT: Okay. All right. Anything else, then,
6 on this, other events?

7 MR. COOKE: I guess, Your Honor, I'd just like to
8 note for the record what events -- which events they are going
9 to intend to offer since it's been --

10 THE COURT: Well, let's be clear about it. We've
11 already established that the complaints are those that you
12 attached as an exhibit in the responsive motions here. So
13 that's a finite number of those, as I recall, the complaints
14 from the other two dealerships or from service techs. So that
15 was the first category we discussed.

16 Then who falls within that second category where you
17 intend to call as a witness a driver who purportedly had a
18 similar defect and event?

19 MR. HEISKELL: Just two non-Ford drivers. One is
20 Kenneth Woddail, the supervisor of the United States Marshals,
21 whose 1996 Explorer would not -- would not slow down. And
22 then the second one is Matthew Hackney, the police officer,
23 Army officer, whose Ranger would not decelerate.

24 THE COURT: All right. So those are two non-Ford
25 employee witnesses who would, you would purport, would testify

1 that they had a similar vehicle in terms of the speed control
2 cable and similar claim of defect.

3 MR. HEISKELL: Yes, Your Honor.

4 THE COURT: Are there Ford people that you intended
5 to call as well?

6 MR. HEISKELL: Casey, C-a-s-e-y, Mulder.

7 Your Honor, he was the --

8 THE COURT: He was the test driver.

9 MR. HEISKELL: Yes, Your Honor.

10 THE COURT: I remember him.

11 And then who else? Padilla?

12 MR. HEISKELL: Padilla, yes, Your Honor.

13 THE COURT: I had a note that Woddail had described
14 the cruise control in his operation of the vehicle.

15 So do you expect him to meet the threshold that I
16 described a while ago, that he would testify that the problem
17 wasn't the cruise control button seemed to not turn off;
18 rather, the cruise control went off but the gas pedal didn't
19 return to neutral or idle?

20 MR. HEISKELL: Yes, Your Honor. I think in that
21 case, the -- he disengaged the speed control or cruise
22 control --

23 THE COURT: Okay.

24 MR. HEISKELL: -- which coincidentally is the same
25 thing that happened to Mrs. Huber coming off Pierpoint Hill in

1 Morgantown off the Interstate, and the -- because the vehicle
2 would not decelerate, he had to use maximum braking.

3 It is -- I think, and I don't precisely recall, but he
4 talked about how his speed control did not seem to disengage,
5 but that is totally consistent with the stuck speed control
6 cable irrespective of the electrical power to the system, to
7 the servo.

8 THE COURT: Well, the problem that I've got with
9 that is, is if you're driving your car and you've got your
10 speed control on -- and I assume this is true even of this
11 model, 2001 -- almost all those vehicles had, first, a light
12 that comes on when your cruise control is activated, and then
13 another light beside it comes on when you actually engage the
14 cruise control.

15 So if you're telling me that when he tapped his brake or
16 pushed the button to disengage the cruise control that the
17 cruise control light went off but the vehicle didn't slow,
18 then I've got no problem with that.

19 But if his testimony is that it didn't -- that the lights
20 didn't go off, that the -- it didn't seem that the cruise
21 control disengaged, then I think that that raises the
22 plausibility that the problem wasn't a mechanically bound
23 cable but a problem somehow in the electrical signal from the
24 button to the cruise control.

25 MR. HEISKELL: I understand the Court's concern. My

1 recollection of the Woddail testimony is that he punched the
2 button. I don't think he referred to the light being on or
3 off, but what he got was exactly consistent with the stuck
4 cable, the dirt, grease, grime, and sticking.

5 THE COURT: Are you presenting his transcript of his
6 testimony, or is he going to testify live?

7 MR. HEISKELL: We're doing a video presentation of
8 his testimony that he gave in *Huber*.

9 THE COURT: All right. So this is prior testimony?

10 MR. HEISKELL: Yes, Your Honor.

11 THE COURT: Well, you know, that can be a real
12 problem. If it's not clear, then -- from his testimony, given
13 that the testimony has been taken, then I don't see how you
14 meet the test that I've outlined.

15 MR. HEISKELL: Well, I would like to look
16 specifically at his transcript for the light thing.

17 THE COURT: Fair enough.

18 MR. HEISKELL: Ford cross-examined him about all
19 this in the past. Mr. Sero testified it's a similar incident
20 consistent with the stuck speed control cable. I --

21 THE COURT: Based upon his findings in examining the
22 cable? No, he didn't examine this cable.

23 MR. HEISKELL: No, that's right, Your Honor. No.

24 MR. COOKE: Your Honor, we cited Mr. -- what
25 Mr. Woddail said about the accident. It's on page 5 of 20 of

1 Document 136. And there's nothing else in the record that the
2 plaintiffs have offered that's contrary to that, and it is
3 specific to pressing the cruise control button.

4 THE COURT: Yeah. It's been, you know, last week
5 when I was reading through this, but it seemed to me when I
6 read it, that the fair inference from his testimony was that
7 he was trying to -- at some early point, he was pushing the
8 button and it wasn't going off.

9 MR. HEISKELL: And that's what -- it's the same
10 thing with Mrs. Huber tapping the brake to disengage the speed
11 control. It did not disengage, or at least the cable did not
12 release.

13 And what Mr. Sero will say is that with that system, the
14 power is always on to the speed control. Even if the light is
15 off, the power -- it's powered up from the time the key is
16 started, I believe will be Mr. Sero's testimony.

17 The point is, this stuck cable overrides whatever the
18 cruise control electronics is trying to do.

19 THE COURT: Well, it does if it's there. The
20 problem here is that we don't have these cables. These are
21 other vehicles that haven't been subject to inspection. And
22 so the only way that this evidence is coming in is if the
23 plaintiff can establish that the cable was the same, the speed
24 control cable was the same design and configuration, and that
25 the defect is the same.

1 And so, you know, if it's ambiguous from the witness's
2 testimony as to whether or not at the time he thought the
3 problem was that the button wasn't working for the cruise
4 control to go off, then to me that's the problem.

5 If he -- if his testimony -- and it did sound like this
6 from what was quoted, that he was first saying that he was
7 pushing the button for the cruise control to go off and it
8 wouldn't go off.

9 Now, you've got the burden of establishing the basis for
10 the introduction here; and if it's not reasonably evident from
11 his testimony that the cruise control button wasn't the
12 problem but, rather, the cable was somehow stuck, then you
13 haven't met the burden.

14 MR. HEISKELL: Well, Your Honor, Mr. Woddail -- it
15 is true in his letter to Mr. Troutman, the president of Ford,
16 said -- he read this letter in his deposition. He said,
17 "Naturally, I attempted to turn the cruise control off before
18 we reached the slower vehicle in front of us. I first tapped
19 on the brake. This failed to disengage the cruise control. I
20 then stepped on the brake and simultaneously pressed the
21 cruise control off button on the steering wheel. Neither of
22 these actions turned the cruise control off."

23 Now, but that's not dispositive of the stuck cable,
24 Your Honor, that keeps the throttle open --

25 THE COURT: The problem is this: If you just accept

1 that he didn't make clear that the cruise control button was
2 going off, then if he didn't make that clear, then it's
3 plausible that the speed control cable itself was mechanically
4 bound, as you're claiming, but it's also possible that the
5 problem was somehow with the cruise control control button
6 itself. And that's the problem.

7 So here's what I'm going to do: We can talk about this
8 all day. Before you can use Mr. Woddail's deposition or his
9 testimony, you're going to have to show me somewhere in a
10 transcript where he addresses this such that it can meet the
11 test for admissibility that it's the same alleged defect and
12 not some problem with the cruise control.

13 MR. HEISKELL: All right, Your Honor. There is a
14 second purpose for Mr. Woddail's testimony, and we could -- if
15 the Court were not to let it in on the basis of notice of the
16 defect, the Woddail testimony is very clear and convincing
17 that whatever was sticking the cruise control cable --

18 THE COURT: The brakes wouldn't overcome.

19 MR. HEISKELL: He's a big, strong man, and it took
20 him seven-tenths of a mile to stop this vehicle.

21 THE COURT: All right. Do you want to respond to
22 that?

23 MR. COOKE: Well, I just had a suggestion, Your
24 Honor. This is all deposition testimony, and it's been --
25 we -- it's been designated, it's been countered, and there are

1 objections.

2 In order to avoid a real problem, it may be that we can
3 submit those to Your Honor and review them before it's read to
4 a jury. And I hate -- I mean, I -- that's another problem
5 with this type of evidence, because we don't want to waste the
6 jury's time.

7 And I apologize for suggesting that the Court have to
8 read it first. But, I mean, that's -- this is not -- this is
9 not something that's going to surprise anybody. It's all
10 designated.

11 THE COURT: I probably didn't make it clear. What
12 I'm requiring the plaintiff to do is before you are to offer
13 or make any reference to Mr. Woddail's testimony, you've got
14 to show me where in his testimony you think he addresses this
15 particular, you know, part of the test, the test being whether
16 he can show that the vehicle had the same defect, a
17 mechanically bound cable, and not something wrong with the
18 cruise control system.

19 MR. HEISKELL: Very well, Your Honor.

20 THE COURT: Okay.

21 MR. HEISKELL: Thank you.

22 THE COURT: All right.

23 MR. COOKE: Would that same -- that ruling would
24 apply to Hackney as well since that's also deposition
25 testimony?

1 THE COURT: What did Hackney say about the cruise
2 control?

3 Well, let's -- we don't need to debate it. Provide me
4 with the same information with respect to that.

5 MR. HEISKELL: Okay, Your Honor. Sure.

6 THE COURT: As far as I'm concerned, you can do this
7 by -- do we have -- do I have these depositions? I don't know
8 what all I have in this case. I can't recall whether the
9 whole deposition has been attached as an exhibit. I've seen
10 plenty of excerpts of his testimony, but I don't recall
11 whether I've sifted through exhibits to see if I have a
12 complete copy of the deposition.

13 So how do you want to get this sort of designation to me?
14 How can we do this efficiently, effectively?

15 MR. HEISKELL: Your Honor, we have the transcripts
16 from the previous trials certainly. I think that the Hackney
17 matters could be a lot simpler than Woddail because he just
18 tapped the brakes and couldn't get it to slow down and then
19 started standing on it. He did not -- I don't think he talks
20 about pushing buttons. We can get this in Your Honor's hands
21 tomorrow morning if you wish or --

22 THE COURT: Well, I would really like to see it
23 today if it's at all possible.

24 MR. HEISKELL: Okay. Sure.

25 THE COURT: I mean, I know you guys would much

1 prefer to have a ruling before we start having opening
2 statements and you're trying to outline what your evidence is
3 going to be.

4 MR. COOKE: Your Honor, we have color-coded the
5 designations and we'll print them out and show them to counsel
6 and we'll send a joint transcript to Your Honor today.

7 THE COURT: That would be great.

8 Okay. All right. Any other issues, then, with respect
9 to these similar event witnesses? The others were the Ford
10 people.

11 MR. COOKE: Mulder and Padilla?

12 THE COURT: Yeah.

13 MR. COOKE: One second, Your Honor.

14 (Mr. Cooke and Mr. Clark conferred privately off the
15 record)

16 MR. COOKE: Your Honor, with Mr. Mulder, we don't
17 have a designation of what happened in the accident. So I
18 don't know -- I'm not sure what the plaintiffs intend to
19 offer, and I do know that that's only deposition testimony.

20 We haven't received any exhibits, though. I think they
21 may have referenced some exhibits. So I'm not sure how
22 they're going to offer up Mr. Mulder's version of the
23 accident.

24 THE COURT: Is this, first, prior testimony?

25 MR. HEISKELL: This is -- he was deposed in the

1 *Huber* case, gave testimony, read the email where he said he
2 pressed mightily on the brakes, and it's a good thing he
3 worked out at noon. If this happened to a customer, he was in
4 big trouble. He read that. It was based on his test-driving
5 of an Explorer. It's very succinct. Ford was there. They
6 had a chance to develop any counterevidence at that
7 deposition. It's really clean, and it's less than 10 minutes,
8 I think.

9 MR. CLARK: Your Honor, if I may, what the
10 plaintiffs have designated in Mr. Mulder's testimony is some
11 discussion of Exhibit Number 13 to his deposition, which I
12 think is the email to which Mr. Heiskell is referring.

13 And there's a lot of discussion of that email, but I
14 don't -- I don't, as I read it, see any discussion of
15 Mr. Mulder having an incident beyond him saying, if you have a
16 condition -- "if," not "I had a condition" -- if you have a
17 condition where you have a wide open throttle, the engine no
18 longer produces vacuum. Now, nobody at this table was counsel
19 of record for Ford in the *Huber* case. We've talked to counsel
20 of record for Ford, and we've got all the deposition exhibits
21 that they had. Unfortunately, with the passage of more than a
22 decade, they don't still have all of them, and we've never
23 actually seen this email. So that would be very helpful.

24 THE COURT: Well, do you have a copy of the email
25 somewhere?

1 MR. HEISKELL: Sure. I thought we exchanged it with
2 the exhibit exchange, but I'm very happy to -- I mean, Ford's
3 office of general counsel I had just assumed had this on file,
4 but it is a lot more than just an email. It's several pages
5 of what he was doing in that Explorer.

6 THE COURT: Well, several pages were his testimony,
7 but the exhibit we're talking about is a -- is one email
8 message.

9 MR. HEISKELL: Yeah, it's one or two --

10 THE COURT: Well, make sure that --

11 MR. HEISKELL: -- pages of an email. I'll give it
12 to him at the first break here.

13 THE COURT: Yeah. All right. So they're getting
14 you a copy of that.

15 MR. CLARK: Thank you, Your Honor.

16 THE COURT: Okay. All right. Anything else, then,
17 on this?

18 MR. HEISKELL: I'm sorry?

19 THE COURT: So anything else on these --

20 MR. COOKE: No, Your Honor, as long as I understand
21 clearly that with each of these witnesses, that the plaintiffs
22 will come forward first to try to prove the elements that
23 they're required under the *Hershberger* case.

24 THE COURT: Well, we've established that with
25 Woddail and Hackney, they're going to provide me with where

1 they find support in the transcript.

2 With regard to Mulder and Padilla, those are Ford
3 employees. I'm not sure that -- I don't know exactly, other
4 than you've described Mr. Mulder, I guess, described driving a
5 Ford Explorer and having this problem where the accelerator
6 pedal didn't seem to allow the car to go back to idle when he
7 took his foot off the gas or something like that; is that
8 right?

9 MR. HEISKELL: That's it, Your Honor. He also
10 describes as an engineer the depletion vacuum with the first
11 one or two applications.

12 THE COURT: All right. So I think that's sufficient
13 for him to testify.

14 What about Padilla? He was the executive who was driving
15 a Lincoln Navigator.

16 MR. HEISKELL: Yes, Your Honor. And we -- with
17 Padilla, here is a driver of a new Ford vehicle that obviously
18 couldn't control it when it would not decelerate. He
19 obviously could not control it with braking up his own
20 driveway, hit a tree or a pole, and took it into the service
21 people inside Ford, and they were trying -- the emails
22 associated with that indicate the kind of brainstorming of
23 Ford's engineers to see what the problem might have been.

24 The only point of this, Your Honor, is not to prove the
25 defect, but to prove notice of the difficulty in braking and

1 keeping control of a vehicle that's experienced this
2 unintended acceleration even at a low speed.

3 So this would be most likely used in rebuttal rather than
4 in our case-in-chief, and it has to do with braking and the
5 ability to maintain control of the vehicle.

6 MR. COOKE: There is -- Your Honor, Mr. Padilla is
7 a -- has a 10-mile -- an accident under 10 miles an hour on a
8 snowy driveway. And that's what we know about that accident,
9 and so I'm not sure how it's similar. I don't understand how
10 that establishes similarity to this case.

11 THE COURT: I know I've seen some of this. Again, I
12 can't keep grasp of all these different people. Didn't -- I
13 mean, my recollection is Padilla seemed to describe to the
14 service department or someone on the receiving end of his
15 communications that this seemed to be a problem with the
16 acceleration, that the accelerator got, in some fashion,
17 stuck, caused him to go faster backing out of his driveway,
18 and he couldn't slow it, that when he took his foot off the
19 gas, it didn't return to idle and didn't slow down, and then
20 he tried to use his brakes, and that didn't seem to work
21 either.

22 MR. COOKE: I just -- I'm just confused about how
23 the circumstances of that accident are anywhere near what
24 happened in this crash. That's -- and so I understand Your
25 Honor's ruling, but that's an accident on a snowy driveway.

1 That's completely different than anything that is alleged in
2 this case.

3 THE COURT: Well, the fact that it's on a snowy
4 driveway doesn't mean anything if Mr. Padilla described what
5 happened as an unintended acceleration and an inability to
6 control the accelerator. My recollection is that, more or
7 less, that's what he said. Yeah, I mean --

8 MR. CLARK: I think part of the problem here, Your
9 Honor, is the same problem that we have with Mr. Mulder, which
10 is we've got all these emails apparently that we've never
11 seen.

12 Mr. Padilla was deposed. He was asked substantively
13 about his incident, completely separately from these emails
14 that apparently exist; and his testimony, I think it's fair to
15 say, has no indicia of any sort of unintended acceleration or
16 failure to decelerate event.

17 It's an event that I've had, perhaps the Court has had it
18 too, where you try to turn a little too quickly and it's a
19 little slipperier than you think below you and you slide.
20 That's what the deposition testimony is.

21 I don't know if the emails are different because, again,
22 we've never seen them before.

23 THE COURT: Well, now I'm confused. So what you
24 intended to offer as Mr. Padilla's event was, I assume, a
25 transcript of the trial or deposition testimony.

1 MR. HEISKELL: Yes, Your Honor, which includes his
2 emails or some of the emails associated with that from the
3 people that worked at Ford and handled the vehicle.

4 This is the -- this is the first time I've heard from
5 Ford that they don't have these documents. We've had them for
6 years, and they haven't told us that they -- we've briefed
7 this stuff before.

8 THE COURT: I can't imagine what the problem is
9 there, but I'm not concerned about it.

10 But you're telling me that in his -- was this deposition
11 testimony or trial testimony?

12 MR. HEISKELL: He was deposed for the -- I believe
13 it was the *Huber* trial. Might have been *Olson*, but I think it
14 was *Huber*.

15 THE COURT: All right. And so in his deposition
16 testimony from the *Huber* trial, did he describe what happened?
17 I mean, not just confirmed that he sent emails about it, but
18 did he actually describe the event?

19 MR. HEISKELL: Yes, he did, Your Honor.

20 THE COURT: And is that description a description
21 that's consistent with a complaint that the vehicle suddenly
22 accelerated or would not decelerate when he took his foot off
23 of the gas pedal?

24 MR. HEISKELL: Yes, Your Honor.

25 THE COURT: Well --

1 MR. COOKE: Your Honor, this hasn't even been
2 designated in this case. The testimony hasn't been
3 designated. So what -- I just don't want to be sandbagged
4 by -- I don't even know what they're going to read --

5 THE COURT: First, I mean, I presume that when they
6 identify a witness who's going to be testifying by deposition
7 or prior testimony, that it's the whole thing, whatever he
8 testified about, I mean, his entire testimony.

9 MR. COOKE: But they -- well, as I understand the
10 rule, Rule 26(a)(3), is you identify the witness, and if
11 you're going to present it by deposition, you say so and you
12 either take the whole deposition or portions thereof. We've
13 got nothing.

14 THE COURT: Okay. I agree, and I presume that that
15 meant that the plaintiff would be offering the whole
16 deposition --

17 MR. HEISKELL: That's right.

18 THE COURT: -- and anything to designate. Now, you
19 know, that -- if that's the fair implication of it.

20 So, again, I'm inclined to let this in and instruct the
21 jury about how they should consider it and weigh it and for
22 what purpose and how those purposes may be limited.

23 MR. COOKE: Your Honor, may I just make one other
24 point for the record?

25 THE COURT: Sure.

1 MR. COOKE: Going back to the MORS and the CQIS
2 complaints, the pleadings clearly object to that on hearsay
3 grounds, but I'm not sure if it was --

4 THE COURT: Yes, and I agree. And my ruling is that
5 they can only come in as to notice to Ford. So they're not
6 being admitted for the truth of the matter. So there's not a
7 hearsay objection. It's just notice to Ford that someone is
8 complaining of something like this.

9 MR. COOKE: After the date of manufacture.

10 THE COURT: I think it comes in after the date of
11 manufacture. I think that at least comes in with regard to
12 the negligence claim.

13 I'm skeptical that it could come in for the strict
14 liability or warranty claims. But I'll address that during
15 the trial and instruct the jury accordingly.

16 Okay. All right. What else have you got on your lists?
17 Anything else that the Court need address?

18 MR. JAVINS: We have counter-designations and
19 objections to James Engle and Jon Sprunger.

20 THE COURT: And who are they? What court were
21 they --

22 MR. JAVINS: Engle is the corporate representative
23 who will testify about the FMEA process and the FMEA handbook.

24 THE COURT: When are you going to expect to get to
25 offering that?

1 MR. JAVINS: Tomorrow, early tomorrow.

2 THE COURT: Okay. So that's Engle. And then who
3 else?

4 MR. JAVINS: Well, Sprunger is the gentleman who
5 talks about the MORS reports. He could be a little later, but
6 I envision putting Engle on pretty early.

7 THE COURT: And to your knowledge, have either side
8 submitted the deposition? Did it come with your designation?

9 MR. JAVINS: Yes. And Ford submitted
10 counter-designations, which I don't have a problem with, and
11 objections.

12 The problem with the objections is it's 402, 403, 401,
13 10 pages. And I don't know what to do with it other than I
14 responded by saying it's relevant; it's got something to do
15 with this, this, this. But it's hard to work with.

16 THE COURT: All right. So you filed your
17 designation.

18 MR. JAVINS: Correct.

19 THE COURT: They filed a counter-designation to
20 which you don't object.

21 MR. JAVINS: No objection to the counter.

22 THE COURT: All right. They filed objections, and
23 you filed a supplemental response to those objections.

24 MR. JAVINS: Correct. Last night.

25 THE COURT: Right. Well, I saw all this in the

1 docket sheet.

2 MR. JAVINS: Sure.

3 THE COURT: But obviously I haven't read it yet, but
4 I will.

5 MR. JAVINS: Okay.

6 THE COURT: And the actual depositions are attached
7 as exhibits, or are they?

8 MR. CLARK: Not to what we filed, Your Honor.

9 THE COURT: I don't need more than one copy of the
10 deposition. So if one side filed the whole deposition --

11 MR. JAVINS: We've got a book right here, and my
12 assistant color-coordinated the whole doggone thing if you'd
13 like it.

14 THE COURT: Sure. So what is this? Is this -- what
15 is this?

16 MR. JAVINS: Engle, Sprunger, and more deposition
17 transcripts --

18 THE COURT: Okay.

19 MR. JAVINS: -- that we've designated that we intend
20 to read. I think Ford's are -- some is in red, some is in
21 blue, and some are in yellow.

22 THE COURT: Okay. Well, so that would be, then, one
23 of them designates what plaintiffs want; the other is the
24 defendant's designation. And then the third?

25 MR. JAVINS: Objections. And I don't think it will

1 be real hard to cross-reference with Ford's objections to
2 figure it out.

3 THE COURT: Right. That's what I'm hoping. So you
4 can leave that with me.

5 MR. JAVINS: I'm happy to.

6 MR. CLARK: The one point that I would make on that,
7 Your Honor, with regard to Mr. Sprunger and Mr. Moore is that
8 as a result of the Court's ruling this morning on the limited
9 purpose of the admissibility of MORS and CQIS, our objections
10 might change. And without spending a little bit of time
11 looking at those objections and thinking about the Court's
12 ruling, I don't want to make any guarantee one way or the
13 other, but I'm not certain, as I stand here, there won't be
14 any changes to those as a result of that ruling.

15 THE COURT: Okay. Well, we will at least take them
16 up briefly before any of them are used with the jury.

17 MR. CLARK: I don't think -- and then, frankly,
18 Mr. Javins and I can probably have a conversation about
19 Mr. Engle and narrow down the topics we need to talk to the
20 Court about. But I don't think any of that has changed based
21 on anything that's happened this morning.

22 THE COURT: All right. Well, certainly if the
23 parties discuss any of these and resolve some or all of the
24 objections, just let me know. Otherwise, I'll expect to start
25 reading them this afternoon.

1 All right. Anything else?

2 MR. COOKE: Your Honor, our daily schedule.

3 THE COURT: Here's the way -- tomorrow, of course,
4 is the first day of trial. The jurors will assemble
5 downstairs. They generally get in around 8:30 or a little bit
6 before 9:00. There has to be paperwork processed down there.
7 The clerk's office will randomly assign to each juror a number
8 and give them a sticker with that number.

9 Once all the jurors are assembled as close to around 9:00
10 as possible, we'll start -- we'll bring them up here, and it
11 takes them a while to get up here. Some will walk up the
12 stairs; some will come by elevator. I think that I told the
13 clerk's office that we needed about 25 to 30 people actually
14 showing up, so somewhere in that number.

15 The jurors will be seated first in the jury box
16 numerically and then in the first two benches numerically.
17 That's where they'll be seated during the voir dire.

18 As I explained, I will conduct the voir dire. Many of
19 these questions -- everything is designed to elicit a "yes" or
20 a "no" answer, at least at first. We'll try to keep notes and
21 expect you all to keep notes, and then do follow-up
22 questioning, more or less, one at a time with the jurors in
23 the conference room.

24 When there are this many different issues, most likely
25 I'll -- we'll just start numerically, Juror Number 1. I'll

1 ask you what else -- what follow-up questions do we need to
2 do. We'll bring them back one at a time and do follow-up
3 questions. I'll usually take the lead in that, but I'll often
4 turn to counsel and let you ask a reasonably connected
5 follow-up question to whatever the juror has told me or us
6 back here. We'll do that.

7 You know, usually it takes most of the morning to pick
8 the jury. But once we get the jury picked, then we'll take a
9 break. I really try and get jury selection out of the way
10 before a break for lunch. So presumably we'll -- given the
11 number of questions here, it's likely it will take until then
12 to get a jury picked. We'll probably take a lunch break at
13 that point and then come back and do preliminary instructions
14 and openings and start.

15 On the first day of trial, I would like to end pretty
16 close to 5:00 just because the jurors showed up not knowing if
17 they were going to be here or not. So I don't like them to
18 have to be here longer than 5:00.

19 We usually take a mid afternoon break somewhere between
20 2:30 and 3:00 for about 15 minutes. Then during the trial,
21 start at 9:00. We'll take a break about 10:30, a five- or
22 ten-minute break. A lunch break usually is an hour and 15
23 minutes, partly depending upon how fast we're moving. Then
24 we'll come back after lunch, take another break middle of the
25 afternoon around 2:30 or 3:00.

1 I'm generally inclined to go a little bit past 5:00, and
2 I'll tell the jury that, you know, after the first day that we
3 might go a little past 5:00 if it helps us complete a
4 witness's testimony or the examination by one of the parties
5 so we don't interrupt too much the flow of the trial. And
6 we'll just follow that schedule pretty much each day.

7 As I told you, we -- in a federal civil case, we'll have,
8 my guess is, nine or ten jurors. If it's going to take -- I
9 assume this is still accurate. You all have estimated,
10 plaintiffs, about four days to put on their case, defendants
11 three or four days to put on its case. So we're talking about
12 a trial going into two weeks.

13 So I'll probably have at least nine, maybe ten jurors.
14 And they will all participate in the verdict if they remain
15 jurors until the conclusion, okay?

16 All right. Anything else that you want --

17 MR. COOKE: Just one point of clarification.
18 Your Honor ruled on the motion related to Mr. Petersen. It
19 was Number 108. And counsel and I were discussing what the
20 ruling was, and we had a little bit of a -- we weren't on the
21 same page, and so I just wanted to get clarification from
22 Your Honor.

23 This was a -- Mr. Petersen was the expert who did the
24 brake demonstration and then has the video of that.

25 THE COURT: Right.

1 MR. COOKE: And I had understood from reading the
2 ruling that the video demonstration was excluded, and -- but
3 perhaps that's not a correct understanding.

4 THE COURT: Well, the video demonstration is
5 excluded. Would you expect to ask him -- I think that
6 implies -- I'll make it clear. I don't think he can rely upon
7 his video demonstration for his opinions.

8 MR. COOKE: He can rely upon -- can he rely -- he
9 can rely upon the fact that he drove the vehicle, that he
10 actually did -- that he actually tested the vehicle.

11 THE COURT: Yeah, I think he can testify to that. I
12 don't think he can testify that as a result of trying the
13 brakes under different circumstances at different speeds with
14 different vehicle conditions that he reached conclusions,
15 because that would be allowing him to testify as to the
16 results of the demonstration that I've ruled isn't admissible.

17 The demonstration isn't admissible because it doesn't --
18 it's not similar enough, doesn't repeat the event in a
19 meaningful way to make it a relevant exercise.

20 MR. COOKE: Okay. Thank you, Your Honor.

21 THE COURT: Okay. All right. Anything else?

22 If not, see you tomorrow morning at 8:30. And I presume
23 other than dealing with these depositions, then, that
24 there's -- I'll deal with the designation of depositions.

25 The plaintiff will provide the specifics from the other

1 event witnesses so I can see how you could get those in, and
2 then we'll be ready to go.

3 MR. HEISKELL: Yes, Your Honor. And is it
4 acceptable if I supply the transcript that's marked up,
5 highlighted, with the language we want to direct the Court's
6 attention to --

7 THE COURT: Absolutely.

8 MR. HEISKELL: -- rather than briefing?

9 THE COURT: Right. I don't want any -- I don't need
10 any more briefing. Just show me where in the depositions the
11 witnesses address these things, and obviously you've got to
12 provide, you know, a copy or notice of what you're designating
13 to the defendant.

14 MR. HEISKELL: Okay, Your Honor, certainly will.
15 Thank you.

16 THE COURT: And I frankly would expect that we'll
17 have a few minutes in the morning while we're waiting to bring
18 the jury up for any final discussion and a ruling on those
19 matters.

20 MR. HEISKELL: Very well, Your Honor. Thank you.

21 MR. COOKE: That's a good point, Your Honor. We
22 have an agreement to advise each other of witnesses the next
23 day and exhibits to be used in the direct of that witness.

24 THE COURT: Right.

25 MR. COOKE: If there's an issue with an exhibit,

1 how -- we could be here at 8:00, 8:30, to raise that with
2 Your Honor. But I'm not sure what Your Honor's preference is.

3 THE COURT: Well, have you identified for the
4 defendants your first witnesses and first exhibits that you
5 expect?

6 MR. O'DELL: We will as soon as this is over,
7 Your Honor.

8 THE COURT: Okay.

9 MR. O'DELL: A lot of it had to do with rulings
10 today.

11 THE COURT: Right. Well, you know, so generally
12 speaking, if it's an important exhibit and the basis of
13 objection is more complex, then certainly I'd prefer to know
14 that as soon as possible to try to rule on it.

15 But, you know, you objected on multiple grounds to about
16 everything I've seen, at least in the designation of a lot of
17 the witnesses and, I think, a number of the exhibits, and I'm
18 not going to try to go through all of those before trial.

19 You can raise objections at trial, and I'll do my best to
20 rule on it correctly then. But other than some unusually
21 important exhibit that you think requires more complex
22 argument, I'd just as soon deal with them as they come up.

23 MR. JAVINS: For starters, Your Honor, I don't
24 envision any big exhibit issues tomorrow with the exception of
25 I think Ford objects to the '87 iteration of the FMEA that

1 James Engle talks about. I believe he ties it back and says
2 that's your first baseline document.

3 Certainly, Sam Sero will talk about that. So they object
4 to that. You'll address that when you read the designation
5 today.

6 THE COURT: Okay. Good.

7 MR. JAVINS: Thank you.

8 THE COURT: All right. If there's nothing else,
9 I'll see you tomorrow at 8:30.

10 (Hearing concluded at 11:10 a.m.)

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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.

24

25 /s/Teresa M. Ruffner

June 4, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware corporation,

Huntington, West Virginia
March 24, 2015

Defendant.

TRANSCRIPT OF JURY TRIAL - DAY 1 (VOIR DIRE)
BEFORE THE HONORABLE ROBERT C. CHAMBERS,
UNITED STATES DISTRICT JUDGE, AND A JURY

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

JA3000

1 Tuesday, March 24, 2015, at 8:43 a.m. in open court

2 (Out of the presence of the prospective jurors)

3 THE COURT: Good morning.

4 RESPONSE: Good morning, Your Honor.

5 THE COURT: All right. We'll let Mr. Heiskell set
6 up and then we'll be ready to go.

7 MR. HEISKELL: Sorry, Your Honor.

8 THE COURT: That's all right.

9 All right. First, have the parties reviewed the changes
10 that were made to the proposed voir dire and the preliminary
11 instructions?

12 MR. O'DELL: Yes, Your Honor.

13 THE COURT: Any other matters we need to address
14 with respect to those?

15 MR. COOKE: No, Your Honor.

16 THE COURT: All right. Then let me first address
17 the matter that we discussed a fair amount yesterday, and that
18 was concerning plaintiffs' evidence of other prior incidents
19 or events.

20 I had asked the plaintiff to identify the portions of
21 either trial testimony or deposition testimony of several
22 witnesses who the plaintiffs represent -- which the plaintiffs
23 represent would be offered as evidence that there was a prior
24 similar event and such evidence should be admissible as to
25 notice, knowledge, or as to proof of defect.

1 So yesterday I was presented in the afternoon with a
2 letter dated March 23rd by -- under Mr. Heiskell's signature,
3 which contained several pages of excerpts of the transcripts.

4 First, I'll address Mr. Hackney. Matthew Earl Hackney
5 was identified, and his deposition was from back from August
6 of 2002.

7 I reviewed the excerpt portions of his deposition, and
8 actually plaintiffs yesterday had also left me with a notebook
9 that had the full deposition in it. So I've even gone back
10 through it a bit.

11 It's clear to the Court that Mr. Hackney is complaining
12 of a cruise control problem. In the excerpt pages that were
13 provided, he referred to trying to press the "off" button and
14 couldn't get -- of the cruise control and couldn't get it to
15 work.

16 It seems to me that the only plausible reading of his
17 description of that event is that he associated it with an
18 inability to turn off the cruise control.

19 Now, admittedly, plaintiffs have argued that a mechanical
20 binding of this particular cable can occur when the cruise
21 control is on. I acknowledge that possibility. The problem
22 is, the plaintiff has the burden of establishing as an
23 evidentiary foundation for the introduction of this evidence
24 that it was substantially similar. And here, plaintiffs can't
25 do that because the description provided by Mr. Hackney

1 suggested that the problem was with the cruise control
2 operation, and that doesn't -- it just doesn't provide a
3 sufficient basis for the Court to conclude that this could
4 have been because of a mechanical binding. That's what the
5 plaintiff has to offer evidence of, and it's not there.

6 I also note that he, although not identified by
7 plaintiffs' counsel, that later in his deposition, he talks
8 about another similar incident that occurred at some later
9 time, and there again he describes it as a problem with the
10 cruise control, that he can't get the cruise control off. So
11 because of that, his testimony can't come in.

12 I then turn to Mr. Woddail. His name is Kenneth Woddail.
13 At page 10 of the excerpt that was provided, he discusses the
14 problem with the cruise control button, that he kept pushing
15 the button off.

16 On page 20, there's further questioning and answer where
17 he responds that he kept the cruise control off after he got
18 his car under control and started again. To me, that suggests
19 that he associated the initial event with the cruise control.
20 And again later at page 24, a similar discussion.

21 So, once again, I conclude that plaintiffs can't
22 establish that the event complained of by Mr. Woddail was
23 substantially similar to that complained of by Mr. Nease.

24 Last was Mr. Padilla. He's the Ford executive who had a
25 Lincoln Navigator, I believe. My understanding is that

1 plaintiffs either had an email or somehow identified the
2 contents of some email that he may have sent to other people
3 in Ford, service technician types, asking them to investigate
4 his vehicle because of an incident that had occurred when he
5 was up in Michigan and was driving on a narrow road that led
6 to a cabin or something like that. It was snowy. He said at
7 one point, he was only going 7 to 10 miles an hour. There was
8 a sharp left and then another right. And at one point he lost
9 control of the car and it skidded into a tree.

10 Evidently -- and it wasn't clear to me, but as I
11 understood it, the plaintiffs claim that he sent an email or
12 some other communication to someone in the service department
13 or the like at Ford asking them to check this vehicle out. He
14 may have implied in that that the car had experienced some
15 sudden unintended acceleration that caused or contributed to
16 his losing control.

17 I frankly couldn't find that when I was reading this last
18 night. So I'm not sure exactly what that communication was.
19 Nonetheless, Mr. Padilla testified -- and his testimony is
20 part of the designation that the plaintiff offered -- intends
21 to offer into evidence, that he described this, and he
22 completely disavowed any claim that his losing control had
23 anything to do with sudden unintended acceleration.

24 Instead, he said he wanted the car thoroughly checked out
25 after he'd lost control. It's not real clear exactly what

1 Mr. Padilla thought was maybe wrong, but it's clear to me that
2 after reading his deposition, it's insufficient to establish a
3 similar incident that would be admissible in evidence in this
4 case.

5 As I said, he disavowed that there was any sudden
6 unintended acceleration problem. He -- if he provided some
7 communication that suggested otherwise, the Court would find
8 it's not supported by his description of what actually
9 happened. And regardless of why he may have suggested that in
10 an email or other communication, that's just not enough to
11 establish the similarity necessary to make this admissible
12 here. So I'm not going to allow Mr. Padilla's testimony about
13 his experience to come in as a prior similar event.

14 Last, I've looked at Mr. Mulder's deposition. He was
15 employed by Ford, a young engineer or something to that effect
16 at the time, and more or less was sometimes called upon to
17 investigate problems or concerns that were raised about the
18 vehicles.

19 Apparently at one point he tested a vehicle that sounds
20 like it would be essentially the same speed control cable
21 configuration as at issue here. In his description of what he
22 did, as best I understand it, he was trying to test the
23 efficacy of the brakes when the throttle was all the way open.
24 I didn't understand from that that he was claiming that he
25 lost control of the throttle, of the speed control. Rather,

1 he was testing how well the brakes would stop it. In part of
2 that testing, he came to the conclusion that the brakes
3 wouldn't be sufficient to overcome the acceleration unless a
4 huge amount of force was applied.

5 So, first, am I missing something, Mr. Heiskell, in what
6 he testified about? Was there some indication that he was
7 going to testify or his testimony would establish that he had
8 a prior sudden unintended acceleration event or experience
9 that could have been because of mechanical binding?

10 MR. HEISKELL: I don't think, because mechanical
11 binding, Your Honor, although he -- he was part of a small
12 team that was trying to investigate these customer complaints
13 of unintended acceleration. They were trying to figure out
14 what it could be, whether it was electronic or something else.

15 I don't think there's any place in his testimony where he
16 concludes that a stuck cable was the cause.

17 THE COURT: Well, in fact, then am I correct in my
18 reading that in his test driving of a vehicle, he didn't have
19 any sudden unintended acceleration event, but, rather, he was
20 in complete control of the throttle and the accelerator and he
21 simply tested the efficacy of the brakes with the throttle
22 wide open, so to speak?

23 MR. HEISKELL: Well, Your Honor, part of his
24 testimony was on one of his test drives, he got -- he wanted a
25 reduction in throttle, and it stayed open.

1 THE COURT: Okay. Well, that's what I thought you
2 were saying. More than -- frankly, I just missed that. Maybe
3 it's just I didn't read his deposition closely enough or
4 thoroughly enough. I'm going to ask that you identify that
5 passage.

6 MR. HEISKELL: All right. Your Honor, thank you.

7 THE COURT: Other than that, the reason I raise this
8 is that he may still be -- you may still be able to offer his
9 testimony about the inability of the brakes or the limitation
10 on the ability of the brakes to overcome acceleration. So
11 that part, I think he does describe adequately. But that
12 doesn't go to a defect claim that, as we've discussed, as I
13 understand it, that's not what plaintiff claims -- the brakes
14 are not defective. It's simply that if you've got a defective
15 throttle system that results in an unintended acceleration,
16 the brakes may be insufficient to overcome that.

17 Is that right?

18 MR. HEISKELL: That's exactly right, Your Honor.

19 THE COURT: All right.

20 MR. HEISKELL: And, Your Honor, just so that we're
21 clear, I take it that we're still permitted with Hackney and
22 Woddail to talk about the extra effort required for braking
23 when the throttle was open, for whatever cause, because here
24 we had Mr. Woddail, 6'3", 220, fighting his machine with great
25 strength.

1 THE COURT: I agree.

2 MR. HEISKELL: Okay. Thank you, Your Honor. And by
3 the way, just on that Padilla matter, that other bit of
4 evidence came from the emails with Mr. Cikaló. He was the one
5 who was trying to figure out what happened.

6 Thank you, Your Honor.

7 THE COURT: All right.

8 MR. COOKE: Your Honor, just for the record --

9 THE COURT: Yes. Use the microphone.

10 MR. COOKE: I would just note our objection to --

11 THE COURT: Is that on?

12 THE CLERK: Push the button on it.

13 MR. COOKE: I'll figure it out eventually.

14 Your Honor, I would just note the objection that
15 Mr. Woddail, Mr. Hackney are not expert witnesses and are
16 essentially being asked for opinion testimony. They haven't
17 been disclosed as experts. They're not engineers. And how
18 hard they pushed seems to be --

19 THE COURT: Well, I disagree. I think to the extent
20 that they're offering opinion -- and I'm not sure I'd
21 characterize it that way. I think it's lay opinion, opinion
22 of a lay witness based upon actual perception. So I would
23 overrule the objection.

24 All right. Next, I'll just tell you I was a bit dismayed
25 when I realized the volume of deposition or trial -- prior

1 trial testimony that required review. I wish somebody had
2 told me last week that it was going to be hundreds of pages.

3 I've gone through several of them. I know that we
4 specifically discussed Mr. Engle and Mr. Perkins. So I
5 started with them, and I've done several.

6 First, I relied upon Document 189, which was defendant's
7 objections and counter designations to plaintiffs' deposition
8 designations, and it sets out numerous objections as to a
9 number of these designations. Some of them I was aware of.

10 As I said, I started with Mr. Engle because my
11 recollection was plaintiffs thought that would be one they'd
12 get to early.

13 MR. CLARK: And if I may, Your Honor.

14 THE COURT: Yes.

15 MR. CLARK: Sorry to interrupt the Court, but
16 Mr. Javins and I have been talking and working pretty hard and
17 talking at some hours that perhaps I don't want to put on the
18 record; and I think that with the exception of one issue,
19 we've come to an agreement about the testimony of Mr. Engle
20 that will be read.

21 THE COURT: Okay.

22 MR. CLARK: I regret, of course, that we were not
23 able to do that before the Court spent the time reading, but
24 happily it should save the Court some time in deciding.

25 THE COURT: Well, that's fantastic. Can you

1 identify for me now what the --

2 MR. CLARK: I can, Your Honor. And, generally, it
3 is testimony that begins around page 116 of Mr. Engle's
4 deposition, goes to page 126. I think it's all or most of the
5 designations in there.

6 THE COURT: Well, wait a minute. I guess I do have
7 a copy.

8 MR. CLARK: It comes around again around page 127 of
9 Mr. Engle's deposition. And the testimony is about whether
10 there were or should have been warnings to customers or
11 technical service bulletins to dealers issued as a result of
12 the failure modes and effects analysis process.

13 Now, if the plaintiffs are putting on Mr. Engle as early
14 as they say they're going to, then there's no foundation for
15 the relevance of that testimony because there's no evidence
16 that Mr. Nease ever took this vehicle to a Ford dealer such
17 that a technical service bulletin would have made a
18 difference. To the contrary, I think the record will show
19 that Mr. Nease never took this vehicle to a Ford dealer
20 because he'd only owned it for ten days at the time of his
21 wreck. Likewise, my understanding is the plaintiffs are not
22 pursuing a warnings claim at this point, and so evidence about
23 warnings that Ford should or shouldn't have given customers is
24 irrelevant.

25 THE COURT: All right. Mr. Javins?

1 MR. JAVINS: We discussed this yesterday, Your
2 Honor, the continuing duty to warn and the fact that
3 customers -- we're also going to elicit testimony of customers
4 calling with complaints, and the point being that when a
5 customer calls the call center or a customer goes to a
6 technician, the technician is not provided with the
7 information in this failure modes effects analysis which says,
8 "This speed control cable can bind. A side note: Make sure
9 you inspect it, and here's how you do it."

10 That's the purpose of the -- of the -- I was trying to
11 learn the process through Mr. Engle; what's the purpose of the
12 FMEA. It's, you know, we identify hazards and failure modes.

13 Well, how do you use it?

14 THE COURT: Well, we've had some brief discussion a
15 couple of times now about whether there was any post-
16 manufacture and sale duty. And as I understand it, plaintiffs
17 have represented you think you've got evidence that
18 establishes some -- well, tell me what is it -- where -- what
19 is your evidence?

20 MR. JAVINS: It's the fact that this failure mode is
21 identified. This thing can bind. People call and say, "My
22 accelerator stuck. My gas pedal is stuck." This critical
23 information is not shared with the technicians or the consumer
24 or in post-sale literature to the consumer. That is the
25 failure to warn.

1 You've got something that rates a 10 out of 10. Your own
2 documents say this thing can bind. A customer calls and says,
3 "My accelerator pedal is sticking," and the people taking the
4 call are not provided with this critical information. And so
5 that's the purpose of that.

6 THE COURT: Mr. Clark?

7 MR. CLARK: If the plaintiffs are going to pursue a
8 failure to warn claim, then my understanding of West Virginia
9 law -- and I hope Mr. Cooke will hop up and correct me if I'm
10 wrong -- is that they've got to prove causation on that
11 failure to warn claim. And the record is utterly devoid of
12 any evidence of any causation of any alleged failure to warn.

13 Now, now that the Court has excluded punitive damages and
14 has refused to reconsider that decision, at least for the time
15 being yesterday, evidence about warnings that Ford should or
16 shouldn't have given other customers is irrelevant.

17 THE COURT: How can you establish that warnings
18 would have made a difference here given --

19 MR. JAVINS: Well, in addition to a duty to warn and
20 the overall negligence, it really goes to the overall
21 negligence that Ford is aware of. It goes to foreseeability.
22 Ford is constantly -- they have opportunities to go back to
23 their FMEA when customers call and say, "I'm complaining about
24 a stuck pedal." There's a document over here that says this
25 pedal can stick. And so really it's foreseeability in the

1 overall negligence arena which may give rise to a duty to
2 warn, but it's also just foreseeability, Your Honor.

3 THE COURT: Well, I've got doubts about it, but I'm
4 going to allow the testimony to come in. And, if appropriate
5 and necessary, at the time of instructing the jury, I think I
6 can make clear whether or not there's a duty to warn type
7 theory here that the jury should decide.

8 MR. CLARK: Let me ask a logistical question, Your
9 Honor. What is the Court's preference as far as advising the
10 Court for purposes of the record what was actually read? How
11 would you like for us to do that?

12 THE COURT: From the deposition designations?

13 MR. CLARK: Yes, sir.

14 THE COURT: Well, for simplicity, as well as
15 relieving the burden on my court reporter, what we generally
16 prefer is that the parties submit the written transcript. And
17 in this case where a transcript is going to be severely edited
18 or significantly edited, the transcript should reflect the
19 edits so that it's clear in the written transcript what was
20 offered at trial and what wasn't.

21 MR. CLARK: We will do that. I don't want to
22 guarantee that it will get done today, but I expect we'll have
23 it for the Court tomorrow morning.

24 THE COURT: Well, that's fine. As far as I'm
25 concerned, first and foremost, I certainly want to make

1 clear -- I'll try to make clear my rulings on things.

2 Secondly, how do you all intend to present these
3 depositions?

4 MR. JAVINS: Mr. Engle is not available, and I
5 intend to read them with Jennifer Holzapfel. She will be
6 James Engle.

7 One other logistical matter with that is -- I think now
8 we talked about the '87 iteration of the FMEA. I think Mr. --
9 Ford has indicated they're fine with admitting the FMEA
10 handbook and the '97 FMEA. I think there's some pushback on
11 the '87, but certainly we talked about it. I introduced it to
12 the witness, and I think that's part of the overall -- and
13 Mr. Sero is going to talk about that. That's where he first
14 identifies the failure mode in his methodology.

15 THE COURT: Perkins testified about that as well,
16 didn't he?

17 MR. JAVINS: I think so. And so I would like to
18 introduce the '87 FMEA through that. We talk about it in the
19 deposition.

20 Engle is today, by the way, but we can --

21 THE COURT: Well, we're kind of getting ahead of
22 ourselves, or at least ahead of me.

23 So, first, with respect to providing a written transcript
24 of deposition or trial testimony being offered into evidence,
25 as long as you've got something clearly marked that you're

1 going to agree is the evidence that should be submitted, then
2 making sure that it's correctly available to whomever is going
3 to read those parts is most important. And I trust the
4 lawyers to be able to work together, if it's necessary to take
5 a transcript and mark it, such that it could then be filed
6 with the Court and be relied upon as the -- for the
7 preparation of any transcript of this trial as the testimony
8 of those witnesses.

9 And I don't mind if that's done the next day if it's not
10 available at the time that the testimony is offered. But that
11 relieves my court reporter of the burden of having to try to
12 take this down when it's going to be a written transcript
13 anyway.

14 MR. CLARK: That's what we were in for.

15 THE COURT: Sure. So we'll take care of that.

16 Now, as far as exhibits --

17 MR. JAVINS: I anticipate three, two of which are
18 not objected, the '97 FMEA handbook, and there is the matter
19 of our discussion of the '87 FMEA.

20 MR. CLARK: We don't -- Ford doesn't object to the
21 discussion of the '87 FMEA, and I think a number of witnesses
22 are going to do that. But in view of Mr. Engle's unequivocal
23 testimony that that FMEA is not applicable to the 2001 Ford
24 Ranger, there's testimony at page 62, line 24, through page
25 63, line 1, of his deposition, it should not come into

1 evidence. It should not go back to the jury.

2 THE COURT: Well, I'm going to defer on this until I
3 have a chance to look at this.

4 MR. CLARK: Okay.

5 THE COURT: I think it is dependent upon the
6 testimony.

7 MR. JAVINS: I'll move for its admission at the
8 conclusion. The Court can rule at the appropriate time.

9 THE COURT: That sounds fair.

10 All right. Is there anything else, then, that we need to
11 take up?

12 MR. CLARK: At some point, Your Honor, we're going
13 to need to make a record about Mr. Perkins' testimony. I
14 think the Court's rulings yesterday and today have taken care
15 of some of our objection. I just need five minutes to make a
16 record at some point.

17 THE COURT: Well, okay.

18 MR. CLARK: Do you want me to make it right now?

19 THE COURT: Sure.

20 MR. CLARK: The Court -- much of Mr. Perkins'
21 testimony concerns the alleged similarities between various
22 speed control cables that were installed in the Next
23 Generation speed control system.

24 First of all, Mr. Perkins stopped working the Next
25 Generation speed control system or on speed controls at all in

1 1993, seven or eight years before the manufacture of Mr.
2 Nease's 2001 Ford Ranger. And so Mr. Perkins would have no
3 knowledge whatsoever about the similarity, if any, between the
4 speed control cable installed in the 2001 Ranger and other
5 speed control cables installed in other vehicles with the Next
6 Generation speed control system.

7 Now, the question of similarity in general is irrelevant
8 as far as the jury is concerned because what Rule 404(b)
9 teaches and what the *Hershberger* case teaches that the Court I
10 think yesterday acknowledged was a correct statement of West
11 Virginia law and other incidents, at least as applied to -- in
12 diversity cases, is that the question of similarity is one for
13 the Court. And so it's absolutely appropriate for the Court
14 to consider that testimony in trying to figure out similarity
15 of various cables. But in the procedural posture of this case
16 where, again, punitive damages have been excluded, that
17 testimony is not relevant as far as the jury is concerned.

18 THE COURT: All right. Plaintiff want to put
19 anything on in response?

20 MR. HEISKELL: Not really, Your Honor. I think
21 we've stated our position with respect to Mr. Perkins and the
22 limitations on what we offer him for.

23 THE COURT: All right. All right. Then is there
24 anything else that we need to deal with before we start
25 bringing the jury up?

1 MR. BIBB: Your Honor, we don't necessarily need to
2 deal with it right now, but at 7:00 last night the plaintiffs
3 furnished us with an animation that's not going to be an
4 exhibit at trial but they want to use in opening statement.

5 First of all, I think it's improper during opening
6 statement to have something you fabricated that's not going to
7 be a witness-sponsored item to be used in opening statement.
8 You use exhibits that you know are going to be introduced at
9 trial.

10 I've got a number of objections to the substance of that
11 animation. We can take that up now or we can take it up at a
12 later time, but I don't think it's proper to be shown during
13 opening statement.

14 THE COURT: Well, tell me about this.

15 MR. JAVINS: Your Honor, with Mr. Katz's help, we
16 have prepared images. They can be moving animations, but it's
17 a series of images of the 2001 Ford Ranger, and we're offering
18 it in the opening as a demonstration, okay? It's a
19 demonstration of our theory of liability.

20 It shows the throttle. It shows the accelerator cable.
21 It shows the gas pedal and how pressing the gas pedal can
22 cause the throttle to open, because these are concepts that I
23 would like to try to communicate.

24 THE COURT: Well, you know, that's a wonderful thing
25 to have, and I'm sure both the Court and the jury would

1 benefit by it.

2 Why was this not identified and disclosed until the night
3 before trial?

4 MR. JAVINS: I don't know what they're going to
5 offer today either. I have no idea.

6 THE COURT: Well, they'd better not be offering a
7 demonstration or exhibit that hasn't been identified and
8 disclosed.

9 MR. BIBB: Your Honor, I'm prepared to furnish them.
10 I brought with me an extra set. They're basically photographs
11 that have been produced during discovery, pictures of the
12 truck and that sort of stuff.

13 MR. JAVINS: I haven't gotten that yet. We gave
14 ours last night because we cobbled together -- I mean, we've
15 got to wait on rulings from the Court, but it just embodies
16 our theory of liability. It shows the speed control cable.
17 It's for demonstration. It's for demonstrative purposes.
18 It's not evidentiary. There's zero evidentiary basis to it.
19 It's just to explain what the speed control cable is and how
20 it interacts with the accelerator cable.

21 THE COURT: So it's not photographs or documents
22 that were identified as potential exhibits, I take it.

23 MR. JAVINS: A few photographs. There's a
24 photograph of the speed control cables taken of the engine,
25 and it's panned in, it's panned out. But then we identify and

1 we label them here and there to explain what these things are
2 and how they work.

3 It's simply a demonstration of how these components work
4 with each other, no different than Mr. Bibb brings his mock-
5 up of the speed control cable where the pedal was improperly
6 placed and what have you. It's no different than that.

7 MR. BIBB: It is -- it's a lot different, Your
8 Honor. It's basically two parts. The first part of their
9 animation, which basically shows how the cable is placed in
10 the vehicle and which cable is which, I don't have a problem
11 with. But then the second half, which is a pure animation,
12 which was the first time we got shown yesterday, is to show
13 how their theory is to be created.

14 This is not an exhibit that was generated through Mr.
15 Sero's testimony, their only liability expert, whose
16 deposition was taken back in November. I find that it's not
17 going to be apparently an exhibit at trial.

18 How can you possibly show that during an opening
19 statement, which is supposed to be a roadmap for the case?

20 THE COURT: Well, I'm not going to let you use the
21 second part of that, Mr. Javins, if that's a fair statement.

22 MR. JAVINS: Okay. We have -- we demonstrate a
23 close-up of the guide tube going into the cap tube, which the
24 Court knows is the place where our theory says contaminants
25 can enter and cause binding.

1 THE COURT: All right.

2 MR. JAVINS: We show a close-up of that. There is a
3 version with some debris, and we can take that off, but I
4 don't know why I can't say to the jury -- take the debris out
5 and say, "This is how the cap tube -- or the guide tube enters
6 into the cap tube."

7 THE COURT: And by that, you mean that's the
8 animated part?

9 MR. JAVINS: Yeah. In fact, it's a series of still
10 photographs.

11 MR. BIBB: Well, it was animated when it was sent to
12 us by a Dropbox last night.

13 THE COURT: How long is it?

14 MR. BIBB: It's about two minutes and forty-six
15 seconds, Your Honor.

16 MR. JAVINS: With photographs, it's shorter because
17 it's as long as I want to discuss it, to be perfectly candid,
18 and it's just -- it enabled me to show how the guide tube goes
19 into the cap tube when, simultaneous, as the accelerator pedal
20 or cable is moving forward and back.

21 MR. BIBB: If he'll show me what he really intends
22 to use, Your Honor, during a break today --

23 THE COURT: All right. We've got some time, so I
24 don't want to stop --

25 MR. JAVINS: I can provide printouts.

1 THE COURT: Well, why don't you provide whatever you
2 can identify for Mr. Bibb. See if you can narrow down and
3 avoid objection and then I'll consider it.

4 MR. BIBB: I appreciate that, Your Honor. Thank
5 you.

6 THE COURT: All right. How many people have we got
7 downstairs?

8 THE CLERK: Thirty-four.

9 THE COURT: All right. We have 34 jurors. Is there
10 anything else we need to take up before we start bringing the
11 jurors up?

12 MR. O'DELL: Your Honor, the medications that
13 Mr. Cooke and I agreed upon --

14 THE COURT: All right. Have you provided that to my
15 clerk?

16 MR. O'DELL: No. We did it by agreement and we
17 confirmed this morning. There are just three.

18 THE COURT: Okay. Well, why don't you bring those
19 up. Just write them down and we'll add them. That's for the
20 purposes of the voir dire, correct?

21 MR. O'DELL: Yes, Your Honor.

22 THE COURT: All right. Anything else we need to do
23 before we start bringing the jurors up?

24 MR. BIBB: No, Your Honor.

25 THE COURT: All right. We're going to call for the

1 jury to be brought up. As I told you yesterday, they'll come
2 up in waves. It will take a few minutes for all of them to
3 get up here. They'll already have a randomly assigned number
4 which will be reflected on a sticker. So we're going to seat
5 them in that numerical order in the jury box and the benches
6 out there, and that's where we'll conduct the voir dire.

7 So as soon as we get them all seated, we'll formally open
8 court and proceed with the jury selection.

9 (Recess from 9:18 a.m. to 9:33 a.m.)

10 (Prospective jurors present)

11 THE COURT: Good morning.

12 RESPONSE: Good morning.

13 THE COURT: All right. The Court calls the matter
14 of Howard and Nancy Nease versus Ford Motor Company, Civil
15 Action Number 3:13-29840.

16 Are the parties ready to proceed?

17 MR. O'DELL: Yes, Your Honor.

18 MR. COOKE: Yes, Your Honor.

19 THE COURT: All right. Good morning, ladies and
20 gentlemen. I am United States District Court Judge Chuck
21 Chambers, and I'll be presiding over this trial.

22 First, I want to thank all of you for your appearance
23 here this morning. All of us are keenly aware of the fact
24 that jury service is often a burden. It almost never happens
25 that it's a good time for the jurors themselves. And I

1 recognize that many of you are put in an uncomfortable
2 position because of the interruption in your work or your
3 family life and responsibilities that's caused by jury
4 service.

5 Having said that, the simple truth is that our system of
6 civil and criminal justice in this country absolutely depends
7 upon the willingness and ability of people like you, citizens
8 of the community, to serve as jurors. And so it's an
9 important civic and public responsibility. I know that
10 probably doesn't make you any more comfortable sitting here
11 today with the prospect of being selected to serve on a jury,
12 but I hope you can appreciate that there's simply no
13 alternative, and you are the folks who were called upon for
14 this particular case. So while we apologize for the
15 inconvenience that we know results from jury service, we also
16 thank you for that service and hope that you recognize how
17 important it is to our system.

18 So as we go through this process this morning, it will
19 take most of this morning, perhaps even a little longer, for
20 the jury selection process. Once that's done, though, the
21 bulk of you will be released and will not be needed for this
22 trial, and those that remain will be selected as jurors, and
23 we'll try to move the trial along as quickly as we reasonably
24 can to minimize the interference that being on a jury will
25 cause each of you. So we'll try to accommodate you as best we

1 can.

2 Now, the first step in a trial is the selection of the
3 jury. And to do that, I'm going to perform what's called a
4 voir dire examination. That's just a term for a process where
5 the Court asks you as a group a series of questions. We're
6 asking these questions, first, to determine your
7 qualifications to serve as members of a jury; and second, and
8 just as importantly, to learn more about you, your background,
9 experience, and so forth so that the lawyers and their clients
10 can exercise in a meaningful way what are called peremptory
11 strikes. And that's simply the process whereby each side gets
12 to whittle the number of jurors down to the final number that
13 we need for trial.

14 We engage in that process because the parties are
15 entitled to a fair and impartial jury to decide this dispute.
16 And so it's important that they have a role in the jury
17 selection as a result.

18 So my clerk is now going to administer the oath on voir
19 dire to you as a panel.

20 THE CLERK: Would each of you stand and raise your
21 right hand.

22 (The prospective jurors were duly sworn)

23 THE CLERK: Thank you. You can have a seat.

24 THE COURT: All right. I'm now going to ask you as
25 a group a series of questions. If any of you don't hear my

1 question or don't understand it, please raise your hand and
2 ask me to repeat it.

3 If your answer to any of my questions is "yes," please
4 raise your hand. After you've raised -- each of you have
5 raised your hands who would have a "yes" answer to a question,
6 I'll ask you to stand. You know, we have a court reporter in
7 the room, but it's important that she be able to identify each
8 person who's speaking. So if I ask you to stand, then I'm
9 going to ask that the first thing you do is state your name
10 and/or your number so we can properly identify you and the
11 court reporter can keep up with it. So I'll ask you to do
12 that before you provide any further answer or response.

13 When I call upon you to stand, after telling me your name
14 and your number, I may ask a follow-up question or ask you to
15 clarify something. Please speak up really loudly. And I say
16 that especially to you folks in the back side of the
17 courtroom. This is a beautiful old courtroom. We're really
18 proud of it, but the fact is the acoustics aren't very good in
19 this courtroom. And I have a microphone and the lawyers have
20 microphones. My court reporter has to try to listen through
21 both the microphone system, as well as those of you who don't
22 have microphones, and the sound does not carry very well.

23 So especially for those of you in the back, when you
24 stand up, you just about have to shout to make sure that we
25 all hear you. So I may interrupt you to ask you to do that or

1 repeat something. So try to keep that in mind.

2 Now, in asking these questions, I want to emphasize this
3 is not a test. There aren't any right answers or wrong
4 answers to anything that I'm going to ask you. You have now
5 taken an oath to answer these questions truthfully and
6 forthrightly. By being truthful and forthright, you're
7 helping to ensure that the parties and the Court find a fair
8 and impartial jury to decide this trial.

9 Please don't let embarrassment prevent you from speaking
10 up. We do this in every case. If there's anything that would
11 embarrass you to stand up and be saying in front of everyone,
12 just let me know. Ask to approach the bench, and I'll call
13 you up here and we'll huddle up here as best we can. I'll
14 have the juror standing in the middle here so we can talk.
15 And, of course, the lawyers and their clients will sort of
16 come around so they can participate in this. We'll have as
17 private a conversation as we can up here.

18 So, again, if your answer to any of my questions is
19 "yes," please raise your hand. There are a lot of questions
20 here, and I'm sure there will be a lot of "yes" answers. So
21 when you've raised your hand, make sure you get my attention
22 and I don't skip over you. And then I'll ask you in turn.
23 Usually I go row by row, if necessary, to stand, identify
24 yourself, and provide your answer or any follow-up.

25 Now, first, the lawyers advised me that this case will

1 take probably seven to ten days of trial. That means all of
2 this week and maybe all of next week.

3 Now, I know many of you when you got your notice to serve
4 as a juror wrote back and indicated that you had concern about
5 serving because of your work responsibilities. I recognize
6 that for many people, the simple fact is it's just a loss of
7 income for a while. I can't release jurors based upon that
8 reason as a general matter because if I did, virtually
9 everybody, and certainly everybody who has a job, would be
10 excused from jury service, and that just wouldn't be possible.
11 We can't have a jury made up of just people who for whatever
12 reason don't work or don't have other responsibilities.

13 So I will tell you now that unless you can tell me
14 something new or more compelling, something unique that's
15 going on with your job, it's unlikely that I'm going to be
16 able to excuse you because of the fact that you're employed.
17 But I've told you now, this will be a trial of seven to ten
18 days.

19 Do any of you have any compelling reason why you couldn't
20 serve as a member of a jury during this period of time?

21 All right. Ma'am, if you'll stand. And, first, tell me
22 your name and speak loud.

23 PROSPECTIVE JUROR: Ethel Groves, Number 21.

24 THE COURT: All right. And what is your --

25 PROSPECTIVE JUROR: My husband is having a stress

1 test, and I have to take him Thursday.

2 THE COURT: All right. He has a stress test on
3 Thursday. All right. Thank you.

4 Yes, sir?

5 You can sit down.

6 Please stand and identify yourself.

7 PROSPECTIVE JUROR: Number 11, Mark Ball. I'm
8 actually on vacation from my job, and I have a family trip
9 planned at the end of the week.

10 THE COURT: End of what week?

11 PROSPECTIVE JUROR: This week.

12 THE COURT: All right. I'll have to ask you some
13 follow-up. What was your last name? Grove?

14 PROSPECTIVE JUROR: Ball.

15 THE COURT: Oh, Ball. I'm sorry.

16 All right. Yes, sir, in the back?

17 PROSPECTIVE JUROR: Michael Hupp, Number 34. I have
18 six children and childcare is very difficult at this point.
19 My wife and I both work, and I've also got a family vacation
20 planned starting Sunday into the end of next week.

21 THE COURT: All right. I'll probably have to ask
22 you some follow-up questions later.

23 And someone else had their hand up? Yes, sir?

24 PROSPECTIVE JUROR: Yes. John Deahl, Number 23. On
25 April 14th I have a -- scheduled for a colonoscopy.

1 THE COURT: Well, you wouldn't want to miss that.

2 PROSPECTIVE JUROR: Wouldn't want to miss that.

3 THE COURT: What if we arranged that that could be
4 done here? Would that -- we've got a nurse.

5 PROSPECTIVE JUROR #13: I'm a nurse. I got you.

6 THE COURT: All right. It's scheduled April 14th?

7 PROSPECTIVE JUROR #23: 14th.

8 THE COURT: Okay. Thank you. I think we'll be
9 okay, but thank you for bringing that to my attention.

10 Anyone else?

11 Now, again, I know many of you have some type of health
12 problem or other condition that might make it uncomfortable
13 physically to sit, but I will tell you that -- I tell all
14 jurors, first, the jurors get the most comfortable chairs that
15 we have. These are nice comfortable rocking chairs in the
16 jury box. And I've always told jurors that whether it's
17 because of a physical problem or they just want to stand up,
18 but at any point during a trial they can stand up and stretch
19 and move about.

20 We take breaks. Nobody is sitting here for six hours a
21 day or anything like that. But apart from that, do any of you
22 have any sort of special disability or problem that would make
23 it difficult or impossible for you to serve as a member of a
24 jury?

25 Yes, ma'am? Please stand and identify yourself.

1 PROSPECTIVE JUROR: Debra Cart, Number 29. I have a
2 bladder condition, and there's some days that I go to the rest
3 room quite frequently.

4 THE COURT: Well, we've had -- that's not an
5 uncommon problem, and we've had jurors who have been able to
6 serve with that. And, honestly, I just tell jurors, whether
7 it's because you've got a problem or it's just time to go, if
8 we're in a trial or a hearing, all jurors need to do is give
9 me a signal that they need a brief break and we do that. So
10 that's not uncommon.

11 Would that be sufficient do you think?

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: All right. Thanks for bringing that up.
14 Anyone else?

15 Now, did any of you show up here this morning after
16 working a midnight shift or something like that where you
17 would normally at this point either be home in bed or close to
18 that? Anybody have that situation?

19 All right. Now, I'm going to introduce you to the
20 lawyers involved and the parties. I try to do this the
21 simplest way, which is just ask the people here in the
22 courtroom that are lawyers or the parties to stand.

23 As I call their name, I would like you to tell me if you
24 or, to your knowledge, anybody in your family or somebody
25 close to you knows these people, has any sort of business or

1 other dealing with them. And when I say "knows these people,"
2 in this day and age, that means whether you happen to be
3 friends on social network, whether you follow each other on
4 Facebook or something like that. So anything like that.

5 If you or your family or somebody close to you knows the
6 lawyers or the parties through any sort of arrangement, please
7 raise your hand and identify yourself, and then I'll ask you
8 some follow-ups.

9 First, I want to start with the plaintiffs to the case.
10 The plaintiffs -- that means in a civil case like this, the
11 people who bring a lawsuit or bring a claim -- are Mr. Howard
12 Nease and Nancy Nease, and they live in Poca. This is Mr. and
13 Mrs. Nease.

14 Thank you, folks. Yeah, turn around so they can see you
15 behind.

16 So if any of you know them or think anybody in your
17 family knows them, raise your hand. All right. Thank you.

18 Now, their lawyers are three lawyers. First, Mr. Lee
19 Javins. He's with the firm of Bucci Bailey & Javins in
20 Charleston. Next, Mr. Tony O'Dell with Tiano and O'Dell in
21 Charleston. And then Edgar Heiskell, who's also from
22 Charleston.

23 Thank you.

24 Now, the lawyers representing Ford -- Ford is Ford Motor
25 Company, the Ford you're all familiar with, is the defendant

1 in this case. They are represented by three attorneys who are
2 here today. First, Andy Cooke, who's with the law firm of
3 Flaherty Sensabaugh & Bonasso in Charleston. And then John
4 Randolph Bibb, who goes by Randy Jr., and Ryan Clark, and
5 they're from a law firm down in Nashville.

6 Thank you.

7 Now, I want to tell you briefly what event occurred that
8 resulted in this lawsuit. I do this just to find out if you
9 happen to know anything. I doubt you would, but just to make
10 sure that nobody has heard something about this or knows
11 something about the event or the case.

12 This case involves a motor vehicle crash that occurred
13 near Mousie's Car Wash in St. Albans.

14 Is that right off Route 60?

15 MR. COOKE: Yes, sir.

16 MR. O'DELL: Yes, it is, Your Honor.

17 THE COURT: The plaintiffs, Mr. and Mrs. Nease,
18 allege that this crash occurred because the accelerator in
19 Mr. Nease's Ford vehicle became stuck and he was unable to
20 stop the vehicle.

21 Now, without telling me what it is, have any of you ever
22 heard anything about this case or know anything about it from
23 any source?

24 Yes, sir?

25 PROSPECTIVE JUROR #14: I just saw it on the news.

1 That's the only thing I know about it.

2 THE COURT: Okay. First, your name is?

3 PROSPECTIVE JUROR: Michael Smith.

4 THE COURT: All right, Mr. Smith. And you're Juror
5 Number 14.

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. Now, where do you live?

8 PROSPECTIVE JUROR: I live in Hurricane, West
9 Virginia.

10 THE COURT: Okay. Counsel, again refresh my
11 recollection. When did this actual crash take place?

12 MR. BIBB: November 20th, 2012.

13 THE COURT: All right. So this crash would have
14 taken place back in November of 2012. You think you may have
15 read or heard something in the news media?

16 PROSPECTIVE JUROR: I think I heard something on the
17 news about it. I'm not, you know, sure, but --

18 THE COURT: All right. Thank you for bringing it
19 up. I'll have some follow-up questions for you.

20 Anyone else?

21 All right. Now, I've asked the lawyers to give me a list
22 of all the witnesses who might testify. Obviously, it will be
23 important for the lawyers and the Court to know if a juror
24 happens to know or have some relationship, business or
25 otherwise, with a potential witness. So I'm going to call

1 this list of witnesses. I want to tell you it's quite long.

2 The fact that somebody's name is on this list doesn't
3 mean that they will testify. In fact, I'm sure many of the
4 names will not end up testifying. But if you or, to your
5 knowledge, somebody in your family knows any of these
6 witnesses or has any other business or other relationship with
7 them, please raise your hand. I'm just going to read down the
8 list. So raise your hand and get my attention before I move
9 to the next name. And I'm going to try to include with each
10 name the city where they reside.

11 First, J. M. Dent, who's a police officer with
12 St. Albans; B. J. Perry, another police officer at St. Albans.

13 All right. Yes, sir? Please stand and identify
14 yourself.

15 PROSPECTIVE JUROR: Number 34, Michael Hupp.
16 Brandon Posser or Brandon Perry and myself went to high school
17 together and played Little League baseball at St. Albans High
18 School.

19 THE COURT: All right. Have you had any continuing
20 contact with him since you got out of high school?

21 PROSPECTIVE JUROR: Spoke with him within the past
22 four years in St. Albans.

23 THE COURT: Just running into each other?

24 PROSPECTIVE JUROR: Yeah, at the grocery store.

25 THE COURT: Would it be fair to say that you've

1 never been close friends?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: So you all wouldn't hang out together.

4 You would just happen to be in the same high school and

5 happened to play Little League.

6 PROSPECTIVE JUROR: Correct.

7 THE COURT: And I hope you're not offended by me

8 asking, but how long ago was it that you were in high school?

9 PROSPECTIVE JUROR: Let's see. That we were
10 actually in high school together?

11 THE COURT: Yes.

12 PROSPECTIVE JUROR: Since 1997.

13 THE COURT: Okay. And since 1997, then, other than
14 on an occasion like four years ago or so, you haven't seen him
15 or done anything with him.

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Would it be fair to say that if you were
18 chosen as a juror in this case and he testified about
19 something, that you would treat his testimony and whether it's
20 believable or not the same as you would any other witness and
21 that you wouldn't give any extra weight or believability just
22 because you happened to know him back in high school?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay. Thank you.

25 Anyone else?

1 C. T. Lowe, another police officer at St. Albans.

2 All right. William Daily, Jr. from Charleston. John

3 Kemplin, Jr. from St. Albans. Samuel Sero from Pittsburgh.

4 Cathy Gross from Morgantown. Ross Dionne from Charleston.

5 Zachary Meyers from Charleston. James Engle from Dearborn,

6 Michigan. Phillip Moore, Dearborn, Michigan. Jonathan

7 Sprunger, Dearborn, Michigan. William McGee, Springfield,

8 Massachusetts. Glen Goldfarb from Charleston, West Virginia.

9 Gregory Mark Morehead from Nitro. Timothy Deer from

10 Charleston. And isn't he a doctor?

11 MR. COOKE: Yes, sir.

12 THE COURT: So it would be Dr. Timothy Deer from

13 Charleston.

14 MR. O'DELL: Your Honor, that was Dr. Mark Moreland.

15 THE COURT: All right. Mark Moreland is a doctor in

16 Nitro.

17 Asif Rahman or "Rahmen" from Charleston. John Deluca

18 from Charleston. Stephen Hass or "Hoss" from Charleston.

19 Frank Lucente from Charleston. Michael Hall from Charleston.

20 Tammy LeMaster from Gallipolis, Ohio. Mark Nease from

21 Hurricane, West Virginia. Valerie Cremeans from St. Albans.

22 Larry Petersen from Warren, Michigan. Karl Stopschinski

23 from Houston, Texas. Steven MacLean from Bowie, Maryland.

24 Lisa Gwin, San Antonio, Texas. Nathan Dorris, Atlanta,

25 Georgia.

1 Harry Duncan, Charleston, West Virginia. Khaled Kebaish.
2 I'm not sure how to pronounce that. Is that close? From
3 Baltimore, Maryland.

4 Kevin McGrath from Pittsburgh. Timothy Parkinson from
5 Dearborn, Michigan. Ronald Gaw, G-a-w, from Dearborn. Leon
6 Mitchell from Toledo. John Lovett from Toledo. John Snyder
7 from Findlay, Ohio. Charles Adams from Dearborn, Michigan.
8 Scott Simpson, Dearborn, Michigan. Sam Rahaim from Dearborn.
9 Louis Camp from Dearborn. James Padilla from Dearborn. James
10 Cikalo from Dearborn. Kenneth Woddail, High Ride, Michigan.
11 And Matthew Hackney from Cottageville, West Virginia.

12 All right. So this morning as you've gathered in the
13 clerk's office and then come up here, do any of you recognize
14 or know any of your fellow jurors? Have you come across
15 somebody here who's a friend or an acquaintance with each
16 other?

17 All right. Yes, sir, if you'd stand and identify
18 yourself.

19 PROSPECTIVE JUROR: Derek Rainey, Number 20. I used
20 to work with Juror Number 22.

21 THE COURT: And what's his name?

22 PROSPECTIVE JUROR #22: Thomas Knapp, Number 22.

23 THE COURT: All right. Where did you work together?

24 PROSPECTIVE JUROR #20: At the time, it was called
25 Alcan Rolled Products in Ravenswood, West Virginia.

1 THE COURT: All right. Say that again. Elk?

2 PROSPECTIVE JUROR #20: Alcan.

3 THE COURT: Alcan?

4 PROSPECTIVE JUROR #20: Yes.

5 THE COURT: All right. How long ago did you work
6 together, about?

7 PROSPECTIVE JUROR #22: I've been retired for three
8 years.

9 THE COURT: Do you still work there?

10 PROSPECTIVE JUROR #20: Yes, sir.

11 THE COURT: All right. Did you all work closely
12 together and see each other every day, work in the same
13 department or same area?

14 I'm going to ask you to answer, Mr. --

15 PROSPECTIVE JUROR #20: I worked in casting and I
16 believe he worked in -- I saw him around the plant.

17 THE COURT: All right. All right. And so the
18 extent to which you all know each other is basically what you
19 described, that you would see each other at the plant site and
20 occasionally work in the same vicinity, but you have had no
21 contact since Mr. Knapp retired. Is that correct?

22 PROSPECTIVE JUROR #20: That's right.

23 PROSPECTIVE JUROR #22: Right.

24 THE COURT: All right. Thank you.

25 Anyone else? Yes, ma'am, if you'll stand and identify

1 yourself.

2 PROSPECTIVE JUROR: I'm Marie Hope Kelley. I know
3 34 from around sporting events. He reports for the *Herald*
4 *Dispatch* and --

5 THE COURT: All right. What kind of sporting events
6 are we talking about, first of all?

7 PROSPECTIVE JUROR: High school softball, Little
8 League softball.

9 THE COURT: All right.

10 PROSPECTIVE JUROR: That's the ones I see him at.

11 THE COURT: Okay. And do you all have kids that
12 play on the same teams or anything?

13 PROSPECTIVE JUROR: No. His are way younger than
14 mine.

15 THE COURT: I'm sorry? They're what?

16 PROSPECTIVE JUROR: His are way younger than mine --

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: -- but he's usually at the games
19 reporting.

20 THE COURT: All right. So you all don't socialize
21 together. You might see each other at a sporting event, say
22 hello and chat about the event, but that's the extent of it?

23 PROSPECTIVE JUROR #30: Yes.

24 PROSPECTIVE JUROR #34: Yes.

25 THE COURT: Thank you very much.

1 Anyone else?

2 All right. Now I'm going to ask you about any prior
3 experience you've had in the court system generally. So have
4 any of you ever served as a juror in any type of a case,
5 whether it's a criminal case or a civil case, or even on a
6 grand jury, state or federal?

7 So I'm sure many of you have. Let's start up here.
8 Number 11, if you'll first stand and identify yourself.

9 PROSPECTIVE JUROR: 11, Mark Ball. I was on a
10 couple of cases in here.

11 THE COURT: How long ago?

12 PROSPECTIVE JUROR: Four or five years.

13 THE COURT: Do you remember what kind of cases they
14 were?

15 PROSPECTIVE JUROR: One was drug-related.

16 THE COURT: Criminal case?

17 PROSPECTIVE JUROR: Criminal. And the other one was
18 CSX-related.

19 THE COURT: So a personal injury case against CSX?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you remember which one that was?

22 PROSPECTIVE JUROR: He just inhaled --

23 THE COURT: All right. I remember the case too.

24 All right. So that's been six or eight years ago.

25 PROSPECTIVE JUROR: Yeah, it's been a while.

1 THE COURT: All right. And that's it?

2 PROSPECTIVE JUROR: And I was just recently on the
3 Cabell County jury as well.

4 THE COURT: Did you actually sit in on a trial?

5 PROSPECTIVE JUROR: Yes, but it was dismissed. It
6 was a civil case that was dismissed.

7 THE COURT: All right. Did you actually start
8 hearing evidence in the case?

9 PROSPECTIVE JUROR: Yes. Yes.

10 THE COURT: All right. And did the judge just
11 dismiss it?

12 PROSPECTIVE JUROR: There was some evidence that was
13 brought forth that wasn't communicated between the two sides.

14 THE COURT: All right. What was the case about,
15 briefly?

16 PROSPECTIVE JUROR: The death of an infant.

17 THE COURT: Was it a medical malpractice type of
18 case?

19 PROSPECTIVE JUROR: Yes. Yes.

20 THE COURT: Okay. Thank you.

21 Let's keep going down the row. Number 12? Please speak
22 up.

23 PROSPECTIVE JUROR: I'm Glennia P. Daniels, Number
24 12, and Wayne County. I think it was, like, 1982.

25 THE COURT: What kind of case?

1 PROSPECTIVE JUROR: Civil.

2 THE COURT: Do you remember what it was about?

3 PROSPECTIVE JUROR: No. No.

4 THE COURT: Can't remember if it was a car wreck

5 or --

6 PROSPECTIVE JUROR: I think it was a business,
7 something to do with a business suing another business.

8 THE COURT: Okay. Great. Thanks.

9 All right. Anyone else on this row? Number 13?

10 PROSPECTIVE JUROR: Okay. I'm Heather Egnor, and
11 I'm in Teays Valley, and I served for jury duty in Putnam
12 County. It was -- I don't know what the date is. It was a
13 couple of years ago.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: And it was about -- something
16 about the food being too hot.

17 THE COURT: Somebody get hurt?

18 PROSPECTIVE JUROR: Somebody burnt their mouth.

19 THE COURT: I'm sorry?

20 PROSPECTIVE JUROR: They burnt their mouth.

21 THE COURT: All right. So you sat on a jury trial
22 of that matter?

23 PROSPECTIVE JUROR: Yes. Yes.

24 THE COURT: Okay. Thank you.

25 Anyone else?

1 All right. How about back here? Let's start with -- oh,
2 I'm sorry. Number 7?

3 PROSPECTIVE JUROR: Mike Joseph, Number 7. DUI case
4 in Putnam County probably 12 years ago.

5 THE COURT: Thank you.

6 All right. Let's start with -- we'll go row by row. So
7 on the first row, Number 15?

8 PROSPECTIVE JUROR: Rebecca Byus.

9 THE COURT: Please speak up.

10 PROSPECTIVE JUROR: I served on jury duty in Putnam
11 County. It was a murder trial. It was probably ten years
12 ago.

13 THE COURT: All right. Thank you.

14 Anyone else on that row? Number 16?

15 PROSPECTIVE JUROR: I'm Karan McMillin, 16. I
16 served on a murder trial probably about eight, ten years ago,
17 Mason County.

18 THE COURT: Mason County? Thank you.

19 Anyone else?

20 All right. Let's go to the next row.

21 PROSPECTIVE JUROR: Ethel Groves, 21. I was on the
22 grand jury in Mason County probably 20 years ago.

23 THE COURT: All right. And it was the grand jury.

24 So you weren't --

25 PROSPECTIVE JUROR: Yes, one day. We did

1 indictments, and I don't remember what any of the indictments
2 were.

3 THE COURT: Okay. That's fine. Thank you.

4 Anyone else on that row? Yes, sir?

5 PROSPECTIVE JUROR: Thomas Knapp, Number 22. I
6 served on the Mason County petit jury several times in the
7 last 30 years and anywhere from a murder case to civil cases.

8 THE COURT: Do you remember what kind of civil cases
9 you've been involved with?

10 PROSPECTIVE JUROR: One was when they was trying to
11 close down the drag strip up at South Side.

12 THE COURT: Okay. Close down the drag strip at
13 South Side.

14 PROSPECTIVE JUROR: Right.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: And I can't remember the others,
17 but I've been on several cases.

18 THE COURT: All right. Thank you.

19 Anyone else on that row? Yes, ma'am, please stand up and
20 identify yourself.

21 PROSPECTIVE JUROR: Lisa Bowles, 24.

22 THE COURT: Speak up. It's hard to hear you.

23 PROSPECTIVE JUROR: Lisa Bowles, 24. I served on
24 the federal grand jury in Charleston for 18 months back in the
25 '80s.

1 THE COURT: Back in the '80s?

2 PROSPECTIVE JUROR: Uh-huh, late '80s.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: I've been on the jury in Putnam
5 County three or four times, and I just got off last year in
6 Putnam County.

7 THE COURT: Did you hear civil trials in Putnam
8 County?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Do you remember what kind of cases you
11 heard?

12 PROSPECTIVE JUROR: Well, I was selected for the
13 jury, but I knew the person that was on trial, so I was
14 dismissed.

15 THE COURT: All right. Okay. Was that the only
16 civil case you recall?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Thank you.

19 All right. Let's go to the next row back. Anybody in
20 that row?

21 All right. Let's start on the right side with you all.
22 Number 27?

23 PROSPECTIVE JUROR: Donna Dickson. And about three
24 years ago I served on a jury in Wayne County and it was a
25 civil case, a dispute over who owned the property.

1 THE COURT: Who owned property?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. Thank you.

4 PROSPECTIVE JUROR: Janette Sigman, 28. I served on
5 -- for a Putnam County jury about four years ago. It was a
6 civil case. The contractor's work the people weren't pleased
7 with.

8 THE COURT: Okay. Thank you.

9 Anyone else on that row? Yes, ma'am?

10 PROSPECTIVE JUROR: Debra Cart, 29. I was called in
11 Putnam County. I was not picked. They dwindled us down and
12 then I got booted off.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: It was an accident.

15 THE COURT: All right. That was the only time you
16 were close to being --

17 PROSPECTIVE JUROR: Yeah. And then I was contacted
18 again, and I -- it was in Monsanto. It was doing everything,
19 had, like, a 30-, 40-page thing.

20 THE COURT: All right. So you weren't selected for
21 that.

22 PROSPECTIVE JUROR: No.

23 THE COURT: All right. Thank you.

24 Anyone else there?

25 All right. In the back row behind, anyone?

1 All right. Now, have any of you ever been involved in a
2 civil or criminal case as one of the parties? Meaning in a
3 civil case, have you been a plaintiff? That's the person
4 bringing the suit. Or have you been a defendant? That's the
5 person who gets sued. Or have you testified as a witness or
6 been the victim in any criminal case?

7 So any of you have any prior experience -- and when I
8 talk about being a party to a case, we're excluding any sort
9 of domestic relations or divorce or anything like that. But
10 have you ever brought a lawsuit or been sued? Anybody up
11 here?

12 All right. Number 34?

13 PROSPECTIVE JUROR: Number 34, Michael Hupp.
14 Brought suit against the City of Huntington for having a tree
15 fall on top of my vehicle sitting at a stoplight.

16 THE COURT: When did this take place?

17 PROSPECTIVE JUROR: 2005.

18 THE COURT: Did it go to trial?

19 PROSPECTIVE JUROR: No. I think it was settled
20 outside of court.

21 THE COURT: All right. Thank you.

22 All right. Number 20?

23 PROSPECTIVE JUROR: Derek Rainey. I currently am
24 suing my place of employment for back pay. I was terminated
25 and they don't want to pay me my back pay.

1 THE COURT: So you have a pending lawsuit somewhere?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Do you know what court?

4 PROSPECTIVE JUROR: It hasn't been filed yet.

5 THE COURT: Oh, it hadn't been filed.

6 PROSPECTIVE JUROR: They're still arguing back and
7 forth.

8 THE COURT: All right. Thank you.

9 Yes, sir, up here, Number 9?

10 PROSPECTIVE JUROR: Dan Miller, Number 9. I'm
11 currently involved in a lawsuit with an insurance company and
12 a past customer as a general contractor. It's -- mediation is
13 next week and trial is set for the 13th.

14 THE COURT: What court are you in? Do you know?

15 PROSPECTIVE JUROR: I do not know, sir.

16 THE COURT: So is this where your business is suing
17 or being sued over --

18 PROSPECTIVE JUROR: I'm indirectly being sued from a
19 job nine, ten years ago.

20 THE COURT: All right. And it's over payment of
21 wages?

22 PROSPECTIVE JUROR: No, sir. Neglect. They're
23 saying that I did something wrong on the job.

24 THE COURT: Okay. And are they claiming somebody
25 got hurt because of that?

1 PROSPECTIVE JUROR: No, sir. Property damage.

2 THE COURT: All right. So it's a complaint that
3 your work wasn't satisfactory --

4 PROSPECTIVE JUROR: Correct.

5 THE COURT: -- or caused some additional expense to
6 the --

7 PROSPECTIVE JUROR: Correct.

8 THE COURT: Okay. All right. Thank you.

9 Anyone else? Yes, ma'am, Number 5?

10 PROSPECTIVE JUROR: Caitlin Kessler, Number 5.

11 THE COURT: Please speak up.

12 PROSPECTIVE JUROR: Caitlin Kessler, Number 5. As
13 part of my job -- I'm a claims adjuster -- I administer
14 Workers' Compensation claims for a third-party
15 administrator --

16 THE REPORTER: I'm sorry. Slow down and a little
17 bit louder.

18 PROSPECTIVE JUROR: I'm a claims adjuster for
19 Workers' Comp. And as part of my job, I am called for
20 hearings. I haven't actually gone to a hearing, but I have a
21 couple set.

22 THE COURT: Who is your employer?

23 PROSPECTIVE JUROR: Sedgwick.

24 THE COURT: Okay. So that's an insurance company?

25 PROSPECTIVE JUROR: It's a third-party

1 administrator.

2 THE COURT: All right. And so you're involved with
3 the Workers' Compensation coverage that your company writes to
4 businesses.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: Managing the claims.

8 THE COURT: Right. So that means you investigate
9 the claim and make a recommendation or decision about whether
10 to pay the claim or how much to pay.

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: All right. Thank you.

13 Anyone else?

14 Now, have any of you or members of your immediate family
15 ever had any legal training or worked in the legal profession?

16 All right. Let's start up here.

17 PROSPECTIVE JUROR #9: My fiancée is an office
18 manager for an attorney here in Huntington.

19 THE COURT: And who is that? What attorney?

20 PROSPECTIVE JUROR: Paula Harbour.

21 THE COURT: Paul Harbour? Paula Harbour? How long
22 has she worked for Miss Harbour?

23 PROSPECTIVE JUROR: About three years.

24 THE COURT: And what does she do? Secretarial work?

25 PROSPECTIVE JUROR: Yes. She's office manager.

1 THE COURT: Office manager.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. Thank you.

4 Anyone else up here?

5 All right. Out there, I think Number 27, you'd be next.

6 PROSPECTIVE JUROR: Yes. My granddaughter works for
7 Larry Tweel. She's a student internship where she goes to
8 college.

9 THE COURT: Before she goes to college?

10 PROSPECTIVE JUROR: She's going to start college in
11 August, and she's doing an internship there.

12 THE COURT: What is she doing for the Tweel Law
13 Firm? Do you know?

14 PROSPECTIVE JUROR: I know she's been to court a few
15 times with different members. She does federal writing. I'm
16 not sure. She does various things.

17 THE COURT: All right. And that's sort of a term
18 job? In other words, it's set to end when school starts next
19 fall?

20 PROSPECTIVE JUROR: Yes. Yes.

21 THE COURT: All right. Thank you.

22 Yes, sir, Mr. Hupp, Number 34?

23 PROSPECTIVE JUROR: I'm currently a legal reporter
24 who covers legal politics and education not only for Wayne and
25 Cabell Counties but throughout the state. I also prior to

1 being a court or legal reporter for the *State Journal* in
2 Charleston covered the West Virginia State Supreme Court and
3 other civil and criminal cases.

4 THE COURT: All right. As a result, are there times
5 where you've actually sat and observed a trial?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Is that something you've done fairly
8 often in your work?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right. And then you would write a
11 news article about it for one of the publications where you
12 work?

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: And over what period of time have you
15 done that?

16 PROSPECTIVE JUROR: I've done that for the past ten
17 years.

18 THE COURT: All right. Thank you.

19 PROSPECTIVE JUROR: You're welcome.

20 THE COURT: Anyone else?

21 All right. Have any of you or members of your immediate
22 family ever been employed in a job that involved claims
23 adjusting or claims handling for either property damage or
24 personal injury? And Juror Number 5 has already explained her
25 work.

1 Anybody else have something like that?

2 All right. Now, you've heard me describe that this is a
3 lawsuit where Mr. and Mrs. Nease claim that Mr. Nease was
4 injured and that the plaintiff suffered damages as a result of
5 a motor vehicle crash, and the plaintiffs are claiming in
6 their lawsuit against Ford that Ford sold -- manufactured and
7 sold a defective vehicle and that that caused or contributed
8 to the crash and the injuries.

9 So we generally refer to this kind of lawsuit as a
10 personal injury lawsuit or as a tort claim.

11 I know that there's been a fair amount of negative
12 publicity over the last several years about the actions of
13 some big businesses, big companies, AIG, for instance. Some
14 of the big banks have been criticized.

15 Do any of you believe that big corporations like that
16 generally do not try to make their products as safe as they
17 should be? In other words, do you come into this case with a
18 preconception that because this is Ford, a big company, that
19 they don't really try to make their products as safe as they
20 should?

21 All right. Please stand and identify yourself.

22 PROSPECTIVE JUROR: I'm Leslie Delapas, Number 10.

23 THE COURT: And it's your opinion that there's a
24 problem about big companies because of this?

25 PROSPECTIVE JUROR: Yeah. I saw a documentary --

1 THE COURT: Well, I'm going to ask you -- I'm going
2 to ask you some private follow-up on that. Thanks for
3 bringing that up.

4 Anyone else?

5 All right. Now, obviously also there's oftentimes a lot
6 of press nationally or even locally about jury verdicts in
7 trials.

8 Have any of you heard or read about a jury verdict in a
9 case that you thought was excessive, that was simply way too
10 high or, for whatever reason, wrong for some reason?

11 All right. Mr. Hupp, Juror 34?

12 PROSPECTIVE JUROR: From my profession.

13 THE COURT: All right. So, first, do you have an
14 opinion based upon the trials that you've actually reported
15 on?

16 PROSPECTIVE JUROR: Yes, sir, I --

17 THE COURT: All right. I'm going to stop you there,
18 and we'll have some follow-up questions for you later.

19 Anyone else?

20 All right. For any reason do any of you believe that
21 there is a lawsuit crisis, meaning that there are just too
22 many lawsuits being filed in court?

23 Let's start up here with Number 9. I'm going to ask that
24 you just raise your hand so I can note it, and then we'll
25 probably ask some follow-up questions. So if your answer was

1 "yes" to that question, please raise your hand.

2 Number 9, Number 1, Number 5.

3 Please stand and identify yourselves. I can't quite see
4 you.

5 PROSPECTIVE JUROR: Number 19, Phoenix Dyer.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: Number 18, Aaron Hanna.

8 THE COURT: Thank you. Number 30 and Number 29.

9 Sir, if you'd stand and identify yourself. I can't see
10 your number.

11 PROSPECTIVE JUROR: John Deahl, Number 23.

12 THE COURT: All right. Thank you.

13 And Mr. Hupp, Number 34.

14 You're determined to answer "yes" to every question,
15 aren't you, Mr. Hupp? Typical reporter.

16 All right. If a person suffers physical injury that
17 causes things like pain and suffering because of the conduct
18 of another party, would any of you have any problem or
19 difficulty awarding the injured person money, compensation, to
20 compensate him or her for those injuries?

21 All right. Now, I've told you generally what this kind
22 of case is about. It's a personal injury lawsuit claiming a
23 defective product.

24 Do any of you have such strong feelings about cases like
25 this that you think you could not sit on a jury and render a

1 fair and impartial verdict on this particular case?

2 All right. Number 1, your answer to that is "yes"?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Please stand. What's your name?

5 PROSPECTIVE JUROR: Ronald Sexton.

6 THE COURT: All right. Mr. Sexton, I'll have some
7 follow-up for you later.

8 Anyone else?

9 Number 9, same answer?

10 PROSPECTIVE JUROR: Yeah.

11 THE COURT: All right. Anyone else?

12 All right. Now, I'm going to ask you some questions
13 generally about your prior use of vehicles and feelings about
14 automotive companies.

15 First, have any of you or members of your immediate
16 family ever been employed by an auto company, like a
17 dealership or a manufacturer?

18 Let's start up here. Stand and tell me your name and
19 tell me --

20 PROSPECTIVE JUROR: Leslie Delapas, Number 10. My
21 husband works for Toyota.

22 THE COURT: Where does he work?

23 PROSPECTIVE JUROR: In Buffalo.

24 THE COURT: So he works at the Toyota plant in
25 Buffalo?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: How long has he been there?

3 PROSPECTIVE JUROR: About 17 years.

4 THE COURT: What does he do?

5 PROSPECTIVE JUROR: He's a specialist. He does --

6 right now he's -- he's a plan -- he's a planner.

7 THE COURT: A planner?

8 PROSPECTIVE JUROR: Planning new projects.

9 THE COURT: Okay. What's his profession? Is he an
10 engineer or something like that?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What?

13 PROSPECTIVE JUROR: He's an engineer.

14 THE COURT: Engineer. Okay. Where did he get his
15 engineering degree?

16 PROSPECTIVE JUROR: West Virginia State.

17 THE COURT: And do you know specifically what his
18 engineering degree was? Electrical engineering or mechanical
19 or civil or --

20 PROSPECTIVE JUROR: No.

21 THE COURT: Don't know?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you.

24 All right. Down here? Yes, ma'am, please stand and
25 identify yourself.

1 PROSPECTIVE JUROR: Trudy Kelly, Number 4. My
2 father-in-law retired from Ford Motor Company.

3 THE COURT: Where did he work?

4 PROSPECTIVE JUROR: Ohio.

5 THE COURT: In a factory or a plant?

6 PROSPECTIVE JUROR: In a plant.

7 THE COURT: How long ago did he work there?

8 PROSPECTIVE JUROR: I'm not sure.

9 THE COURT: Five years? Ten years?

10 PROSPECTIVE JUROR: At least five years.

11 THE COURT: At least five years. And it's your
12 father-in-law?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Do you know anything about the type of
15 work he did?

16 PROSPECTIVE JUROR: I have no idea.

17 THE COURT: All right. But your understanding is he
18 was a factory worker?

19 PROSPECTIVE JUROR: I knew he worked in the factory
20 and retired from there.

21 THE COURT: Retired from there. All right. Do you
22 know whether he ever had any complaints or problems with his
23 employment?

24 PROSPECTIVE JUROR: Not as I'm aware of.

25 THE COURT: Okay. All right. Thank you.

1 Number 5?

2 PROSPECTIVE JUROR: Caitlin Kessler, Number 5. My
3 aunt who lives in New Jersey in the '60s worked in a
4 dealership as a saleslady.

5 THE COURT: What kind of dealership? Do you know?

6 PROSPECTIVE JUROR: I have no idea. I just remember
7 her telling stories she was the only female salesperson at the
8 time.

9 THE COURT: All right. Thank you.

10 Number 14?

11 PROSPECTIVE JUROR: Michael Smith. I had a cousin
12 that worked for Ford Motor Company in Dearborn. It's been
13 many, many years ago.

14 THE COURT: What kind of work did he do?

15 PROSPECTIVE JUROR: He was something in supervision.
16 That's all I know. I don't know exactly what he did.

17 THE COURT: All right. I take it this is not a
18 cousin that you were close with, or were you?

19 PROSPECTIVE JUROR: We were, but it's been years and
20 years and years ago, so --

21 THE COURT: All right. Do you think that hearing a
22 lawsuit where Ford is accused of making a defective product,
23 that you would tend to weigh in favor of Ford or against Ford
24 because of your cousin's work there?

25 PROSPECTIVE JUROR: I don't think it would affect

1 anything, no.

2 THE COURT: All right. Thank you.

3 Anyone else? Back here, Number 21?

4 PROSPECTIVE JUROR: Yes. Ethel Groves, 21. I had a
5 brother-in-law that worked for a motor company in Flint,
6 Michigan. He was an electrical engineer.

7 THE COURT: How long did he work up there?

8 PROSPECTIVE JUROR: He worked his whole life.

9 THE COURT: Is he retired now?

10 PROSPECTIVE JUROR: He's retired, about 20 years
11 retired. It was --

12 THE COURT: All right. You don't even recall -- I'm
13 sorry. I didn't mean to interrupt you.

14 Do you recall even which company he worked for?

15 PROSPECTIVE JUROR: No, I don't know. It was in
16 Flint, Michigan.

17 THE COURT: Okay. And you say he was some type of
18 an engineer?

19 PROSPECTIVE JUROR: He was an electrical engineer.

20 THE COURT: Did he -- was he -- did he work in
21 designing things or did he make things?

22 PROSPECTIVE JUROR: I don't know.

23 THE COURT: All right. Thank you.

24 Number 27?

25 PROSPECTIVE JUROR: My husband used to work at the

1 Toyota plant in Buffalo.

2 THE COURT: How long did he work there?

3 PROSPECTIVE JUROR: About five years.

4 THE COURT: What did he do?

5 PROSPECTIVE JUROR: He worked on the machines and so
6 forth that built parts, car parts, and maintain those.

7 THE COURT: All right. And he worked there about
8 five years?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Why did he leave that employment?

11 PROSPECTIVE JUROR: Just a change in job, closer to
12 home.

13 THE COURT: Okay. Thank you.

14 Yes, sir, Number 23?

15 PROSPECTIVE JUROR: 23. I don't know if this
16 counts, but I'm a driver for several of the dealerships
17 around, and I go pick up cars in Cincinnati or North Carolina
18 for them.

19 THE COURT: Okay. So you get hired by local
20 dealerships?

21 PROSPECTIVE JUROR: Yes, sir. They'll call me and
22 say we've got to go to Columbus or Raleigh or something to
23 pick up a dealer trade.

24 THE COURT: All right. And the cars you're picking
25 up, are these --

1 PROSPECTIVE JUROR: Some of them are new and some of
2 them are auction cars.

3 THE COURT: All right. And I take it, then, as a
4 result, you've done some pickups for Ford dealerships.

5 PROSPECTIVE JUROR: No, not Ford. It's been
6 currently Chevrolet and Audis.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: I could get a call from them.

9 THE COURT: All right. All right. Thank you.

10 All right. Mr. Hupp?

11 PROSPECTIVE JUROR: My father-in-law worked along
12 the line in Detroit, Michigan, for Ford Motor Company for more
13 than 25 years before retiring in the early '80s. And then
14 once upon retiring, he continued to work in just local auto
15 shops until he passed.

16 THE COURT: All right. How long ago did he pass?

17 PROSPECTIVE JUROR: Three years -- two years ago.

18 THE COURT: All right. Thank you.

19 PROSPECTIVE JUROR: You're welcome.

20 THE COURT: Anyone else? Yes, sir?

21 PROSPECTIVE JUROR: Dakota Moles, Number 31. My mom
22 and stepdad both worked at the Toyota plant in Buffalo.

23 THE COURT: What kind of work do they do?

24 PROSPECTIVE JUROR: They've both worked tool
25 regrind.

1 THE COURT: In what?

2 PROSPECTIVE JUROR: Tool regrind, where they grind
3 the gears and everything for the --

4 THE COURT: All right. How long did they work
5 there?

6 PROSPECTIVE JUROR: My mom worked there for 13 years
7 and my stepdad worked there for 14.

8 THE COURT: Why did they leave that job, or did
9 they?

10 PROSPECTIVE JUROR: My stepdad retired and went to
11 Texas. My mom got a new job closer to home.

12 THE COURT: All right. Thank you.

13 PROSPECTIVE JUROR: And my uncle used to work as a
14 maintenance man at Hurricane Chevrolet about 23 years ago.

15 THE COURT: I'm sorry. You're going to have to say
16 that again loud.

17 PROSPECTIVE JUROR: My uncle worked at Hurricane
18 Chevrolet about 23 years ago.

19 THE COURT: How long was he working there?

20 PROSPECTIVE JUROR: He worked there for about five
21 years.

22 THE COURT: And what did he do?

23 PROSPECTIVE JUROR: He was like a maintenance man on
24 some of the vehicles.

25 THE COURT: All right. Thank you.

1 Anyone else? Yes, ma'am, Number 19?

2 PROSPECTIVE JUROR: My brother is currently a
3 mechanic for Dutch Miller Chevrolet and --

4 THE COURT: How long has he been in this work?

5 PROSPECTIVE JUROR: For about four years now.

6 THE COURT: And what does he do exactly?

7 PROSPECTIVE JUROR: He's a mechanic.

8 THE COURT: All right. So he works -- does repairs
9 on cars?

10 PROSPECTIVE JUROR: Yeah. He does different
11 vehicles, not necessarily just Chevies.

12 THE COURT: All right. Thank you.

13 Yes, Number 13?

14 PROSPECTIVE JUROR: Okay. Well, how do I say this?

15 THE COURT: Speak up.

16 PROSPECTIVE JUROR: I have friends that work at
17 Hurricane Chevrolet who are mechanics, and it's not for Ford
18 or anything like that, but --

19 THE COURT: All right. So they just do repair work
20 for the dealership?

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: Just simple stuff.

24 THE COURT: Thank you.

25 All right. Anyone else?

1 Now, if you've already answered this, fine, but do any of
2 you have any business or employment interest in an automotive
3 company?

4 And, again, if you've already answered, don't worry about
5 doing it again, but do you or any member of your immediate
6 family have any stock or ownership interest in an automobile
7 manufacturer or car dealership?

8 Do any of you have any special training or experience in
9 the automotive industry or in any industry related to
10 automobiles?

11 Do any of you have any training or education as an
12 electrical engineer or a mechanical engineer?

13 Do any of you have any education or training in
14 ergonomics or human factors?

15 Do any of you perform -- oh, I'm sorry. Yes, sir, Number
16 33?

17 PROSPECTIVE JUROR: Jason Jeffrey. I'm a chemical
18 engineer at Dupont. I have some training in human factors,
19 just how people interface with --

20 THE COURT: All right. The court reporter couldn't
21 quite hear that. So loud.

22 PROSPECTIVE JUROR: Jason Jeffrey, Number 33. I
23 work for Dupont up in Belle. I do process hazards analysis,
24 and we deal with some human factors and help people interact
25 with their work environment.

1 THE COURT: All right. And so you're a chemical
2 engineer by training?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: All right. Have you had specialized
5 training in this ergonomics area?

6 PROSPECTIVE JUROR: No specialized training, just do
7 some series of checklists, more human factors and how
8 people --

9 THE COURT: Okay. All right. Thank you.

10 Anyone else?

11 Now, have any of you never driven an automobile?

12 Everybody in here has driven at some time or another.

13 All right. Have any of you driven in the past but no
14 longer drive; you quit driving for whatever reason?

15 Have any of you ever suffered a significant injury in an
16 automobile crash?

17 All right. Let's start back here. Well, we'll start in
18 the front row.

19 Number 4, please stand and identify yourself.

20 PROSPECTIVE JUROR: Yeah. About eight years ago, I
21 was in a head-on collision, had over a hundred stitches in my
22 face.

23 THE COURT: All right. Where did this take place?

24 PROSPECTIVE JUROR: On Crab Creek in Mason County.

25 THE COURT: Okay. So a head-on collision. You were

1 hospitalized, I take it?

2 PROSPECTIVE JUROR: Yeah, for a brief period of
3 time.

4 THE COURT: By that, means treated and released the
5 same day?

6 PROSPECTIVE JUROR: I was there three days.

7 THE COURT: Oh, three days. All right. So you had
8 a bunch of stitches.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: What else? Anything?

11 PROSPECTIVE JUROR: Nothing that I'm aware of. I
12 just had the stitches. Due to the head trauma, they wanted me
13 to stay for observation.

14 THE COURT: All right. And were they able to rule
15 out any significant concussion or head injury?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: Was there any kind of lawsuit or claim
18 filed over this?

19 PROSPECTIVE JUROR: Just on the insurance company on
20 the other driver.

21 THE COURT: Okay. And did the other driver
22 basically have their insurance company pay your costs and --

23 PROSPECTIVE JUROR: Yeah.

24 THE COURT: All right. So no lawsuit was actually
25 filed.

1 PROSPECTIVE JUROR: Right. It was just taken care
2 of out of court.

3 THE COURT: All right. Thank you, ma'am.
4 Number 9?

5 PROSPECTIVE JUROR: I'm Dan Miller, Number 9. I've
6 been in multiple accidents over the years, none my fault,
7 where I was on the road all the time.

8 THE COURT: What were you doing on the road all the
9 time?

10 PROSPECTIVE JUROR: General contractor.

11 THE COURT: All right. So as a general contractor,
12 you were driving to job sites in different places?

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: Were you able to -- were you injured?

15 PROSPECTIVE JUROR: Many, many back injuries, neck
16 injuries.

17 THE COURT: All right. Hospitalized for any of
18 those?

19 PROSPECTIVE JUROR: Short periods of time.

20 THE COURT: All right. About how many times do you
21 think you had a back or a neck injury that resulted in
22 hospitalization -- that resulted in medical treatment, either
23 ER or actually hospitalized?

24 PROSPECTIVE JUROR: Seven to ten.

25 THE COURT: Seven to ten?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right. Are you currently under care
3 for your back or neck problems?

4 PROSPECTIVE JUROR: Just on my own. I go every once
5 in a while to the chiropractor.

6 THE COURT: All right. All right. I'm going to
7 have some additional follow-up questions for you. Thank you.

8 Anyone else back here? Number 13?

9 PROSPECTIVE JUROR: Heather Egnor, Number 13. I was
10 in a car wreck in 2006. I don't know -- I was getting on the
11 interstate at Cross Lanes. I was asleep, but I got ejected
12 from my car and landed on the interstate head first. I had
13 brain surgery, was in the hospital for three and a half
14 months, had to learn to walk, talk, speak, and everything.
15 They said I'd be a vegetable. Apparently I'm not. And they
16 said I couldn't have a kid, and I have a child, so --

17 THE COURT: Okay. How long ago did this happen?

18 PROSPECTIVE JUROR: 2006.

19 THE COURT: Did you bring any type of claim or
20 lawsuit?

21 PROSPECTIVE JUROR: Tried. Tried to get disability
22 because my doctor told me I was not allowed to work because of
23 the issue I was in.

24 THE COURT: Yeah.

25 PROSPECTIVE JUROR: And they denied me like nine

1 times.

2 THE COURT: Well, who denied you? What --

3 PROSPECTIVE JUROR: Okay. I don't remember the
4 names.

5 THE COURT: Was it an insurance company?

6 PROSPECTIVE JUROR: It was insurance, and then my
7 mom tried a lawsuit. I don't remember anything. I'm just
8 telling you what I was told because I don't remember
9 anything --

10 THE COURT: Right.

11 PROSPECTIVE JUROR: -- other than they shaved my
12 head. It was horrible.

13 THE COURT: So are you currently under medical care?

14 PROSPECTIVE JUROR: I go for checkups and stuff just
15 to make sure my head, like everything, is civil, like --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I don't know how to explain it.

18 THE COURT: Are you -- do you currently have pending
19 anywhere a claim or a lawsuit or anything?

20 PROSPECTIVE JUROR: No. Everything got dropped.

21 THE COURT: All right. Everything is over with.

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: And so I guess from what you're telling
24 us --

25 PROSPECTIVE JUROR: Basically go for checkups just

1 to make sure everything is working.

2 THE COURT: All right. Thank you.

3 Anyone else up here?

4 All right. Back here, Number 20?

5 PROSPECTIVE JUROR: Derek Rainey. I was on my way
6 to work in 2001 and I was in a head-on collision.

7 THE COURT: Were you injured?

8 PROSPECTIVE JUROR: Torn ligaments in my right
9 shoulder.

10 THE COURT: Were you hospitalized?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Treated at the ER and released?

13 PROSPECTIVE JUROR: Rehab for around six weeks.

14 THE COURT: And did you heal up?

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: Had any problems since then?

17 PROSPECTIVE JUROR: No, not --

18 THE COURT: Okay. Thank you.

19 Anyone else?

20 Now, have any of your close friends or members of your
21 immediate family ever been seriously injured or killed in an
22 automobile crash?

23 Let's start up here. Number 3?

24 PROSPECTIVE JUROR: Yes. Robert Anastasio. And I
25 think it was two years ago in Florida my grandmother ran into

1 the back of a truck. The truck had slammed on their brake,
2 and it went over the hood of the car, causing back problems.
3 Pieces, I think, of glass actually went into her body. She
4 recovered, but that was the extent of the accident. I think
5 my grandfather also suffered back injury during that as well.

6 THE COURT: All right. Did they bring any claim or
7 lawsuit as a result?

8 PROSPECTIVE JUROR: I do not know.

9 THE COURT: Okay. Thank you.

10 Number 5?

11 PROSPECTIVE JUROR: Caitlin Kessler. My mother.

12 THE COURT: Please speak up.

13 PROSPECTIVE JUROR: Caitlin Kessler. My mother was
14 injured in an automobile accident 35 years ago. Her back was
15 injured. No lawsuits to my knowledge.

16 THE COURT: All right. Did she recover?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. So she hasn't had back problems
19 since then because of it?

20 PROSPECTIVE JUROR: Not that she's gotten treatment
21 for. She has to sit down and stuff like that.

22 THE COURT: Okay. Thank you.

23 Number 13?

24 PROSPECTIVE JUROR: Okay. My mom just got in a car
25 wreck on the interstate like two months ago. A semi hit her

1 and went over top of her new car. It was a Nissan. Ran over
2 top of her.

3 THE COURT: Was she injured?

4 PROSPECTIVE JUROR: Well, she just went last week
5 because I made her go because she's having, like, head issues,
6 and I made her go, and she had CTs and all that stuff she has
7 to have done now, because she says she wasn't hurt, but I can
8 tell she is because she's acting different.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: But I don't know of, like, a
11 lawsuit. I don't know anything about that.

12 THE COURT: Well, this is still pretty recent?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right.

15 PROSPECTIVE JUROR: And then in 2002 my brother's
16 best friend was on his way to school, high school, and he
17 wrecked and he passed away.

18 THE COURT: As a result of the crash?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Where did this happen? Here in Cabell
21 County?

22 PROSPECTIVE JUROR: No, Putnam.

23 THE COURT: Putnam County?

24 PROSPECTIVE JUROR: Yeah. It was on the way to
25 Winfield, from Scott Depot to Winfield.

1 THE COURT: What caused the accident?

2 PROSPECTIVE JUROR: Somebody I guess was drunk or
3 something and hit him and it killed two of my brother's best
4 friends.

5 THE COURT: All right. And it's your understanding
6 that it was a drunk driver that caused the collision?

7 PROSPECTIVE JUROR: Yeah. And I don't know anything
8 else that happened because I didn't get involved in it.

9 THE COURT: All right. Thank you.

10 All right. Let's go out here. Anybody in the first row?
11 Second row? Number 21?

12 PROSPECTIVE JUROR: Number 21. My sister and
13 brother-in-law were killed in a car accident in 1962 in
14 Richmond, Virginia.

15 THE COURT: What happened?

16 PROSPECTIVE JUROR: Bad roads. They hit a police
17 cruiser head-on and they were both killed, but the policeman
18 wasn't. But there was no lawsuit.

19 THE COURT: All right. You say bad roads. So --

20 PROSPECTIVE JUROR: Ice. Ice on the roads.

21 THE COURT: Okay. All right. Thank you.

22 Next?

23 PROSPECTIVE JUROR #22: My brother was killed four
24 years ago. A boy was high on drugs, hit him head-on, and they
25 both burned immediately in the vehicle.

1 THE COURT: Where did this happen?

2 PROSPECTIVE JUROR: Up in Mason County.

3 THE COURT: Was the -- they were both killed?

4 PROSPECTIVE JUROR: Both of them were killed.

5 THE COURT: And it was established at some point
6 after that that the other driver was intoxicated from some
7 type of drug abuse?

8 PROSPECTIVE JUROR: Right.

9 THE COURT: Okay. All right.

10 Anyone else in that row?

11 Let's go to the next row. We'll start on your all's
12 right. Number 27?

13 PROSPECTIVE JUROR: My brother and mother were
14 involved in a car wreck about four or five years ago. The
15 driver fell asleep, went off the road, overcorrected and
16 T-boned the car.

17 THE COURT: Were either of them seriously injured?

18 PROSPECTIVE JUROR: My brother had broken ribs and
19 internal bleeding, and my mother slammed the door, damaged her
20 shoulder.

21 THE COURT: Did they both recover from their
22 injuries?

23 PROSPECTIVE JUROR: Yeah. Well, yeah. My mother
24 needed a shoulder replacement, but they both recovered.

25 THE COURT: All right. Thank you.

1 Yes, Number 30?

2 PROSPECTIVE JUROR: Yeah. My brother was in a wreck
3 probably 25 years ago, a drunk driver. They were hit and he
4 lost his spleen. I don't remember what all there was. I was
5 14 or 15 when it happened, but he had multiple -- he almost
6 died, had emergency surgery.

7 THE COURT: All right. Has he recovered since then?

8 PROSPECTIVE JUROR: For the most part, yes.

9 THE COURT: For the most part?

10 PROSPECTIVE JUROR: And then also probably about six
11 years ago, my cousin through my husband, he was killed on I-64
12 in a car wreck. He lost control. And then he overcorrected
13 and clipped a car and hit a sign that severed his fuel line
14 and he died in the car.

15 THE COURT: What caused him to lose control of his
16 car?

17 PROSPECTIVE JUROR: I have no idea.

18 THE COURT: Okay. Thank you.

19 Anyone else? Yes, sir, in the back?

20 PROSPECTIVE JUROR: Dakota Moles, Number 31. About
21 three years ago one of my real close friends was riding a
22 street bike from Huntington to Charleston and got hit and was
23 actually killed. And then --

24 THE COURT: So did somebody run a stop sign or --

25 PROSPECTIVE JUROR: Ran a stoplight and T-boned him

1 and ejected him off his bike.

2 And then about six months ago, my brother-in-law was in a
3 car wreck. He got T-boned in Barboursville.

4 THE COURT: How bad was he hurt?

5 PROSPECTIVE JUROR: He had to go to the hospital.

6 He was in there for about three days, and he had to go to
7 physical therapy ever since then. He was getting better and
8 actually getting ready to stop his physical therapy.

9 THE COURT: And how long ago was his accident?

10 PROSPECTIVE JUROR: About six months ago.

11 THE COURT: Okay. Thank you.

12 All right. Now, have any of you or, to your knowledge,
13 anybody in your immediate family ever experienced an incident
14 where your car would not slow down when you wanted it to, in
15 other words, where you or your family member operating the car
16 seemed to lose control of the speed of the car and not be able
17 to slow it down?

18 Let's start here. Number 3?

19 PROSPECTIVE JUROR: Yes. My fiancée's brake line
20 went out in her car two years ago.

21 THE COURT: What caused the brake line to go out?
22 Do you know?

23 PROSPECTIVE JUROR: There was a leak in -- or there
24 was a hole that caused the fluid to leak out of it.

25 THE COURT: All right. Thank you.

1 Anyone else? Yes, sir, Mr. Smith, Number 14?

2 PROSPECTIVE JUROR: Yes. My mother was driving in
3 Charleston -- you know where the bridge goes into Charleston
4 there?

5 THE COURT: Right.

6 PROSPECTIVE JUROR: The cruise control stuck on it
7 and she had a hard time getting stopped, but there was no
8 wreck or anything like that.

9 THE COURT: How long ago did this happen?

10 PROSPECTIVE JUROR: That's been about 20 years ago.

11 THE COURT: Twenty years ago.

12 All right. What kind of car was she driving? Do you
13 know?

14 PROSPECTIVE JUROR: Ford.

15 THE COURT: Ford.

16 You say that she felt like the cruise control was --

17 PROSPECTIVE JUROR: That's what they told her when
18 she took the car in. They thought it must have malfunctioned
19 or something.

20 THE COURT: All right. So she was able to get
21 control of the car, stop it, and then later took it to the
22 dealership?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: And the dealership told her there was a
25 problem with the cruise control?

1 PROSPECTIVE JUROR: Yeah. They had to do some kind
2 of work on it. They said there was some kind of problem with
3 it.

4 THE COURT: Was it your understanding that they
5 repaired it?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: I mean, did she have any trouble after
8 that?

9 PROSPECTIVE JUROR: Not that I know of, no.

10 THE COURT: Okay. Thank you.

11 Anyone else? Yes, sir, Number 9?

12 PROSPECTIVE JUROR: Dan Miller. One of my work
13 trucks, 2004 Ford.

14 THE COURT: What happened?

15 PROSPECTIVE JUROR: Had suspension problems on the
16 front, and they began to shake excessively on the interstate
17 in turns, and it would make it to where you couldn't hardly
18 stop the truck or brake.

19 THE COURT: How old was the truck when you bought
20 it?

21 PROSPECTIVE JUROR: I bought it brand new, 2004
22 model.

23 THE COURT: All right. So it was about five or six
24 years old?

25 PROSPECTIVE JUROR: Pardon?

1 THE COURT: What year did you say that happened?

2 PROSPECTIVE JUROR: 2004.

3 THE COURT: Oh.

4 PROSPECTIVE JUROR: I bought it new in 2004.

5 THE COURT: All right. I misunderstood. So you
6 bought it new in 2004. And in 2004, that's when you had this
7 suspension problem?

8 PROSPECTIVE JUROR: Correct. Yes.

9 THE COURT: Was it repaired?

10 PROSPECTIVE JUROR: They had recalls on some parts.
11 The problem never did get fixed, and I sold the truck.

12 THE COURT: How long did you keep the truck?

13 PROSPECTIVE JUROR: A year and a half.

14 THE COURT: All right. Thank you.

15 Anyone else?

16 Have any of you when you were operating a motor vehicle
17 had an experience where you felt that your brakes seemed to
18 fail, that the brakes just suddenly didn't seem to work?

19 Number 13?

20 PROSPECTIVE JUROR: Yeah. Mine was a Grand Prix GT.
21 Sometimes like the anti-lock would pop up on my dash.

22 THE COURT: The what would?

23 PROSPECTIVE JUROR: The anti-lock, like for your
24 brakes.

25 THE COURT: Right.

1 PROSPECTIVE JUROR: And when I hit it, it would
2 stop, and then sometimes it didn't. But I sold the car. So I
3 don't drive it anymore.

4 THE COURT: All right. Did you have any kind of
5 accident or collision with it?

6 PROSPECTIVE JUROR: I hit a curb.

7 THE COURT: Hit a curb?

8 PROSPECTIVE JUROR: It's better than hitting a car.
9 So that's why I got stopped.

10 THE COURT: All right. Did it damage your car?

11 PROSPECTIVE JUROR: Yeah. I didn't pay for it,
12 though. I just bought a new tire and hubcap. That's it.

13 THE COURT: Was this a new car?

14 PROSPECTIVE JUROR: No.

15 THE COURT: How old was it?

16 PROSPECTIVE JUROR: Two -- I think it's a two
17 thousand -- 2006, maybe.

18 THE COURT: So about how many years old was the car?

19 PROSPECTIVE JUROR: Oh, gosh. What is it now? '15?
20 I don't know. I'm bad on math. Don't ask me that.

21 THE COURT: All right. Thank you.

22 PROSPECTIVE JUROR: So -- what? -- 10, 11 years --

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: -- ish.

25 THE COURT: Anyone else?

1 All right. Have any of you read anything in the news or
2 heard any kind of news or other story about runaway vehicles,
3 meaning vehicles that were out of control in terms of the
4 speed, somebody couldn't slow it down or stop it, or something
5 called sudden unintended acceleration? Any of you heard of
6 things like that?

7 Again, I'm going to ask that you just raise your hand so
8 I can make a list.

9 So, Number 1, did you raise your hand?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Number 1. Wait just a second. Number
12 9, Number 10, Number 4, Number 5. And I can't see your
13 numbers out there. If you would, just stand and call out your
14 name or number.

15 PROSPECTIVE JUROR: 29.

16 THE COURT: Number 29. Number 17?

17 PROSPECTIVE JUROR: 17, Pat Debord.

18 PROSPECTIVE JUROR: 18, Aaron Hanna.

19 PROSPECTIVE JUROR: 19, Phoenix Dyer.

20 THE COURT: All right. And, of course, Mr. Hupp.
21 We assumed that you were going to raise your hand.

22 Number 27?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Anyone else?

25 Did I miss anybody?

1 Okay. This may be similar, so if you've already raised
2 your hand to my previous question, you need not do so again.
3 But have you ever read or heard anything about recalls for
4 sticky gas pedals or a stuck gas pedal?

5 All right. Have you read or heard anything about recent
6 recalls involving ignition switches in automobiles?

7 Again, if you have, just raise your hand.

8 Number 1, Number 2, Number 3, Number 4.

9 PROSPECTIVE JUROR #6: Is it the one -- I'm sorry.

10 THE COURT: Well, any, any recall involving any
11 ignition problem. Do you think you've heard about something
12 like this?

13 PROSPECTIVE JUROR #6: I do.

14 THE COURT: You do? All right. Number 6.

15 Who else?

16 Number 8, Number 12, Number 13, Number 14.

17 PROSPECTIVE JUROR: 17.

18 THE COURT: 17, 19. I can't see beyond that.

19 PROSPECTIVE JUROR: 21.

20 THE COURT: 21, 22.

21 PROSPECTIVE JUROR: 23.

22 THE COURT: 23, 27.

23 PROSPECTIVE JUROR: 32.

24 THE COURT: 32, 29, 30.

25 PROSPECTIVE JUROR: 33.

1 THE COURT: 33 and 34.

2 PROSPECTIVE JUROR: 31.

3 THE COURT: And 31.

4 Now, let me address this to each of you. Did anybody
5 hear or learn about something about a recall over ignition
6 switches from something other than it being in the news
7 somewhere? In other words, did you get some direct
8 communication or somebody talked to you about it or something
9 like that?

10 Number 8, please stand and tell us your name.

11 PROSPECTIVE JUROR: Roy See, Number 8. I have a
12 recall on my 2004 Grand Prix.

13 THE COURT: All right. So your 2004 Grand Prix was
14 subject to a recall. Was this recently?

15 PROSPECTIVE JUROR: Yeah. I got notified about a
16 month ago.

17 THE COURT: Speak up.

18 PROSPECTIVE JUROR: I got notified about a month
19 ago.

20 THE COURT: And what did the recall tell you to do?

21 PROSPECTIVE JUROR: The ignition switch needs
22 replaced because it will shut off going down the road.

23 THE COURT: All right.

24 PROSPECTIVE JUROR: Make a key change or something
25 on it.

1 THE COURT: First, had you ever had that problem?

2 PROSPECTIVE JUROR: Huh-uh.

3 THE COURT: No? And did you take it in to get it
4 fixed?

5 PROSPECTIVE JUROR: No, not yet.

6 THE COURT: Do you plan to?

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: Okay. Let's keep going down the list
9 here. Number 12?

10 PROSPECTIVE JUROR: Yes. My son had a Chevy Cobalt
11 and he had a recall on it.

12 THE COURT: Was it similar to what Juror Number 8
13 just described?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: A recent one?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Did he ever have the problem actually
18 happen?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Has he gotten it repaired?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you.

23 Number 13?

24 PROSPECTIVE JUROR: Same thing. Same car.

25 THE COURT: Same kind of car?

1 PROSPECTIVE JUROR: Yeah, Grand Prix.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: It was a recall on it.

4 THE COURT: Had you experienced the problem with the
5 ignition?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Has it been fixed?

8 PROSPECTIVE JUROR: I sold it.

9 THE COURT: Oh, you sold it?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Did you get the recall after you sold
12 it?

13 PROSPECTIVE JUROR: No.

14 THE COURT: So before you sold it --

15 PROSPECTIVE JUROR: But I told them about it,
16 because it's one of my friends.

17 THE COURT: Okay. And so you got the recall notice
18 before you sold it and then you just passed that on to the
19 purchaser.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: Thank you.

22 Up here, Number 6, please?

23 PROSPECTIVE JUROR: My sister's car. She drives a
24 Chevy Cobalt. Same thing.

25 THE COURT: Recent recall?

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: To your knowledge had she ever had the
3 problem with the ignition?

4 PROSPECTIVE JUROR: Yeah.

5 THE COURT: So her car was one that actually the
6 ignition had malfunctioned?

7 PROSPECTIVE JUROR: (Nods head up and down)

8 THE COURT: Answer out loud for me.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And did she have it repaired after the
11 recall notice?

12 PROSPECTIVE JUROR: She took it to Dutch Miller to
13 have it fixed. They didn't fix it, though.

14 THE COURT: So it still had the problem.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Does she still have the car?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Has she had the problem anymore?

19 PROSPECTIVE JUROR: I don't think so.

20 THE COURT: Okay. Thank you.

21 Anyone else up here?

22 Number 3, please tell us your experience.

23 PROSPECTIVE JUROR: My fiancee bought a Chevy Cobalt
24 back in September, and they were -- the recall had just been,
25 I think, issued around that time, and they fixed it at the

1 dealership before she bought it. She hasn't had any trouble
2 with it.

3 THE COURT: Thank you.

4 All right. Out here, let's start with the first row.
5 Anybody?

6 Second row, starting on your right? Number 21?

7 PROSPECTIVE JUROR: Yes. Our 2005 Buick LaCrosse
8 was recalled. We took it in and had it repaired, the
9 ignition.

10 THE COURT: And was this recent?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Had you all experienced a problem with
13 the ignition?

14 PROSPECTIVE JUROR: No. No.

15 THE COURT: Thank you.

16 All right. Down the row, Number 22, Mr. Smith?

17 PROSPECTIVE JUROR #22: Mr. Knapp.

18 THE COURT: Knapp. I'm sorry.

19 PROSPECTIVE JUROR: Brother-in-law had a Chevy
20 Impala that got a recall on the ignition, and he took and had
21 it fixed and then he traded it off.

22 THE COURT: Okay. Had he experienced the ignition
23 problem?

24 PROSPECTIVE JUROR: No, he didn't have any problem
25 with it.

1 THE COURT: Thank you.

2 All right. Anyone else on that row?

3 Let's go to the next row back. Anyone?

4 Anyone else in the back?

5 All right. Thank you.

6 Now, there's a federal governmental agency called the
7 National Highway Traffic Safety Administration that has some
8 authority over things like recalls and automobile standards.

9 Do any of you have some preconceived opinion about how
10 well the National Highway Traffic Safety Administration
11 performs its work?

12 Number 3, could you stand and identify yourself?

13 PROSPECTIVE JUROR: Robert Anastasio. I mean, I've
14 read a little bit about it and I've tried to keep up to date
15 on recalls since I was in tenth grade and took driver's ed.

16 THE COURT: Okay. So what's your impression or
17 opinion about how well the National Highway Traffic Safety
18 Administration does its work?

19 PROSPECTIVE JUROR: I'm actually very impressed --

20 THE COURT: All right.

21 PROSPECTIVE JUROR: -- considering the number of
22 cars out on the road.

23 THE COURT: Thank you.

24 Anyone else?

25 Now, the particular lawsuit that we're going to be

1 deciding involves a 2001 Ford Ranger. That's a pickup truck.

2 Have any of you or members of your family owned or driven
3 a significant amount a Ford Ranger, any model year?

4 All right. Let's start -- we have a bunch here. So
5 let's start here with Number 8.

6 Well, down here, Number 4, do you --

7 PROSPECTIVE JUROR: My son had a --

8 THE COURT: Please stand up.

9 PROSPECTIVE JUROR: Trudy Kelly, Number 4. My son
10 drives a Ford Ranger. He's not had any problem with it.

11 THE COURT: Does he still have it?

12 PROSPECTIVE JUROR: No.

13 THE COURT: How long did he own one?

14 PROSPECTIVE JUROR: About a year and a half.

15 THE COURT: When was this?

16 PROSPECTIVE JUROR: 2008.

17 THE COURT: And you say he had no problems with it
18 as far as you know.

19 PROSPECTIVE JUROR: No.

20 THE COURT: Thank you.

21 Continuing. Number 6, please stand and identify
22 yourself.

23 PROSPECTIVE JUROR: Donna Carter. My husband, he
24 owned a Ford Ranger.

25 THE COURT: How long?

1 PROSPECTIVE JUROR: He owned it for probably ten
2 years and never had a problem out of it.

3 THE COURT: Okay. What model year was it?

4 PROSPECTIVE JUROR: I think it was a '90. It seems
5 like it was a 1990.

6 THE COURT: Did he buy it new?

7 PROSPECTIVE JUROR: No. It was a few years old when
8 he bought it, but he never had any problem with it.

9 THE COURT: All right. Thank you.

10 Number 7?

11 PROSPECTIVE JUROR: Steve Joseph. I have a Ford
12 Ranger still. It's a '94 and I've had it for about ten years.

13 THE COURT: So you bought it used about ten years
14 ago?

15 PROSPECTIVE JUROR: (Nods head up and down)

16 THE COURT: Have you had any trouble with it?

17 PROSPECTIVE JUROR: I've had minor work. I had the
18 engine rebuilt and just a little work on it.

19 THE COURT: Just normal wear and tear?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Up here, Number 8?

22 PROSPECTIVE JUROR: Roy See, Number 8.

23 THE COURT: Speak up.

24 PROSPECTIVE JUROR: We've owned three, four Ford
25 Rangers over the years.

1 THE COURT: When you say "we," who do you mean?

2 PROSPECTIVE JUROR: I've owned one and my father has
3 owned three.

4 THE COURT: Have you had a 2001 model?

5 PROSPECTIVE JUROR: He had a 2001. I had a '99, a
6 '97, late '80s.

7 THE COURT: Did you have any trouble with them?

8 PROSPECTIVE JUROR: Just the usual stuff.

9 THE COURT: Usual stuff?

10 PROSPECTIVE JUROR: Yeah, maintenance.

11 THE COURT: All right. Did you own -- were these
12 trucks that you all owned for a period of years?

13 PROSPECTIVE JUROR: Yeah, for the most part. Two,
14 three, four years.

15 THE COURT: Okay. Thank you.

16 Anyone else down through here? Yes, Number 12?

17 PROSPECTIVE JUROR: Glennia P. Daniels. My grandson
18 had a 2005 Ford Ranger.

19 THE COURT: Did he buy it new?

20 PROSPECTIVE JUROR: Used.

21 THE COURT: Did he have any trouble with it?

22 PROSPECTIVE JUROR: No.

23 THE COURT: How long did he own it?

24 PROSPECTIVE JUROR: About three years. He sold it.

25 THE COURT: Thank you.

1 All right. Mr. Smith, Number 14?

2 PROSPECTIVE JUROR: Yes. I had a -- it was a
3 ninety-something. I can't remember what the exact year was.

4 THE COURT: Did you buy it new?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Did you own it for several years?

7 PROSPECTIVE JUROR: About three, until I had a
8 head-on collision and totaled it.

9 THE COURT: Okay. Did you have any trouble with it?

10 PROSPECTIVE JUROR: No, not --

11 THE COURT: All right. So after you had a car
12 wreck, you got something different?

13 PROSPECTIVE JUROR: Yes. Yes.

14 THE COURT: Thank you.

15 Out here, let's go to the front row. There's several of
16 you.

17 Number 18?

18 PROSPECTIVE JUROR: 18, yes, sir. I've owned two of
19 them, two Rangers, and haven't had any problem out of them.

20 THE COURT: What model years?

21 PROSPECTIVE JUROR: The first one was an '88 model
22 and the other was a '97 model.

23 THE COURT: Did you buy them both used?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Did you own each for a period of years?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: But you had no trouble with them.

3 PROSPECTIVE JUROR: Routine maintenance and regular
4 repairs.

5 THE COURT: All right. Thank you.

6 Anyone else in that row?

7 Number 19?

8 PROSPECTIVE JUROR: We have a '94 Ford Ranger.
9 We've had it -- we bought it in '97. It's my husband's, and
10 we still own it today. The only thing we had to do was in '98
11 was the transmission.

12 THE COURT: All right. Thank you.

13 Number 20?

14 PROSPECTIVE JUROR: My father has owned quite a few
15 of them, and he still has one right now that he bought in
16 1990, a 1986 model. Routine maintenance on it. That's it.

17 THE COURT: All right. Thank you.

18 Keep going in the next row.

19 Mr. Knapp, Number 22?

20 PROSPECTIVE JUROR: 22. My son had a -- I think it
21 was a 2001 or a 2002, and he had it for three or four years
22 and then decided to trade for another vehicle.

23 THE COURT: Did he buy it new or used?

24 PROSPECTIVE JUROR: No, it was used.

25 THE COURT: So far as you know --

1 PROSPECTIVE JUROR: Never had any problems with it.

2 THE COURT: No problems?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right. Thank you.

5 Anyone else in that row?

6 All right. Let's go to the next row back.

7 Number 30?

8 PROSPECTIVE JUROR: I had a '98 Ranger --

9 THE COURT: Speak up. I'm sorry.

10 PROSPECTIVE JUROR: I had a '98 Ranger my brother
11 bought new and I bought it off of him to get him out from
12 under the loan because he was going to lose it and --

13 THE COURT: I'm sorry. What?

14 PROSPECTIVE JUROR: It was the worst vehicle I ever
15 owned.

16 THE COURT: Okay. So you had a lot of trouble with
17 it.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Was it the kind of problems you would
20 attribute to the way the car was made or was there just a
21 problem with people not doing a good job on repairs or
22 maintenance?

23 PROSPECTIVE JUROR: Well, I paid enough money
24 putting into it, so I don't know if it was people doing it
25 or --

1 THE COURT: How old was the car when you got it?

2 PROSPECTIVE JUROR: Three years old.

3 THE COURT: Had your brother ever --

4 THE REPORTER: I'm sorry?

5 THE COURT: Three years old?

6 PROSPECTIVE JUROR: Yeah. He had different -- I'm
7 not sure I can remember what his issues was. Ultimately it
8 ended up blowing up on the interstate.

9 THE COURT: Okay. Thank you.

10 Anyone else back there?

11 Number 29?

12 PROSPECTIVE JUROR: Yeah. My husband had a late
13 '80s Ranger. No problems out of it. He had it for about five
14 or six years.

15 THE COURT: Had he bought it new or used? Do you
16 know?

17 PROSPECTIVE JUROR: He bought it used.

18 THE COURT: Used? All right. Thank you.

19 Anyone else?

20 Let's go back here in the corner.

21 PROSPECTIVE JUROR: Number 31. I owned a '94 Ford
22 Ranger. I bought it used off of a buddy of mine, had it for
23 about two years, blew the motor in it. And now I own a '91
24 Ford Ranger. I haven't had any problems other than routine
25 maintenance.

1 THE COURT: Do you feel like you had any problems
2 with the first one? You said you blew the engine in it.

3 PROSPECTIVE JUROR: I blew the motor in it because I
4 was young and stupid. It was a five-speed. I was 18.

5 THE COURT: I think I probably must have run around
6 with you at one point. That describes me.

7 Anybody else back here?

8 Number 33?

9 PROSPECTIVE JUROR: Yeah, Number 33. My dad has
10 owned Ford Rangers since the '80s. The most recent one was
11 probably 2006 or 7.

12 THE COURT: Has he ever had any trouble with them?

13 PROSPECTIVE JUROR: He's hurt a couple of
14 transmissions, had transmissions replaced.

15 THE COURT: Did he think that it was because of the
16 way the car was manufactured?

17 PROSPECTIVE JUROR: The most recent one was he was
18 probably doing more work with it than he probably should have
19 been.

20 THE COURT: Okay. I take it that he must like
21 these --

22 PROSPECTIVE JUROR: He likes the vehicle.

23 THE COURT: Okay. Because he keeps buying them.

24 PROSPECTIVE JUROR: Yeah.

25 THE COURT: Okay. Thanks.

1 Anybody else?

2 All right. Have any of you ever been involved in an
3 automobile crash while driving any type of Ford, Lincoln, or
4 Mercury automobile, or being a passenger in one?

5 Number 9?

6 PROSPECTIVE JUROR: Multiple, as discussed before.

7 THE COURT: With your -- that was a Ford truck?

8 PROSPECTIVE JUROR: Yes. All my work trucks were
9 Ford back then.

10 THE COURT: What kind of truck? What model?

11 PROSPECTIVE JUROR: F-350s, F-250s.

12 THE COURT: Okay. And how many times do you think
13 you were in a crash when you were in a Ford vehicle?

14 PROSPECTIVE JUROR: The seven to ten times,
15 something --

16 THE COURT: All those were?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Did you ever think any of
19 those crashes were caused or -- either wholly or partly
20 because of the way the car was made or operated or anything?

21 PROSPECTIVE JUROR: The 2004 that I discussed, yes,
22 sir, because of the --

23 THE COURT: Suspension problem?

24 PROSPECTIVE JUROR: -- suspension problems, and the
25 stuff just didn't work right.

1 THE COURT: All right. And you had some collisions
2 as a result of that?

3 PROSPECTIVE JUROR: I couldn't stop appropriately.
4 I didn't feel like the equipment worked properly to get me to
5 -- most of my accidents have been T-bones, people pulling out
6 in front of my trucks.

7 THE COURT: Okay. Thank you.

8 Now, if you've already answered this about a particular
9 Ford Ranger, you don't need to repeat it, but have you had any
10 serious mechanical problems with any other Ford, Lincoln, or
11 Mercury automobile that you or a family member has owned?

12 Mr. Knapp?

13 PROSPECTIVE JUROR: I have a 2008 Ford Focus, and it
14 had 50,000 miles on it and the transmission went out on it.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: They wouldn't -- it was under
17 warranty. They wouldn't put a new transmission in. They
18 rebuilt it, and I've not had any more problems with it since
19 they rebuilt the transmission.

20 THE COURT: Okay. Who did you deal with? Just the
21 dealership?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: What dealership?

24 PROSPECTIVE JUROR: I-77 Ford at Fairplain.

25 THE COURT: Did you ever have -- to your knowledge

1 was the manufacturer, the Ford Company, ever involved in it,
2 or was all this just handled between you and the dealership?

3 PROSPECTIVE JUROR: It was all between me and the
4 dealership.

5 THE COURT: Okay. Thank you.

6 Anyone else?

7 PROSPECTIVE JUROR #9: Would you repeat that
8 question, sir?

9 THE COURT: Yes. Have you or any member of your
10 family had any serious mechanical problems with a Ford, a
11 Lincoln, or a Mercury that either you or your family member
12 owned?

13 You told us about the Ford trucks.

14 PROSPECTIVE JUROR #9: Electrical.

15 THE COURT: Well, stand up and tell us about that.

16 PROSPECTIVE JUROR: 2003 model that I bought new --

17 THE COURT: Was this another truck?

18 PROSPECTIVE JUROR: Yes, sir. It was plagued with
19 electrical trouble and it would just shut down. It was an
20 F-350.

21 THE COURT: You bought it new?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: And so the electrical problems would
24 literally cause the engine to shut down?

25 PROSPECTIVE JUROR: The truck would just stop while

1 driving, yes.

2 THE COURT: All right. Were you ever involved in
3 any wreck?

4 PROSPECTIVE JUROR: Not directly related to that,
5 no.

6 THE COURT: Okay. Were you actually driving it when
7 this happened?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: And did you just completely have --

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: -- the car shut down?

12 PROSPECTIVE JUROR: And that would then kill the
13 brakes.

14 THE COURT: Power steering and everything else?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Okay. So you took it back to the
17 dealership and complained about it?

18 PROSPECTIVE JUROR: Yes. It was worked on, close to
19 \$18,000 worth of repairs under warranty the first year I owned
20 it, and I sold it and got rid of it.

21 THE COURT: Okay. So they covered all this under
22 warranty --

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: -- but they had to do a lot of work on
25 it.

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Did you feel like it had been fixed by
3 the time they finished their work?

4 PROSPECTIVE JUROR: Not the electrical, no, sir.

5 THE COURT: All right. So you got rid of it?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. Thank you.

8 Anyone else? I'm sorry.

9 MR. O'DELL: Your Honor, I think in that last
10 question about driving Fords, I think there may have been a
11 couple of people in the back.

12 THE COURT: Oh, I'm sorry. Did I miss somebody in
13 the back?

14 PROSPECTIVE JUROR #29: How far back on Ford do you
15 want to go?

16 THE COURT: Well, back when Henry was just a little
17 boy would probably be sufficient.

18 PROSPECTIVE JUROR #29: No, you were talking about
19 accidents in Fords.

20 THE COURT: Sure, whatever.

21 PROSPECTIVE JUROR #29: My mother had two Lincoln
22 Town Cars that the brakes went out on.

23 THE COURT: All right. How long ago --

24 PROSPECTIVE JUROR: The '60s --

25 THE COURT: Sixties?

1 PROSPECTIVE JUROR: Yeah, early '70s.

2 THE COURT: Is it your understanding that she felt
3 like the brakes went out because the car was poorly made?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Did she think the brakes were just worn
6 and not maintained or what?

7 PROSPECTIVE JUROR: Well, the one car they only had
8 for a week.

9 THE COURT: Was it new?

10 PROSPECTIVE JUROR: No, sir. It was bought used --

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: -- from a dealer.

13 THE COURT: Was it -- is it your impression that she
14 felt like with that Lincoln, that the brakes had just gotten
15 bad over time and weren't very good or what, or do you know?

16 PROSPECTIVE JUROR: Well, my dad is a mechanic and
17 he said that it was just something that the dealer missed,
18 that one that sold it, you know, used.

19 THE COURT: Okay. So the brakes just weren't kept
20 in a good state of repair.

21 PROSPECTIVE JUROR: Right.

22 THE COURT: Is that the case for both of the times
23 that the brakes went out?

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: Okay. Thank you.

1 Anyone else?

2 Now, have any of you or members of your immediate family
3 ever been involved in a significant or a serious controversy
4 or conflict with an automobile manufacturer or an automobile
5 dealer? And if you've already answered by describing the
6 dealership dealing with the problem, that's fine.

7 Anything else?

8 Okay. Now, have any of you ever felt that you had a
9 claim or a dispute that was significant with the manufacturer
10 of any type of product because you think that product was
11 defective, defectively made?

12 Number 9?

13 PROSPECTIVE JUROR: Dan Miller, Number 9. The 2003
14 discussed, I fought with Ford to take the truck back --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: -- because I'd paid so much
17 money for it.

18 THE COURT: Did you always just go through the
19 dealership with that problem?

20 PROSPECTIVE JUROR: Yes, Turnpike here in
21 Huntington, and then they would communicate with Ford and tell
22 me I'm stuck with the truck, essentially.

23 THE COURT: All right.

24 PROSPECTIVE JUROR: And then I would go through the
25 repairs again and try it again and never got anywhere.

1 THE COURT: So was some of your contact with the
2 manufacturer?

3 PROSPECTIVE JUROR: Not directly, through Turnpike.

4 THE COURT: So you were being told by Turnpike
5 sometimes the manufacturer says yes or no.

6 PROSPECTIVE JUROR: Correct.

7 THE COURT: Okay. Thank you.

8 Go ahead and change your tape.

9 If any of you need to stand up and stretch, feel free to
10 do that. I'm trying to get through all these questions before
11 we take a break, but I certainly don't mind interrupting at
12 any point. So if any of you feel like you need to take a
13 break and go to the rest room, just raise your hand.

14 All right. We'll take a quick, about a five-minute
15 recess. Let me tell you, we have rest rooms back here. This
16 is where the jury room is. And when you go through this first
17 door, immediately behind it is the women's rest room. It's
18 quite small, but it works. And on into where the conference
19 table is, to the other side is the men's rest room.

20 So we'll take about a five-minute recess. If you need to
21 go to the rest room, please try to do that. If you want to
22 stand up and stretch and move about, that's okay. Please
23 don't discuss anything about the case and in particular any of
24 the questions that I've been asking you or the answers anybody
25 has given.

1 With that, we'll stand in a recess for about five
2 minutes.

3 (Recess from 10:57 a.m. to 11:10 a.m.)

4 THE COURT: All right. It looks to me like we've
5 got everybody back, so we'll go ahead and start with the next
6 question, and that is, do any of you or members of your family
7 to your knowledge consider Ford automobiles or trucks, Ford
8 products, generally either inferior or poorly made or, on the
9 other hand, superior or better made in comparison with other
10 manufacturers?

11 So what I'm getting at is, do any of you have a belief or
12 an opinion that Ford is either significantly worse or
13 significantly better than other car manufacturers?

14 So please stand and identify yourself first.

15 Up here, Number 10?

16 PROSPECTIVE JUROR: Leslie Delapas, Number 10.

17 THE COURT: Speak up. So what is your opinion about
18 Ford?

19 PROSPECTIVE JUROR: That they're inferior.

20 THE COURT: That they're inferior to other car
21 manufacturers?

22 PROSPECTIVE JUROR: (Nods head up and down)

23 THE COURT: All right. Thank you.

24 Up here, Number 9?

25 PROSPECTIVE JUROR: As per my previous stuff, I

1 drive a Dodge now, and I've been buying their trucks for
2 years, and I just think they've ruined their trucks.

3 THE COURT: All right. Thank you.

4 MR. O'DELL: I'm sorry. I didn't hear that.

5 THE COURT: Oh, I'm sorry. Would you repeat that?
6 Say it louder so they can hear it.

7 PROSPECTIVE JUROR: I said I think Ford has ruined
8 their trucks. I drive a Dodge now.

9 THE COURT: You said you drove a Ford for years.
10 You thought they started to go downhill in quality.

11 PROSPECTIVE JUROR: Correct. Quality, yes.

12 THE COURT: And now you buy Dodge.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you.

15 All right. Anybody else up here? Number 4?

16 PROSPECTIVE JUROR: Of course, my family thinks Ford
17 is perfect. I myself drive a Ford.

18 THE COURT: All right. So you have a high opinion.
19 You think Ford is better than others.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: Thank you.

22 Anyone else?

23 Let's go here in the front row. Number -- I can't see
24 your number.

25 PROSPECTIVE JUROR: Number 19.

1 THE COURT: Please stand and state your name.

2 PROSPECTIVE JUROR: Phoenix Dyer. I think they're
3 inferior. I traded mine in on a Toyota.

4 THE COURT: All right. Thank you.

5 Back -- Number 23, I believe?

6 PROSPECTIVE JUROR: Yes, Number 23. I wouldn't have
7 anything but Ford.

8 THE COURT: All right. Thank you.

9 Number 30?

10 PROSPECTIVE JUROR: Inferior.

11 THE COURT: You think Fords are inferior?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. Anyone else?

14 All right. Now, let me ask sort of a general question
15 here, and it concerns the questions I've been asking you about
16 people's experience with Fords or your knowledge of Ford and
17 so forth.

18 A number of you have had either lots of people in the
19 family have owned or driven Ford Rangers. Now some of you
20 have expressed opinions about whether Ford is better or worse
21 than other manufacturers.

22 I know everybody has had a lot of different individual
23 experiences and everybody is entitled to their own individual
24 feelings and beliefs, but if you're to serve as a juror in a
25 case, you have to agree to set aside any personal feelings or

1 opinions or experience you have about something and, rather,
2 decide the case based on the evidence that you hear in the
3 trial and my instructions to you about the law you're to
4 apply.

5 Do any of you have such strong feelings or opinions about
6 the Ford vehicles that you've discussed in your answers with
7 me that you think you could not be a fair and impartial juror
8 in this case?

9 Thank you.

10 Now, let me ask you a few questions about what I've
11 generally lumped together as health care and medical issues.

12 Have any of you ever -- you or members of your immediate
13 family ever worked for a health care provider, been a nurse in
14 a doctor's office, something like that?

15 Let's start up here. Number 3?

16 PROSPECTIVE JUROR: Yes. My mother works as a
17 radiologic technician for CAMC and Women's and Children's
18 Hospital.

19 THE COURT: How long has she been there?

20 PROSPECTIVE JUROR: She has been there for about 15
21 years. And before that, she was at Associated in Kanawha
22 City.

23 THE COURT: Thank you.

24 Number 1?

25 PROSPECTIVE JUROR: Yes. Ronald Sexton. My wife is

1 an x-ray technologist up at St. Mary's Hospital. She's been
2 there for about 12 years.

3 THE COURT: Thanks.

4 Number 9?

5 PROSPECTIVE JUROR: My sister is in nuclear medicine
6 and my brother-in-law is a pharmacist.

7 THE COURT: Where does your sister work?

8 PROSPECTIVE JUROR: She was a professor here at
9 Marshall -- or this St. Mary's school. She recently just
10 transferred down to Virginia with her husband. He got a
11 promotion.

12 THE COURT: All right. Thank you.

13 Number 3 -- or, I mean, Number 13?

14 PROSPECTIVE JUROR: That's all right. Okay. My
15 whole family is nurses.

16 THE COURT: And you're a nurse?

17 PROSPECTIVE JUROR: I'm a nurse.

18 THE COURT: Are you working as a nurse currently?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Where?

21 PROSPECTIVE JUROR: CAMC Teays Valley.

22 THE COURT: And what kind of work do you do there?

23 PROSPECTIVE JUROR: I'm a nurse assist. Like
24 colonoscopy, I can help you out, but, like, I help everybody.
25 Like, the nurses, if they need something, I've got to go get

1 it and bring it back to them. I cannot pass medications
2 because I'm not an LPN.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: But at the nursing home, because
5 I used to work at Angel Avenue Assisted Living, I could pass
6 medication there.

7 THE COURT: And by "pass medication," you mean
8 simply handle it. You don't prescribe --

9 PROSPECTIVE JUROR: Yeah, to handle it, everything.

10 THE COURT: And so is it fair to say that as a
11 nursing assistant, you've assisted nurses in providing direct
12 care to patients?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And has it been across a wide variety --

15 PROSPECTIVE JUROR: Oh, yeah, everything.

16 THE COURT: -- of treatments? Everything?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. And how long have you been a
19 nurse?

20 PROSPECTIVE JUROR: Oh, gosh. Eight years.

21 THE COURT: All right. Thank you.

22 Let's go out here in the front row. Number 18, I
23 believe.

24 PROSPECTIVE JUROR: Yes. My sister is an x-ray
25 tech. My mother works at Cabell Huntington as a nurse;

1 stepmother, a nurse --

2 THE COURT: I'm sorry. I couldn't quite hear all
3 that.

4 PROSPECTIVE JUROR: Oh. Many of the women in my
5 family are either x-ray techs or work in the lab or are
6 nurses.

7 THE COURT: All right. Thank you.

8 Number 19?

9 PROSPECTIVE JUROR: I'm currently an RN at Cabell
10 Huntington Hospital. I'm a charge nurse on the orthopedic
11 floor there.

12 THE COURT: How long have you worked there?

13 PROSPECTIVE JUROR: Eight years.

14 THE COURT: And you're a charge nurse on the
15 orthopedic floor?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. Thank you.

18 Next row back, anyone?

19 PROSPECTIVE JUROR: Ethel Groves. I am a retired
20 nurse. I worked in the hospital, nursing homes, and doctors'
21 offices. My daughter is a nurse. My son-in-law and
22 daughter-in-law are nurses, and I have a lot of nieces --

23 THE COURT: How long ago -- oh, I'm sorry. How long
24 ago did you retire?

25 PROSPECTIVE JUROR: About eight years ago.

1 THE COURT: All right. Thank you.

2 Anyone else on that row? Yes, sir?

3 PROSPECTIVE JUROR #23: I have a younger brother
4 that's a doctor in Boston.

5 THE COURT: What kind of doctor is --

6 PROSPECTIVE JUROR: Well, he's a dentist.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: And my mother was a health nurse
9 in Kanawha County. She's passed now, but she did that for as
10 long as I can remember.

11 THE COURT: Was that with the health department?

12 PROSPECTIVE JUROR: The health department.

13 THE COURT: Okay. Thank you.

14 PROSPECTIVE JUROR #29: My daughter is in nuclear
15 medicine at Jackson General. She's been there for two years.

16 THE COURT: What does she do?

17 PROSPECTIVE JUROR: Administers -- she does MRIs,
18 CAT scans, stuff like that.

19 THE COURT: Is she a nurse of some type?

20 PROSPECTIVE JUROR: I'm not sure what -- she's not a
21 nurse per se. She's a nuclear medicine tech --

22 THE COURT: Okay. Thank you.

23 PROSPECTIVE JUROR: -- and my son is in optometry
24 school in Alabama.

25 THE COURT: Okay. Thank you.

1 Number 28?

2 PROSPECTIVE JUROR: My sister is an LPN at Teays
3 Valley Nursing. She has been for about seven or eight years.

4 THE COURT: Thank you.

5 Number 34, Mr. Hupp?

6 PROSPECTIVE JUROR: My sister is a nurse anesthetist
7 at CAMC in Charleston, and my stepmother was the lead
8 orthopedic administrator for Teays Valley CAMC. My ex-wife is
9 a nurse at St. Mary's. And I guess that's it.

10 THE COURT: All right. Thank you.

11 All right. Now, there might be some medical evidence
12 about a number of different medical conditions, so I'm going
13 to sort of read these out to you. Hopefully I'll pronounce
14 them correctly. But if you or somebody in your family or
15 somebody you're close to suffers from or has suffered from one
16 of these conditions, please raise your hand and let me know.

17 First, gastroesophageal reflux disease.

18 All right. Let's start here in the front. Number 6, if
19 you don't mind, stand up and tell me --

20 PROSPECTIVE JUROR: My sister.

21 THE COURT: Has she been hospitalized for it?

22 PROSPECTIVE JUROR: No, not yet.

23 THE COURT: Is this a longstanding condition she's
24 had?

25 PROSPECTIVE JUROR: Yeah. She's swallowed the tubes

1 and stuff.

2 THE COURT: Okay. And so she's under current
3 treatment for it?

4 PROSPECTIVE JUROR: Oh, yeah.

5 THE COURT: Have you talked with her much about it?

6 PROSPECTIVE JUROR: Just -- not really. I mean,
7 enough that I know what she's going through.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: I actually take care of her.

10 THE COURT: I'm sorry? You've taken care of her?

11 PROSPECTIVE JUROR: I actually take care of her
12 every day --

13 THE COURT: Okay. So have you learned a fair amount
14 about the condition or the disease do you think?

15 PROSPECTIVE JUROR: Yeah. I mean, I know what she
16 goes through, yeah.

17 THE COURT: Okay. Thank you.

18 Back here, Number 13?

19 PROSPECTIVE JUROR: My mom and my grandma have it,
20 and they're medicated, so --

21 THE COURT: Have they ever been hospitalized for it?
22 Do you know?

23 PROSPECTIVE JUROR: My grandma, yes.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: There was other issues with it,

1 along with that, is why she had to go.

2 THE COURT: And so they're both on prescribed
3 medication for it?

4 PROSPECTIVE JUROR: Yeah. And I take it too because
5 I get the acid reflux.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: So I take medicine for it too.

8 THE COURT: Does the medicine that you all take seem
9 to help each one of you --

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: -- keep it in control?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. Have you ever done any research
14 or looking into it?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. Thank you.

17 Back here on the front row, Number 19?

18 PROSPECTIVE JUROR: My mom. And she's just never
19 been hospitalized.

20 THE COURT: Is it under control when she takes
21 medication?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Thank you.

24 The next row back? Yes, Mr. Knapp, Number 22?

25 PROSPECTIVE JUROR: I take medicine for acid reflux.

1 THE COURT: All right. Is it prescribed medicine?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Have you ever been hospitalized for it?
4 Have you been hospitalized because of it?

5 PROSPECTIVE JUROR: No, I haven't.

6 THE COURT: And does the medicine effectively treat
7 it?

8 PROSPECTIVE JUROR: It's under control, yes.

9 THE COURT: Okay. Thank you.

10 Number 30?

11 PROSPECTIVE JUROR: Yes, I have --

12 THE COURT: I can't hear you.

13 PROSPECTIVE JUROR: I have esophageal spasms and I
14 have to take medicine for it.

15 THE COURT: Have you ever been hospitalized?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: So you're taking a prescription for it?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Has that been effective?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you.

22 And I can't see your number, ma'am, Number --

23 PROSPECTIVE JUROR: 26.

24 THE COURT: -- 26. Please stand and identify
25 yourself.

1 PROSPECTIVE JUROR: Lilly Relf. I have the GERD and
2 I take medicine, several medicines.

3 THE COURT: Okay. Does the medicine help your
4 reflux?

5 PROSPECTIVE JUROR: Yes, a little bit.

6 THE COURT: Have you ever been hospitalized for it?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Okay. Have you ever done any research
9 into it or looked up things on the Internet --

10 PROSPECTIVE JUROR: I read on it, but it's better
11 today now with the medicines that I take than when I started.

12 THE COURT: Okay. So medicines you've been taking
13 more recently have been more effective for you?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Thank you.

16 Anyone else?

17 The next condition is called Barrett's esophagus. Is
18 that the correct term?

19 Anybody ever -- do you or, to your knowledge, anybody in
20 your family have that condition?

21 Esophageal cancer? Cancer of the esophagus or something
22 like that?

23 Yes, sir, Number 22?

24 PROSPECTIVE JUROR: I have a brother-in-law that has
25 esophageal cancer, and he's in Pittsburgh about every three

1 months for treatment.

2 THE COURT: Where does he live?

3 PROSPECTIVE JUROR: Out at Point Pleasant.

4 THE COURT: So has he been hospitalized for it?

5 PROSPECTIVE JUROR: No, he hasn't.

6 THE COURT: But it's been diagnosed?

7 PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: How long ago did he get diagnosed with
9 cancer?

10 PROSPECTIVE JUROR: About three or four years ago I
11 think.

12 THE COURT: Okay. And he goes to Pittsburgh for
13 treatment about every three months or so?

14 PROSPECTIVE JUROR: Yes, to be checked. They think
15 they've got it under control, but he goes back about every
16 three months.

17 THE COURT: All right. So at this point his
18 prognosis is pretty good?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: But he needs to go in every few months
21 and be checked for it?

22 PROSPECTIVE JUROR: Right.

23 THE COURT: All right. Thank you.

24 Anyone else?

25 Now, have any of you or anybody in your immediate family

1 suffered or had any significant abdominal surgery?

2 All right. Have any of you ever had back or neck
3 surgery?

4 THE CLERK: Judge.

5 THE COURT: Oh, I'm sorry. Somebody?

6 Number 20, abdominal surgery?

7 PROSPECTIVE JUROR: Two hernia surgeries.

8 THE COURT: How long ago?

9 PROSPECTIVE JUROR: One was --

10 THE COURT: Roughly.

11 PROSPECTIVE JUROR: -- about four years ago, and the
12 other one was about two years ago.

13 THE COURT: What caused the hernias? Do you know?

14 PROSPECTIVE JUROR: I was born with them.

15 THE COURT: I'm sorry?

16 PROSPECTIVE JUROR: I was born with them.

17 THE COURT: All right. But have the surgeries
18 repaired it?

19 PROSPECTIVE JUROR: As far as I know, yes.

20 THE COURT: Are you having any problems now?

21 PROSPECTIVE JUROR: Every once in a while, but
22 nothing like it was.

23 THE COURT: Nothing requiring treatment?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Someone else had their hand up.

1 Number 21, yes, ma'am?

2 PROSPECTIVE JUROR: Yes. I have seven bad disks in
3 my back. I have a stimulator in my back, and I had two
4 herniated disks in my neck. I have two metal plates and six
5 screws in my neck.

6 THE COURT: What caused all these problems? Did you
7 have injuries or were these just things that developed over
8 time?

9 PROSPECTIVE JUROR: Just developed over time.

10 THE COURT: All right.

11 PROSPECTIVE JUROR: Working and standing on concrete
12 for 40 years.

13 THE COURT: Okay. Yeah. When was your last
14 surgery?

15 PROSPECTIVE JUROR: I had to have the wire replaced
16 in my stimulator a year ago in January.

17 THE COURT: All right. And you said you had several
18 disks --

19 PROSPECTIVE JUROR: I had seven bad disks in my
20 back, but I just had the stimulator.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: I was not a candidate for back
23 surgery --

24 THE COURT: All right. So you have a stimulator
25 now?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Has it been effective?

3 PROSPECTIVE JUROR: It helps. I still have a lot of
4 hip and leg pain from my back.

5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR: But my neck I had done in '97.

7 THE COURT: What did you have done to your neck?

8 PROSPECTIVE JUROR: I had two herniated disks and I
9 have two metal plates and six screws in my neck.

10 THE COURT: Now, was that --

11 PROSPECTIVE JUROR: I don't have any trouble with
12 it. It's never bothered me since my surgery.

13 THE COURT: Okay. Good. Were the neck problems
14 just --

15 PROSPECTIVE JUROR: I was losing the use of my left
16 arm. It was laying on the nerve.

17 THE COURT: All right. Was that just from wear and
18 tear of getting older, or did you have any injuries or
19 accidents?

20 PROSPECTIVE JUROR: I didn't recall any. I don't
21 know.

22 THE COURT: All right. Thank you.

23 Anyone else back there? Yes, ma'am, Number 12?

24 PROSPECTIVE JUROR: Glennia P. Daniels. I had a
25 hernia in my belly button two years ago. I've had surgery.

1 THE COURT: What caused the hernia? Do you have any
2 idea?

3 PROSPECTIVE JUROR: Lifting and picking up things.

4 THE COURT: I'm sorry? I couldn't hear you.

5 PROSPECTIVE JUROR: Lifting, picking up weight.

6 THE COURT: And how was it you were lifting and
7 picking up weight?

8 PROSPECTIVE JUROR: I'm a cook, and picking up the
9 weight.

10 THE COURT: Big jars and cans and things?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Did the surgery fix it?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: No problem since?

15 PROSPECTIVE JUROR: No problem.

16 THE COURT: All right.

17 Anyone else? Number 13?

18 PROSPECTIVE JUROR: Stomach issues. Oh, I'm Heather
19 Egnor, 13. Stomach issues. If you have acid reflux, it will
20 go with your gallbladder too because that's what makes it. So
21 I had my gallbladder taken out because of that, and so did my
22 mom and my grandma and like everybody else.

23 THE COURT: How long ago did you have your
24 gallbladder removed?

25 PROSPECTIVE JUROR: 2007.

1 THE COURT: Any complications or problems?

2 PROSPECTIVE JUROR: No. That's why I got the
3 medicine, to help that. If you don't take it, it becomes
4 worse.

5 THE COURT: All right. So when you take your
6 medicine, you're good to go.

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: Thanks.

9 Anybody else?

10 THE CLERK: There's a couple in the back.

11 THE COURT: Yes, Number 30?

12 PROSPECTIVE JUROR: I've had my gallbladder removed,
13 appendectomy, tubal ligation.

14 THE REPORTER: I couldn't hear the last --

15 THE COURT: Tubal ligation was the last one.

16 All right. When was the last one? What was the most
17 recent?

18 PROSPECTIVE JUROR: 2010.

19 THE COURT: All right. Did you have any
20 complications or problems from any of these surgeries?

21 PROSPECTIVE JUROR: The appendectomy, I got an
22 abscess on my belly button.

23 THE COURT: All right. And did that require further
24 hospitalization?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Did you heal up from it?

2 PROSPECTIVE JUROR: Eventually. About two months.

3 THE COURT: About two months? All right. And the
4 last of these was about 2010?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: And you've had no --

7 PROSPECTIVE JUROR: I had three of them real close
8 together in time.

9 THE COURT: Okay. And you haven't had any problems
10 since then.

11 PROSPECTIVE JUROR: No.

12 THE COURT: Were any of these things caused by an
13 accident or an injury?

14 PROSPECTIVE JUROR: No. Everything went bad at
15 once.

16 THE COURT: Okay. Lucky you, huh?

17 PROSPECTIVE JUROR: A year and a half of surgeries,
18 though.

19 THE COURT: Okay. Thank you.

20 Anyone else?

21 PROSPECTIVE JUROR: Number 29. I had my gallbladder
22 removed.

23 THE COURT: And any complications from that?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right.

1 Have any of you had any back surgeries, and that's -- a
2 number of you have already told us something, so we've already
3 heard it and you don't need to repeat it.

4 But anybody else have back surgery or neck surgery?

5 Yes, ma'am?

6 PROSPECTIVE JUROR: Linda Adkins, Number 32. I had
7 two disks in my lower back repaired due to a fall.

8 THE COURT: How long ago?

9 PROSPECTIVE JUROR: It's been about 15 years ago.

10 THE COURT: And it was because you had fallen?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Did the surgery work?

13 PROSPECTIVE JUROR: Yes, sir, it did.

14 THE COURT: Okay. So you haven't had any
15 complications or serious problems?

16 PROSPECTIVE JUROR: I just have spasms every once in
17 a while, but I take medication.

18 THE COURT: All right. Thank you.

19 Anybody else?

20 Now, have any of you had any significant low back pain or
21 low back pain that radiates down as pain into your legs?

22 All right. Let's start up here.

23 Number 9, what have you had? What you've already told us
24 about?

25 PROSPECTIVE JUROR: Just from back injuries. Yes.

1 THE COURT: How is your back currently?

2 PROSPECTIVE JUROR: How is it hurt?

3 THE COURT: How is it currently?

4 PROSPECTIVE JUROR: Oh, at the moment, I'm fine.

5 THE COURT: In these last several weeks or months,
6 have you had any problems with your low back pain?

7 PROSPECTIVE JUROR: Every few weeks I have episodes
8 and I'll go to the chiropractor for a few visits and then I'm
9 fine again.

10 THE COURT: The chiropractor helps?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Anything in particular trigger or cause
13 this to recur?

14 PROSPECTIVE JUROR: Lifting.

15 THE COURT: Lifting?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. So do you try to avoid
18 lifting or something like -- activities like that?

19 PROSPECTIVE JUROR: I can't avoid it. I just deal
20 with it when it happens.

21 THE COURT: All right. Do you take pain medication?

22 PROSPECTIVE JUROR: No, I do not.

23 THE COURT: Thank you. All right.

24 Up here, who else? Anybody else?

25 Number 6, please stand and identify yourself.

1 PROSPECTIVE JUROR #6: I have degenerative disk
2 disease.

3 THE COURT: Speak up. I'm sorry.

4 PROSPECTIVE JUROR: I have degenerative disk disease
5 and sciatica.

6 THE COURT: When were those diagnosed?

7 PROSPECTIVE JUROR: Probably four months ago.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: I've had the problem for a long
10 time, but I finally went in and checked it.

11 THE COURT: And what kind of treatment are you
12 getting for it?

13 PROSPECTIVE JUROR: They gave me some muscle
14 relaxers and pain pills.

15 THE COURT: Does that help?

16 PROSPECTIVE JUROR: Yeah. I mean, you have -- I
17 like, you know, lie flat on my back for a while.

18 THE COURT: Any physical therapy?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Is this something that you take pain
21 medicine for about every day?

22 PROSPECTIVE JUROR: Not every day, no.

23 THE COURT: How often?

24 PROSPECTIVE JUROR: Probably once every couple of
25 weeks or so.

1 THE COURT: Okay. Thank you.

2 Let's go to the next row, the first row out there.

3 Nobody.

4 The second -- oh, I'm sorry. Number 19?

5 PROSPECTIVE JUROR: I have rheumatoid arthritis in
6 my tailbone and my spine.

7 THE COURT: If you would, stand up. How long ago
8 were you diagnosed with arthritis?

9 PROSPECTIVE JUROR: About six months ago.

10 THE COURT: And are you taking medication for it?

11 PROSPECTIVE JUROR: I take Plaquenil for it. They
12 started me on that and it seems to help.

13 THE COURT: Okay. Thank you.

14 Anyone else there?

15 Next row back? Number 22?

16 PROSPECTIVE JUROR: 22, Thomas Knapp. I have a
17 deteriorated disk in my back that I take pain pills for
18 whenever it bothers me. Sometimes the pain will go down my
19 leg. Most of the time it's just in my lower back.

20 THE COURT: How often do you have to take pain
21 medicine?

22 PROSPECTIVE JUROR: Maybe once a week, or it depends
23 on what I do.

24 THE COURT: Has a doctor ever given you a real
25 diagnosis or explanation of this?

1 PROSPECTIVE JUROR: Well, he checks about every time
2 I go. I go every six months to my regular doctor, but he told
3 me that I would know when I needed surgery or whatever.

4 THE COURT: Told you let him know?

5 PROSPECTIVE JUROR: Yeah, that I would know --

6 THE COURT: Oh, you would know.

7 PROSPECTIVE JUROR: -- if I needed it.

8 THE COURT: All right. At this point you don't feel
9 like it's bad enough that you want surgery?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Thank you.

12 Yes, sir, Number 23?

13 PROSPECTIVE JUROR: Yes. I have RA and I'm taking
14 medication --

15 THE COURT: And "RA" is rheumatoid arthritis?

16 PROSPECTIVE JUROR: Rheumatoid arthritis. And my
17 hips and my leg goes numb all the time.

18 THE COURT: Do you take medicine every day?

19 PROSPECTIVE JUROR: Every day, yes, sir.

20 THE COURT: Is there any particular activity that
21 seems to make it worse or trigger it?

22 PROSPECTIVE JUROR: Walking does. Walking here this
23 morning -- I'm just falling apart -- I had pain.

24 THE COURT: Okay. Thank you, sir.

25 Anyone else on that row? Yes, Number 25?

1 PROSPECTIVE JUROR: 25, Kristopher Pyles. I
2 sustained an injury. I have two herniated disks.

3 THE COURT: I'm sorry. You're going to have to say
4 all that again a lot louder.

5 PROSPECTIVE JUROR: I sustained an injury while I
6 was employed. I have two herniated disks.

7 THE COURT: How long ago was this diagnosed?

8 PROSPECTIVE JUROR: 2005.

9 THE COURT: Are you currently receiving treatment
10 for it?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Are you currently taking medicine for
13 it?

14 PROSPECTIVE JUROR: No.

15 THE COURT: About how long were you having a
16 significant problem with it?

17 PROSPECTIVE JUROR: 2005 through the present. I
18 just deal with the pain.

19 THE COURT: So even currently you have pain. You
20 just don't take medicine for it.

21 PROSPECTIVE JUROR: Correct.

22 THE COURT: Is it affecting your activities much?

23 PROSPECTIVE JUROR: Sometimes.

24 THE COURT: Like?

25 PROSPECTIVE JUROR: Lifting my kids or playing with

1 them.

2 THE COURT: While you're up, I want to bring to
3 everyone's attention, you told me during the break that
4 after --

5 PROSPECTIVE JUROR: I know Miss Nease.

6 THE COURT: All right. After sitting here a while,
7 you recognized that you may know Miss Nease.

8 PROSPECTIVE JUROR: Correct.

9 THE COURT: And how is that?

10 PROSPECTIVE JUROR: I believe her and my mother
11 taught school at Poca.

12 THE COURT: At Poca?

13 PROSPECTIVE JUROR: At Poca.

14 MS. NEASE: No.

15 THE COURT: Mrs. Nease, did you teach school at
16 Poca?

17 MS. NEASE: No.

18 THE COURT: Okay. So it's not this Miss Nease.

19 You also knew somebody that you thought might be related
20 to Miss Nease. What's the name of that person?

21 PROSPECTIVE JUROR: I believe it was her daughter.

22 THE COURT: What was her name?

23 PROSPECTIVE JUROR: Kimberly.

24 THE COURT: Miss Nease, do you have a daughter named
25 Kimberly?

1 MS. NEASE: No.

2 THE COURT: Okay. It must have been somebody else.
3 Thanks for bringing that to our attention.

4 All right. Anybody else back there on the -- all right.
5 I can't see your number. So please stand and identify
6 yourself.

7 PROSPECTIVE JUROR: 26. I have arthritis in my
8 lower back and --

9 THE COURT: Can you say that louder, ma'am? I'm
10 sorry.

11 PROSPECTIVE JUROR: I have arthritis in my lower
12 back. I have three disks out of place. And on my spine, I
13 have -- that's why I'm wearing a back brace.

14 THE COURT: So you wear a back brace for it?

15 PROSPECTIVE JUROR: Uh-huh, I wear a back brace,
16 plus I go to the pain clinic and they give me injections.

17 THE COURT: All right. First, do you wear a back
18 brace about every day?

19 PROSPECTIVE JUROR: Every day.

20 THE COURT: Okay. And do you take pain medicine
21 about every day?

22 PROSPECTIVE JUROR: I -- I don't take pain medicine
23 every day. I try to not take it unless I have to.

24 THE COURT: About how often then during a week do
25 you have to take it?

1 PROSPECTIVE JUROR: When it gets -- when the pain
2 gets so bad that I'm crying.

3 THE COURT: Does that happen once or twice a week?

4 PROSPECTIVE JUROR: I just -- it happens maybe
5 every -- maybe every other day or so.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: And I just take a half of one.

8 THE COURT: All right. And so you go to a pain
9 clinic?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Who is that?

12 PROSPECTIVE JUROR: A pain doctor, for my arthritis.

13 THE COURT: Okay. What pain clinic or doctor do you
14 go to?

15 PROSPECTIVE JUROR: I go to Dr. Germani in
16 Proctorville for my upper back.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: And I go to the pain clinic at
19 St. Mary's for my lower back.

20 THE COURT: All right. And so you currently have
21 regular follow-up appointments for these things?

22 PROSPECTIVE JUROR: Yes. I go to these doctors now.

23 THE COURT: Okay. Thank you. Anything else?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right. Thank you very much, ma'am.

1 Let's go down that row. Anyone else? Number 29?

2 PROSPECTIVE JUROR: I've had sciatic before, pinched
3 nerve in my back.

4 THE COURT: How long ago?

5 PROSPECTIVE JUROR: It's probably been about five
6 years ago since --

7 THE COURT: What kind of treatment did you get for
8 it?

9 PROSPECTIVE JUROR: Chiropractor.

10 THE COURT: Did that help?

11 PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: Yes?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. Thank you.

15 Number 30?

16 PROSPECTIVE JUROR: I have spinal stenosis and
17 arthritis in my spine.

18 THE COURT: When was your stenosis diagnosed?

19 PROSPECTIVE JUROR: About a year and a half on both.

20 THE COURT: I'm sorry?

21 PROSPECTIVE JUROR: On both.

22 THE COURT: Are you under current treatment for
23 either or both of those?

24 PROSPECTIVE JUROR: No. I see the chiropractor when
25 I get too --

1 THE COURT: Does the chiropractor help?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: About how often do you think you have to
4 go to the chiropractor?

5 PROSPECTIVE JUROR: At least once a month.

6 THE COURT: Once a month? Do you take pain
7 medicine?

8 PROSPECTIVE JUROR: No. I don't take more than
9 Tylenol.

10 THE COURT: I'm sorry?

11 PROSPECTIVE JUROR: I don't take anything more than
12 Tylenol.

13 THE COURT: Okay. Thank you.

14 Anyone else?

15 All right. Have any of you or members of your immediate
16 family ever suffered from peripheral neuropathy or foot drop?

17 Yes, Number -- I think your number is 26. Please stand
18 up and state your name first.

19 PROSPECTIVE JUROR: Lilly Relf. I suffer from drop
20 foot, diabetes neuropathy.

21 THE COURT: Diabetic neuropathy?

22 PROSPECTIVE JUROR: Yes, and so does my mother.

23 THE COURT: Does it affect any of your limbs, your
24 arms or legs?

25 PROSPECTIVE JUROR: Yes, my legs.

1 THE COURT: And how does it affect your legs?

2 PROSPECTIVE JUROR: They go numb.

3 THE COURT: They go numb? Are you under treatment
4 for it?

5 PROSPECTIVE JUROR: I take Lyrica.

6 THE COURT: I'm sorry?

7 PROSPECTIVE JUROR: I take Lyrica.

8 THE COURT: Lyrica. And that's a specific medicine
9 for neuropathy?

10 PROSPECTIVE JUROR: That's what they give me, and it
11 doesn't keep my legs from going numb. If I stand a little too
12 long, my legs go numb.

13 THE COURT: All right. Thank you.

14 Anyone else?

15 Now, have any of you or members of your immediate family
16 had an extended hospitalization as a result of an injury, an
17 accident or something like that causing significant
18 hospitalization, other than what you've already told me about?

19 Number 13, you told us about your car wreck and how that
20 put you in the hospital.

21 Anyone else? Number 29?

22 PROSPECTIVE JUROR: Yeah. My son had a bicycle
23 accident. He was in ICU for four days and he was in the
24 hospital for five days.

25 THE COURT: When was this?

1 PROSPECTIVE JUROR: Twelve years ago.

2 THE COURT: Has he recovered?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: What type of injuries did he have?

5 PROSPECTIVE JUROR: He had a lacerated spleen,
6 broken ribs, broken shoulder, and just scrapes.

7 THE COURT: Okay. Thank you.

8 Someone else had their hand up back here, I think. Yes,
9 Number 22?

10 PROSPECTIVE JUROR: My brother, he had a -- he got
11 knocked off a tractor and the tractor spun on his leg, broke
12 both legs, but it almost tore his left leg off, and he was
13 over two years -- they grew the bone back in his leg, and he
14 had his leg in a halo type thing to hold it in place almost
15 two years.

16 THE COURT: All right. How long ago was all this?

17 PROSPECTIVE JUROR: It was in '99 I believe it was.

18 THE COURT: All right. Thank you.

19 Up here, Number 9?

20 PROSPECTIVE JUROR: I run my hand through a table
21 saw about six years ago, and I was in for a couple of weeks,
22 had complications.

23 THE COURT: How long were you in the hospital?

24 PROSPECTIVE JUROR: A couple of weeks.

25 THE COURT: A couple of weeks in the hospital?

1 PROSPECTIVE JUROR: Yes. I was in ICU for three or
2 four days.

3 THE COURT: Why?

4 PROSPECTIVE JUROR: There was some kind of
5 infection.

6 THE COURT: Okay. All right. Thank you.

7 Anyone else?

8 Yes, Number 26? Please stand and identify yourself. I'm
9 sorry to keep making you stand.

10 PROSPECTIVE JUROR #26: I'm so sorry. I got a plate
11 and several screws in my -- holding my right foot to my leg.

12 THE COURT: All right. So you've got screws --

13 PROSPECTIVE JUROR: And I broke my major bone on my
14 right.

15 THE COURT: Right leg?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: How did that happen?

18 PROSPECTIVE JUROR: I fell.

19 THE COURT: How long ago was this?

20 PROSPECTIVE JUROR: 19 -- no, 2003.

21 THE COURT: How long were you in the hospital?

22 PROSPECTIVE JUROR: A week and a half.

23 THE COURT: And so now you've got plates and
24 screws --

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: -- with your left -- your right foot and
2 leg?

3 PROSPECTIVE JUROR: Yes, I do.

4 THE COURT: All right. Thank you.

5 Anyone else?

6 PROSPECTIVE JUROR #26: I'll try not to stand up
7 again.

8 THE COURT: All right. Now, I'm going to read off
9 three medications, and I want to ask you -- and I'm sorry that
10 this is asking for medical information, but I just don't see
11 any way around it. So if you have taken this medicine
12 currently or at any point for some significant period, a
13 matter of days or weeks at least:

14 Elavil? Neurontin?

15 All right. Number 26, you've taken Neurontin?

16 PROSPECTIVE JUROR: I've taken it, yeah.

17 THE COURT: All right. And how long have you been
18 on Neurontin, roughly?

19 PROSPECTIVE JUROR: For about three years.

20 THE COURT: Three years?

21 PROSPECTIVE JUROR: Two, three times a day.

22 THE COURT: Okay. Thank you.

23 And Number 21?

24 PROSPECTIVE JUROR: Yes. I had it for my legs.

25 THE COURT: You take Neurontin?

1 PROSPECTIVE JUROR: Yes, twice a day.

2 THE COURT: Currently?

3 PROSPECTIVE JUROR: On and off for probably, I don't
4 know, seven or eight years.

5 THE COURT: Okay. Thank you.

6 Anyone else with Neurontin?

7 Or Mirapex? Any of you taken Mirapex at some point or
8 currently?

9 All right. Now, I'm going to ask you just really some
10 brief -- or one really brief question about your educational
11 background. I'm really just trying to get to how far you've
12 gone in any regular school or college or beyond.

13 So, again, I want to just call this out and ask that you
14 raise your hand until I get your name and number.

15 First, how many of you have some type of post-graduate
16 degree, meaning something after a basic college degree? A
17 post-graduate degree.

18 Number 7, can you tell us?

19 PROSPECTIVE JUROR: Mike Jones. Special ed.,
20 masters plus 25.

21 THE COURT: All right.

22 PROSPECTIVE JUROR: Education.

23 THE COURT: Thank you.

24 Number 26?

25 PROSPECTIVE JUROR: I have an associate's degree as

1 an electronic engineering technician.

2 THE COURT: As an electronic engineer technician?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Where did you get that degree?

5 PROSPECTIVE JUROR: International --

6 International -- NIC.

7 THE COURT: Is that a --

8 PROSPECTIVE JUROR: A technical school.

9 THE COURT: And where's that located?

10 PROSPECTIVE JUROR: In Cross Lanes.

11 THE COURT: All right. So you went to a classroom
12 in Cross Lanes at that institution?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right.

15 PROSPECTIVE JUROR: Got my associate's degree.

16 THE COURT: All right. Thank you.

17 Anyone else? Yes, sir, Number 33.

18 PROSPECTIVE JUROR: Jason Jeffrey. I've got a
19 masters of engineering in chemical engineering, University of
20 South Carolina.

21 THE COURT: And when did you get your masters?

22 PROSPECTIVE JUROR: 2004, I think.

23 THE COURT: And it's in chemical engineering?

24 PROSPECTIVE JUROR: Chemical engineering.

25 THE COURT: All right. Thanks.

1 Anyone else?

2 Now, how many of you have a college degree, just an
3 undergraduate degree?

4 We'll start up here. Please, we'll just take turns and
5 ask you to stand up and tell me what your degree is in and
6 when you got it and where you went.

7 Number 2?

8 PROSPECTIVE JUROR: Ashley Daniel. Marshall
9 University, just a Regents degree.

10 THE COURT: What did you get it?

11 PROSPECTIVE JUROR: Actually, I get it in two
12 months, maybe.

13 THE COURT: Well, congratulations. Good for you.

14 Number 3?

15 PROSPECTIVE JUROR: I'm Robert Anastasio. I have a
16 bachelors in history, a bachelors in social studies, secondary
17 education, and working on a masters in special ed.

18 THE COURT: Where did you get your degrees?

19 PROSPECTIVE JUROR: Marshall University.

20 THE COURT: And when did you get your degrees?

21 PROSPECTIVE JUROR: My first one was 2011, my second
22 was 2013, and then my expected graduation date is 2017.

23 THE COURT: Good for you.

24 All right. Number 5?

25 PROSPECTIVE JUROR: Caitlin Kessler. Bachelors --

1 THE COURT: Speak up.

2 PROSPECTIVE JUROR: -- in political science,
3 Marshall University, 2010.

4 THE COURT: All right. Thank you.

5 Back here, Number 10?

6 PROSPECTIVE JUROR: I have a Regents from West
7 Virginia State.

8 THE COURT: When did you get it?

9 PROSPECTIVE JUROR: Last May.

10 THE COURT: Last May. Thank you.

11 Number 13?

12 PROSPECTIVE JUROR: I'm Heather Egnor, Number 13,
13 and I went to Marshall undergrad for interior design.

14 THE COURT: Interior design.

15 PROSPECTIVE JUROR: Yeah. And then I had to quit
16 because of my wreck.

17 THE COURT: Okay. When did you get your interior
18 design degree?

19 PROSPECTIVE JUROR: I graduated in 2004. So I had
20 to quit 2006 because it's after the wreck. I couldn't go
21 back.

22 THE COURT: All right. Thank you.

23 Out here in the first row, anyone?

24 All right. Number -- I can't see. Number 19 I believe
25 is your number. Stand up --

1 PROSPECTIVE JUROR: Number 19. I have my bachelors
2 in chemistry I got in '99 from Marshall. And then I got my
3 associate's in nursing in 2007 at St. Mary's.

4 THE COURT: Thank you.

5 Number 20?

6 PROSPECTIVE JUROR: I have an associate's degree in
7 industrial automation and another associate's degree in
8 computer repair that I got from the University of Rio Grande.

9 THE COURT: Were both of your degrees from Rio
10 Grande?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Thank you.

13 Next row back, anyone?

14 All right. Yes, Number 25?

15 PROSPECTIVE JUROR: Kristopher Pyles. I have a BA
16 from Marshall University, 2004.

17 THE COURT: I couldn't hear that.

18 PROSPECTIVE JUROR: I have a BA from Marshall
19 University, 2004.

20 THE COURT: And what's your degree in?

21 PROSPECTIVE JUROR: Marketing.

22 THE COURT: Marketing? Thank you.

23 Next row back, anyone?

24 Number 30?

25 PROSPECTIVE JUROR: I have an associate's in

1 business management from Marshall, and then I have a one-year
2 coding certificate for ACTC.

3 THE COURT: For where?

4 PROSPECTIVE JUROR: ACTC.

5 THE COURT: And when did you get these degrees?

6 PROSPECTIVE JUROR: The business management, 2009,
7 and the coding in 2010.

8 THE COURT: Thank you.

9 All right. Number 27?

10 PROSPECTIVE JUROR: Associate's degree in computer
11 science, early '90s --

12 THE COURT: Early '90s?

13 PROSPECTIVE JUROR: Yes.

14 THE REPORTER: I'm sorry. I couldn't hear that.

15 THE COURT: My court reporter couldn't hear you.
16 You said -- say that again louder. I'm sorry. Number 27?

17 PROSPECTIVE JUROR: Computer science.

18 THE COURT: Computer science from Huntington
19 Business College?

20 PROSPECTIVE JUROR: Yeah, early '90s.

21 THE COURT: Early '90s. Thank you.

22 All right. Number 33?

23 PROSPECTIVE JUROR: Jason Jeffrey. West Virginia
24 University, bachelors of chemical engineering.

25 THE COURT: When did you get your bachelors?

1 PROSPECTIVE JUROR: 1998.

2 THE COURT: Thanks.

3 Mr. Hupp, Number 34?

4 PROSPECTIVE JUROR: Marshall University, BA in
5 public relations, 2006.

6 THE COURT: Thank you. All right.

7 All right. If you've already answered by describing the
8 college or post-graduate degree or associate's degree, you
9 don't need to repeat that. But apart from that, if you didn't
10 get a degree, how many of you at least had some college
11 classes, college-level classes, but not to the point of a
12 degree?

13 If you would, do the same thing.

14 All right. Number 11?

15 PROSPECTIVE JUROR: Number 11, yes. Marshall, two
16 years, didn't finish.

17 THE COURT: Okay.

18 Number 13?

19 PROSPECTIVE JUROR: I didn't finish because of my
20 wreck, so I didn't get --

21 THE COURT: Your interior --

22 PROSPECTIVE JUROR: Yeah. I didn't get a degree.

23 THE COURT: Thank you.

24 All right. Number 26?

25 PROSPECTIVE JUROR: I have a diploma in computer

1 science.

2 THE COURT: From?

3 PROSPECTIVE JUROR: It was a community college.

4 THE COURT: Thank you.

5 21?

6 PROSPECTIVE JUROR: Yes. I got my associate's in
7 LPN from Buckeye Hills.

8 THE COURT: Where's that?

9 PROSPECTIVE JUROR: It's in Rio Grande.

10 THE COURT: All right. Thank you.

11 Number 18?

12 PROSPECTIVE JUROR: Marshall University, two years.

13 THE COURT: I can't see the next one. I think it's
14 Number 24, but I can't quite see it.

15 PROSPECTIVE JUROR: 24, Lisa Bowles.

16 THE COURT: Please speak up.

17 PROSPECTIVE JUROR: Lisa Bowles. Marshall
18 University. I didn't finish. I got married.

19 THE COURT: But you had classes there?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: All right.

22 Anyone else back there?

23 All right. And, again, if you've already told me about
24 some college-level course or degree, you need not answer
25 again. But apart from that, how many of you -- or who among

1 you has a high school diploma or GED degree?

2 Please just raise your hands. I'm not going to ask that
3 you -- keep your hands up for a second so we can call out your
4 number.

5 Number 1, Number 8, Number 9, Number 14, Number 6, Number
6 15, 16, 17, 22, 23, 28, 29, 21, 26.

7 I can't see you folks in the back row.

8 PROSPECTIVE JUROR: 31.

9 THE COURT: 31.

10 PROSPECTIVE JUROR: 32.

11 THE COURT: 32.

12 All right. Thank you.

13 How many of you attended a vocational school or
14 vocational program?

15 Number 26, Number 13, Number 6, Number 17, Number -- 34?

16 PROSPECTIVE JUROR: 31.

17 THE COURT: 31, Number 26.

18 All right. Thank you.

19 All right. Now, as I've introduced the parties to you, I
20 explained the plaintiffs in this case, the people bringing the
21 lawsuit, are two individuals, two people, Mr. and Mrs. Nease.

22 The defendant in this case is, of course, a corporation,
23 Ford Corporation. The law treats people and corporations the
24 same. They have the same legal standing and, for all of our
25 purposes, the same legal rights.

1 Do any of you believe that you could not treat the
2 plaintiffs and the defendant on a fair and equal basis?

3 Now, in a civil case like this, the plaintiff has the
4 burden of proving the elements of their claims. And that
5 means they have to present their evidence first.

6 Is there anyone who believes you couldn't keep an open
7 mind about a case until after the defendant presents its case?

8 Number 1? Would you stand and identify yourself, first
9 of all?

10 PROSPECTIVE JUROR: Ronald Sexton.

11 THE COURT: Can you explain then your answer?

12 The plaintiffs present their case first. Do you believe
13 that you would not be able to keep an open mind and listen to
14 the defense side?

15 PROSPECTIVE JUROR: Yeah, I think I can.

16 THE COURT: You think you can?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. So it wouldn't matter which
19 side presented their case first. Once you hear all the
20 evidence from both sides, you would then make your decision
21 and you would wait until then to do that?

22 PROSPECTIVE JUROR: Probably not.

23 THE COURT: Well, what do you mean by that?

24 PROSPECTIVE JUROR: Well, I don't know. I just
25 don't -- I don't really feel like some of these suits -- some

1 of these lawsuits is not what they should be and --

2 THE COURT: All right. So --

3 PROSPECTIVE JUROR: I feel like -- I feel like the
4 companies is always getting a raw deal on it, to be honest
5 with you.

6 THE COURT: All right. So you feel like you start
7 off feeling like people who brought a suit maybe shouldn't be
8 believed just because they brought a suit?

9 PROSPECTIVE JUROR: A lot of cases, yes, I believe
10 that; yes, sir.

11 THE COURT: All right. I'll have some follow-up for
12 you later.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: All right. Anyone else?

15 All right. Now, if you are selected as a juror, do you
16 know of any reason that you would be unable to render a
17 verdict based solely on the evidence you hear and the law that
18 I instruct you, disregarding any other ideas or beliefs about
19 the law that you may have?

20 Now, I've asked you about a number of different topics.
21 Obviously, as I've explained, our goal here today is to try to
22 find a fair and impartial jury.

23 What that means is that you would be, as a juror, taking
24 an oath to decide this case based solely on the evidence you
25 hear in the trial and the instructions of the law that I give

1 to you that you must apply.

2 Do any of you know of any reason that you believe you
3 could not sit on this jury and render a fair and impartial
4 verdict in this case?

5 All right. Now, as I've also told you, we've got a
6 number of questions that we're going to do follow-up on, and I
7 apologize for the length of time it takes to do this, but it's
8 just a necessary part of the process.

9 So I'm now going to invite the lawyers and the parties to
10 join me back in my conference room, and we're going to then
11 begin calling jurors in, one at a time, to ask some follow-up
12 questions in there.

13 While we're doing that, I don't expect you to, you know,
14 sit here like statues. If you need to get up and use the rest
15 room, feel free to do so. I would ask that you not congregate
16 back there in groups.

17 Secondly, while I don't mind you chatting, please do not
18 discuss anything about the case, anything about any of the
19 questions I've asked or the answers anybody has given.

20 You can talk about the weather or talk about basketball.
21 Don't talk about politics because we don't want any fights to
22 break out in the courtroom.

23 But other than that, please avoid any discussion about
24 anything that's related to the case or this process, and we'll
25 do this as quickly as we can.

1 I'm going to guess that we'll do this for a few minutes
2 at least before we take a lunch break. And I'm sorry to make
3 you wait past noon. Many people are used to taking a lunch
4 break at noon, but I'd like to see how far we can get before
5 we have to take a break to see what we can accomplish before
6 then.

7 So with that, we're going to stand in recess. If you are
8 not using the rest room, I'd ask that you remain at or near
9 your seat, but feel free to stand up and stretch and move
10 about a little bit. And be prepared. My clerk is going to
11 come to the door and call out a name and a number and ask you
12 to come back for what I think will be relatively brief
13 sessions with the lawyers.

14 So with that, we stand in recess. We'll reconvene in the
15 conference room.

16 (Recess from 10:57 a.m. to 11:10 a.m.)

17 (Conference in chambers on the record with counsel)

18 THE COURT: First, anybody have any motions to
19 strike for cause based upon the voir dire conducted thus far?
20 And that doesn't preclude asking -- you know, some of these
21 people, I obviously want to get them in here and ask them
22 more. But even without that, does anybody want to deal with
23 anybody straight off?

24 MR. O'DELL: Your Honor --

25 THE COURT: Yes?

1 MR. O'DELL: -- I believe that Number 1 needs to be
2 stricken for cause. I mean, he made it very clear that he
3 couldn't be fair.

4 THE COURT: Well, we're going to start with him.
5 Anybody other than that?

6 MR. O'DELL: Yeah. I believe Number 9 had also said
7 he had a strong feeling about lawsuits and being fair.

8 THE COURT: Which do you think he dislikes more,
9 lawsuits or Ford?

10 MR. BIBB: I was going to say --

11 THE COURT: Yeah, do you --

12 MR. BIBB: Yeah, going to make that motion.

13 THE COURT: All right. I agree. Number 9 we will
14 strike for cause.

15 I want to talk to Mr. Sexton before I agree or disagree
16 with your motion to strike him. Frankly, I think he was a
17 little confused about one of his answers. I'm not sure, so I
18 want to talk to him.

19 But other than Mr. Sexton -- and now Mr. Miller, Number
20 9, is excused for cause -- anyone else?

21 MR. O'DELL: Number 13 expressed that she has
22 difficulty with lawsuits, and I think that brings a prejudice
23 into the courtroom against the plaintiff.

24 THE COURT: What did she say? She's answered "yes"
25 to so many things, frankly, I've lost track of what she said

1 about lawsuits.

2 MR. O'DELL: Hang on.

3 MR. BOGGS: It was about where she was a juror and
4 had -- someone had burned their mouth on food, and she
5 expressed that disdain.

6 MR. COOKE: The food was too hot.

7 MR. BOGGS: And then there was also --

8 THE COURT: Well, does the defense join in that
9 motion or oppose it?

10 MR. BIBB: You know, I don't remember her expressing
11 some -- a dislike for lawsuits. She mentioned that she'd been
12 a juror on a case where the food was too hot. But then by the
13 same token, she had all that about whatever her accident was
14 and the suit was dropped.

15 THE COURT: Yeah. You know, if the defendant joins
16 in it, I'll let her go. If the defendant doesn't, we'll ask
17 her more and see what else --

18 MR. BIBB: I think we should follow up.

19 THE COURT: All right. I'll do follow-up with her.
20 Anyone else off the top?

21 MR. O'DELL: Again, Number 18 was another one who
22 expressed concerns about lawsuits when you raised that and
23 thought that there were too many.

24 Number --

25 MR. BOGGS: 19.

1 MR. O'DELL: Number 19.

2 THE COURT: Well, I had a list of, it looks to me,
3 like about eight or nine who thought there were maybe too many
4 lawsuits.

5 MR. O'DELL: That's the list I'm going through now.

6 THE COURT: Okay. I'm going to ask them more
7 follow-up. So let's just go ahead and do that.

8 MR. O'DELL: Okay.

9 THE COURT: Let's ask Number 1 to come in.

10 MR. O'DELL: Okay.

11 THE COURT: Other than what he said about his
12 attitude about suits against big corporations, is there
13 anything else that anybody --

14 MR. O'DELL: He had already expressed too many
15 lawsuits --

16 THE COURT: Right.

17 MR. O'DELL: -- before you got to the next question.

18 THE COURT: Yes, I agree.

19 MR. O'DELL: So he almost did a double-whammy.

20 THE COURT: Anything other than his attitude about
21 lawsuits? I don't recall if there was anything else.

22 All right. Number 1, Mr. Sexton.

23 MR. COOKE: We want to do follow-up on 13, 14, and
24 15, those questions about recalls and --

25 THE COURT: Yeah, we'll get to all of those.

1 (The prospective juror entered the judge's chambers)

2 BY THE COURT:

3 Q. Hey, Mr. Sexton. Have a seat.

4 A. All right.

5 Q. How are you today?

6 A. Fine, sir.

7 Q. Well, I wanted to ask you some follow-up questions here.
8 First, as I recall, you expressed an opinion that there maybe
9 are too many lawsuits; is that correct?

10 A. That is correct.

11 Q. What do you mean by that?

12 A. Just seems like every day when you pick up the newspaper
13 or hear something on the news, it's always about individuals
14 suing companies for the sole purpose of monetary gain.

15 Q. All right.

16 A. And that's my opinion on things.

17 Q. Do you think that there are times when people have
18 legitimate reasons to sue a company for damages?

19 A. Well, I would say there's probably exceptions to that,
20 yes; but for the most part, no.

21 Q. All right. And I think you also maybe said you thought
22 that big companies got treated unfairly generally or something
23 to that effect.

24 A. Yeah.

25 Q. Were you just talking about in this -- about being sued?

1 A. Yes, exactly.

2 Q. Okay.

3 A. Well, there was another -- there was a case in point two
4 or three years ago. Maybe it's not been that long ago.
5 Toyota, for instance, talk about acceleration sticking.

6 Well, it seems like every time you pick up a paper,
7 there's another article in there about somebody's accelerator
8 is sticking. Everybody is wanting to jump on the bandwagon to
9 sue Toyota.

10 Q. Do you have an opinion that suits like that or claims
11 like that are unfounded, that they're not based on --

12 A. Yes, very much so. Yes.

13 Q. All right. You think people are just suing just to
14 collect money when they may not really be deserving?

15 A. Right. Exactly.

16 Q. Okay. Well, you've heard what this case is about a
17 little bit. I mean --

18 A. Yes. Yes. Yes. Yeah, I've heard the general layout of
19 it.

20 Q. So you know -- all right. You know a little bit about
21 the claim.

22 A. Uh-huh.

23 Q. Do you think your opinions or feelings about lawsuits and
24 about people bringing too many suits against -- that are
25 unfounded against corporations would cause you to have a bias

1 against the plaintiffs in this particular case and their suit?

2 A. Probably.

3 Q. So you think you would have a hard time having an open
4 mind to listen to the evidence?

5 A. Yes. Yes.

6 Q. Do you think it would be difficult for you to listen to
7 the evidence and form a conclusion based just on this
8 evidence?

9 A. Yes.

10 THE COURT: All right. Any follow-ups?

11 MR. O'DELL: I don't think so, Your Honor.

12 BY THE COURT:

13 Q. All right. Mr. Sexton, thank you.

14 Did you go to Barboursville?

15 A. Yes, I did.

16 Q. I think we knew each other back then. I knew a lot of
17 the Sextons.

18 A. Yeah, Frank.

19 Q. Yeah, I knew Frank.

20 A. We graduated the same year from high school, yes.

21 Q. All right. Nice to see you. Thank you.

22 A. You too.

23 (The prospective juror exited the judge's chambers)

24 THE COURT: So the defense nominates him as the
25 foreperson.

1 MR. BIBB: I saw no bias at all there.

2 THE COURT: My personal guess is his bias was a
3 little exaggerated here so he could depart, but I'm going to
4 excuse him for cause.

5 Number 2 is Ashley Daniel. She didn't have much to say.
6 Regents degree.

7 MR. COOKE: She answered 14 and 15.

8 THE COURT: Well, which are those?

9 MR. COOKE: I'm sorry, Your Honor. Anything to do
10 with sticky gas pedals --

11 THE COURT: Heard about it? Let's bring her in.

12 MR. COOKE: And ignition switches.

13 THE COURT: Number 2, Ashley Daniel.

14 (The prospective juror entered the judge's chambers)

15 BY THE COURT:

16 Q. Hi, Miss Daniel. How are you today?

17 A. I'm doing just fine. How about yourselves?

18 Q. I'm well.

19 I want to ask you just some brief follow-up questions. I
20 think you answered "yes" to some of the questions about
21 whether you'd heard about sticky gas pedals, unintended
22 acceleration, recalls. What do you remember?

23 A. It was more so on the ignition that I heard, not --

24 Q. What did you hear?

25 A. Just from the news. Actually, I had an individual that I

1 worked with who had to go through that recall.

2 Q. All right. Had they -- did they claim to you or tell you
3 that they'd had the actual problem occur?

4 A. No. I mean --

5 Q. Didn't say one way or the other?

6 A. No. No. They didn't suffer anything, endure anything.

7 Q. All right. But you were aware from that and from the
8 news media that there was a recall.

9 A. Uh-huh, yes.

10 Q. Do you remember what manufacturer that was?

11 A. I just knew it was the Chevy Cobalt, the Pontiac --

12 Q. Do you know who makes those cars, which manufacturer?

13 A. No.

14 Q. All right. You know that there are Ford, General Motors,
15 Chrysler, so --

16 A. Yeah. Yeah. I think it may be General Motors. I'm
17 really not --

18 Q. Yeah. Okay. Well, that's why I was asking.

19 All right. Any follow-up questions about any of this?

20 MR. COOKE: No.

21 MR. BIBB: No follow-up.

22 BY MR. O'DELL:

23 Q. Mrs. Daniel, my name is Tony O'Dell. Just a couple of
24 follow-ups.

25 A. Okay.

1 Q. You talked about the ignition. Any other defects on cars
2 you're aware of?

3 A. No. That's the only one that's just recently in the news
4 that I've heard or read about.

5 Q. Okay. When you hear the term or someone brings a lawsuit
6 because of an auto defect, what's the first thing that comes
7 to your mind?

8 A. Oh, if it was recalled or not. That's what I think of.

9 BY THE COURT:

10 Q. Why is that important to you?

11 A. Well, because you have to factor in, like, either the
12 driver's neglect or their ability or whatever. If it was the
13 car itself, then, really, then you would consider the
14 manufacturer of the vehicle.

15 Q. Okay. And if it's a recall, then what does that mean to
16 you?

17 A. My responsibility to go get checked in, looked at.

18 Q. Okay. But you understand that to mean that there's
19 something wrong with the way your car was made.

20 A. Oh, yes. Uh-huh.

21 Q. But then the person who has the car should get it fixed.

22 A. Yes.

23 Q. Okay.

24 BY MR. O'DELL:

25 Q. Let me make sure I understand. Do you believe like in

1 order for you to be able to find that there was a defect with
2 a car, there would've had to have been a recall on it?

3 A. Uh-huh.

4 Q. You feel like there needed to be a recall?

5 A. Yes, if there was -- yes.

6 Q. Okay.

7 BY THE COURT:

8 Q. Well, if you heard that there wasn't a recall, do you
9 think that would lead you to believe there couldn't have been
10 a defect or a problem with the car?

11 A. Oh, I mean there's limits -- you know what I mean? -- in
12 that situation. Yeah, there could be something wrong with it
13 without a recall.

14 Q. So if there's a recall, you would consider that as
15 important evidence?

16 A. Yes.

17 Q. If there wasn't a recall, though, you'd still -- would
18 you still be able to weigh the other evidence to decide if
19 that car was not made properly?

20 A. I would take into consideration the driver's account.

21 Q. Sure.

22 A. I would consider other stuff other than just the recall
23 itself.

24 Q. Okay. All right.

25 BY MR. O'DELL:

1 Q. And I just want to make sure, because when I asked you
2 about the recall, if you felt like you needed to have that,
3 you told me you did. And I really appreciate you being
4 honest. What we're trying to do is just make sure that we get
5 a juror that's completely unbiased one way or the other.

6 A. Oh, yes.

7 Q. And we all have biases --

8 A. Yes.

9 Q. -- about one thing or another.

10 A. Uh-huh.

11 Q. So do you feel that car manufacturers do a good job of,
12 if they know of issues, reporting them to the authorities to
13 be recalled, or do you think they might hold something like
14 that back?

15 A. I really don't know what that process would entail,
16 whether they take in effect the amount of accidents or
17 complaints or -- yeah, I mean, I guess they do a good job. I
18 think it's kind of really hard to I guess assume that, hey --
19 or just bring it out in the open, hey, this car has this
20 problem; how do they get to that point? Is it because of
21 accidents, or is it because of complaints or repair work or
22 whatever?

23 I don't know. It's kind of a difficult -- I'm really not
24 too informed about it, but I think it's kind of difficult to
25 see what they would make a recall for, you know, like why

1 they -- why is this recalled.

2 Q. Right. A major piece of evidence for you, though, has to
3 be whether a recall happened or not.

4 A. Yeah. I guess 50/50, I mean recall or not, no recall. I
5 mean, it just depends. Like I said, I mean, just if there's
6 other factors involved.

7 THE COURT: Okay. All right.

8 Any other questions?

9 Thank you, ma'am. Appreciate it.

10 (The prospective juror exited the judge's chambers)

11 THE COURT: So after we interview a juror like this,
12 if either side wants to move to strike, that's the time to do
13 it, not to wait, okay?

14 MR. O'DELL: Your Honor, I would move to strike. I
15 think before she was rehabilitated, she made it pretty clear
16 on the record that she would have to have a recall. And I
17 think once they -- once they say something that shows that
18 they have a bias like that that she's bringing into the
19 courtroom with her, that, you know, I think it's hard to
20 rehabilitate them and get them to agree they can be fair.

21 THE COURT: Well, I disagree. And I don't think
22 it's a matter that she was rehabilitated. I mean, clearly if
23 there's a recall, she's going to consider that to be a
24 significant piece of evidence that there is something wrong,
25 but I didn't read her to say that it had to be subject to a

1 recall or she wouldn't believe that there's a defect.

2 I think, instead, she said it depends on the evidence and
3 the facts, what's presented to her, the reasons why something
4 may not have been recalled or what the recall process is
5 about. So I deny your motion to strike.

6 MR. O'DELL: Thank you, Your Honor.

7 THE COURT: All right. Let's go to Number 3,
8 Mr. Anastasio. Anybody have any questions to ask him?

9 MR. O'DELL: Yes, Your Honor.

10 THE COURT: And what are they?

11 MR. O'DELL: He basically said that he's impressed
12 by NHTSA, was one of the things I believe that he'd said
13 during his voir dire.

14 He also tries to stay up with news about recalls and
15 things like that. He talked about that. I think he had a
16 Chevy Cobalt.

17 THE COURT: Yeah, he did.

18 All right. Well, let's bring Number 3 in, Mr. Anastasio.

19 MR. HEISKELL: Your Honor, one other area with him,
20 which is his grandmother rear-ended a truck, and we want to
21 make sure there's no bias against an elderly driver --

22 THE COURT: Oh, okay.

23 MR. HEISKELL: -- because this is a young man.

24 THE COURT: All right. Glad you brought that up.

25 Thanks.

1 (The prospective juror entered the judge's chambers)

2 BY THE COURT:

3 Q. Good morning. I guess it's afternoon by now.

4 A. Yes.

5 Q. How are you?

6 A. Fine.

7 Q. I want to ask you about a few things.

8 A. Yes.

9 Q. One, you told me I think it was your grandmother ran into
10 the back of a truck and was injured.

11 A. Yes, she was.

12 Q. How old was she when she was driving that day?

13 A. I think she's 82 right now. So she would have been about
14 80, 79, somewhere in there.

15 Q. Okay. Did you have any concern about her driving at that
16 age?

17 A. No. She is a perfectly capable driver, and so is my
18 grandfather.

19 Q. All right.

20 A. And they still -- they just moved to West Virginia, and
21 they still are perfectly capable.

22 Q. Okay. And they're in their 80s now, I take it.

23 A. Yes.

24 Q. All right. You also mentioned that I guess either you or
25 someone you knew had one of the vehicles recalled over the

1 ignition problem?

2 A. Yes. My fiancée was buying a Chevy Cobalt in the fall
3 back when that ignition recall was happening, but they had
4 already -- it was a used car, and so the dealership in
5 Charleston had already replaced the ignition. And the only
6 reason we found out about it was it was included as part of
7 the cost.

8 Q. Okay. All right. You mentioned also that you were
9 impressed with the National Highway Traffic --

10 A. Yes. From time to time, being a social studies teacher,
11 I have to look up statistics as, you know, trying to prepare
12 lessons for kids. And, you know, we talk -- I did a unit when
13 I was student teaching about federal administration -- federal
14 regulations and administrative bodies and things like that.
15 And so we had to look up statistics.

16 And when I just look at the numbers, I just feel like the
17 government -- the regulation bodies -- I forget what they're
18 called, I'm sorry -- do a really good job of protecting the
19 American people overall. I feel like the percentage of people
20 that are injured, not only automotive cases but also just in
21 the products that we use in our homes and toys and things like
22 that, the percentage of people compared to the total number of
23 cars that are out there is very low.

24 Q. So you think those agencies do a good job of protecting
25 the public and keeping the public safe.

1 A. Yes, I do.

2 Q. With respect to in the automobile industry, do you think
3 that this agency, when it takes action, that that means that
4 there is a great reason for them to take that action or they
5 wouldn't be taking the action in the first place?

6 A. Yes, I believe that the reason is just to keep us safe,
7 and also I mean it's in the best interest of the companies to
8 comply so that they don't have to worry about huge legal
9 suits.

10 Q. Okay. So if the agency took action over some problem
11 with a car, for instance, you believe that would be pretty
12 strong evidence that there must have really been something
13 wrong with that car, or not?

14 A. I'm trying to think about the wording of your question.

15 Q. Sure.

16 A. I believe that in every model car, there's probably going
17 to be something wrong.

18 Q. Okay.

19 A. Just because they issue a recall doesn't mean that
20 there's something wrong with every car of --

21 Q. Of that type.

22 A. -- that model and that year.

23 Q. Okay.

24 A. It's just a preventative measure issued to try to keep
25 the consumer safe.

1 Q. Good point. What about when the agency decides not to
2 take some action? Let's say there are complaints or reports
3 made to it and it does not decide to take some type of action
4 or recall or investigation?

5 When you hear that, does that make you believe there
6 probably wasn't any real merit to the claim or the report?

7 A. I haven't done any research into claims that have not
8 turned into recalls, so I can't really --

9 Q. Okay. So is it fair to say that if you learned that
10 there were complaints or reports of a problem but that the
11 agency didn't take any action, that would just be one piece of
12 evidence to you about whether action should have been taken or
13 not?

14 A. Yes.

15 Q. And so even if there wasn't action taken, you believe
16 that there could be evidence that would support findings that
17 there was something really wrong with the car?

18 A. Yes, I believe that there could be something wrong.

19 THE COURT: Okay. All right.

20 Follow-up questions?

21 BY MR. O'DELL:

22 Q. My name is Tony O'Dell. I appreciate you being here.

23 You also mentioned -- I'm having a quick blank here --
24 that there was a brake line failure with your --

25 A. With my fiancée's Ford Taurus. It actually happened

1 twice in the past three years. That's why she got rid of it
2 and got the Cobalt. The first time she was on Fifth Avenue
3 here in Huntington when she was attending Marshall. And that
4 would've been -- let's see. This is 2014 [sic]. So that
5 would've been probably 2011, I believe, 2012, somewhere in
6 there. And she was going down Fifth Avenue. Her brake
7 line -- she pushed the brake to stop, and the car just kept
8 going. Fortunately, there was no one around her and she was
9 able to just come to a rolling stop, call someone and get it
10 fixed I believe at one of the local places here.

11 BY THE COURT:

12 Q. What was causing the brake line to rupture? Do you know?

13 A. Don't know, but --

14 Q. Did she believe or did you believe that it was because of
15 the way the car was made?

16 A. No. It was an older Ford Taurus. I don't remember the
17 model, but it had been through three siblings, and she was the
18 last one to get it. So we don't believe that it was because
19 of the car. It just went out again last spring.

20 Q. All right. You thought it was just something that
21 happens because of wear and tear and normal use of a car?

22 A. Yes.

23 Q. All right.

24 BY MR. O'DELL:

25 Q. Do you believe if NHTSA hasn't issued a recall, does that

1 affect your ability to be fair in a case?

2 A. If what?

3 Q. If NHTSA, the National Highway --

4 A. Okay.

5 Q. Yeah. If they had not issued a recall, would it affect
6 your ability to be fair in a case?

7 A. No, it would not affect my ability.

8 Q. You believe there could be defects even though there
9 hasn't been a recall?

10 A. Yeah, even -- I do believe that there could be a defect,
11 yes.

12 Q. What do you believe in terms of, like, with car
13 manufacturers? You said something about it would be in their
14 best interest to report.

15 Do you believe that car manufacturers always report
16 defects in their cars to NHTSA?

17 A. Well, according to what happened with GM, they apparently
18 don't. I believe that from an economic's point of view, I
19 think it would be smart for a company to do that just because
20 you are -- even if there's that initial huge cost of millions
21 of dollars, it could save you even more millions, like I said,
22 in lawsuits. But apparently there are sometimes executives
23 who don't see it that way.

24 MR. O'DELL: Okay.

25 THE COURT: All right. Any other questions? Hold

1 on.

2 BY MR. O'DELL:

3 Q. The only thing I would ask -- you're a schoolteacher,
4 correct?

5 A. Yes.

6 Q. And you're okay with being gone for two weeks?

7 A. Well, next week is our spring break in Kanawha County,
8 and I don't like the thought of missing another three days
9 here this week because even though I trained as a social
10 studies teacher, I actually teach students with mental
11 impairments right now, and so I don't particularly like the
12 thought of messing up their schedule, because they need that
13 routine on a daily basis.

14 THE COURT: Sure.

15 A. So I'm not happy about that. I like the idea of serving
16 on a jury. I just -- I don't like that.

17 BY MR. O'DELL:

18 Q. What kind of special needs kids do you have?

19 A. They have -- they all have IQs between -- below 70. And
20 they -- some have Downs, some have autism, some can speak
21 well, some can't, all kinds of physical and a wide range of
22 problems.

23 Q. So you're worried about these kids' routine because of
24 that?

25 A. Yes.

1 Q. And those types of kids need their routines or they act
2 out or have trouble?

3 A. Yes. Now, I do feel that, you know, for honesty's sake,
4 I should mention that I am not the only teacher. There are
5 three of us that work with all 20 kids in our program. So the
6 other two can handle it. But like I said, I just hate being
7 gone.

8 BY THE COURT:

9 Q. If you're chosen as a juror, do you think your concern
10 about being away from your students would affect your ability
11 to be fair and impartial?

12 A. No.

13 THE COURT: Thank you.

14 Mr. Cooke, do you have questions?

15 MR. COOKE: Yes, sir.

16 BY MR. COOKE:

17 Q. Mr. Anastasio, I'm one of Ford's lawyers here today. My
18 name is Andy Cooke.

19 You mentioned the Ford Taurus and a brake line failure.

20 A. Yes.

21 Q. There's not going to be evidence in this case about brake
22 line failure. Even though that's not the case, would you hold
23 the brake line failure experience that your fiancée had
24 against Ford in this case?

25 A. No, I would not.

1 Q. Okay. So you'd be able to listen to all of the evidence
2 and weigh it appropriately and make a decision based on the
3 evidence that both Mr. O'Dell presents and that my side
4 presents and then decide the case based on the instructions
5 that Judge Chambers gives you?

6 A. Yes, I do believe I'd be able to do that.

7 Q. Thank you.

8 THE COURT: Thank you.

9 (The prospective juror exited the judge's chambers)

10 THE COURT: All right. Number 4?

11 MR. O'DELL: Your Honor, before we -- I would
12 mention that she basically stood up and said Ford, the way I
13 took it, were perfect, and that was the best car.

14 THE COURT: Yeah.

15 MR. O'DELL: And for the same reason that Ford was
16 ready to strike Number 9, Daniel Miller, we would ask that
17 Number 4 be struck for cause because she was pretty adamant
18 about her position out there.

19 MR. COOKE: We haven't moved to strike anybody I
20 don't think, Your Honor.

21 THE COURT: Let's bring her in and we'll ask her
22 about that.

23 MR. O'DELL: I think they co-moved to strike Number
24 9.

25 THE COURT: Does anybody else have any other topics

1 for Miss Kelly other than her apparent allegiance to Ford?

2 MR. BOGGS: She answered affirmatively to ignition
3 recalls, to sudden acceleration, her father-in-law worked at a
4 Ford Motor plant, retired from, and her son has owned a Ford
5 Ranger.

6 THE COURT: Okay. Let's bring her in, Number 4,
7 Miss Kelly.

8 MR. COOKE: You know, in every automotive product
9 liability case, there's always people on a jury that are
10 either Ford people or GM people. It happens in every case,
11 and that doesn't typically arise to a level of cause.

12 (The prospective juror entered the judge's chambers)

13 BY THE COURT:

14 Q. Hi, Miss Kelly. How are you?

15 A. I'm good. How are you?

16 Q. I'm good. Thank you. Have a seat.

17 I just wanted to ask you a few follow-up questions. One,
18 you told me, I think, your father-in-law worked for Ford for a
19 long time?

20 A. Yes.

21 Q. As far as you know, he had a good relationship with Ford?

22 A. He loved Ford.

23 Q. No problems when he retired?

24 A. No. He was quite happy with Ford.

25 Q. Well, you know that Ford is the defendant in this suit.

1 A. Yes.

2 Q. Do you think that it would be difficult for you to listen
3 impartially to claims that Ford did something wrong?

4 A. I'm afraid it would.

5 Q. How so?

6 A. My father-in-law, in fact my whole family, as far as my
7 married family, they love Ford. In their eyes Ford can do
8 nothing wrong. My husband to this day, "You're driving a Ford
9 or you're not driving nothing."

10 Q. So that's your all's family car of choice?

11 A. Yes, is Ford.

12 Q. And you believe that in a lawsuit like this, you would
13 just start out --

14 A. I would be Ford all the way. I'd be for Ford all the
15 way.

16 THE COURT: Okay. All right.

17 Anybody have any other questions?

18 MR. O'DELL: I don't think so, Your Honor.

19 THE COURT: Go ahead, Mr. Cooke.

20 BY MR. COOKE:

21 Q. Miss Kelly, my name is Andy Cooke. I represent Ford in
22 this case. Mr. O'Dell represents Mr. and Mrs. Nease.

23 If Mr. and Mrs. Nease were able to bring you evidence
24 that proved that there was a defect in their 2001 Ford Ranger
25 that he was driving, do you believe that you would be able to

1 weigh that and find in their favor if the evidence proved that
2 to you despite the fact that you appreciate Ford?

3 A. I don't know -- I don't know that I could.

4 Q. Okay. Thank you.

5 THE COURT: All right. Thank you, ma'am.

6 (The prospective juror exited the judge's chambers)

7 MR. JAVINS: Nice try.

8 MR. O'DELL: We'll move again, Your Honor, to strike
9 Number 4.

10 THE COURT: All right. I'm going to excuse Number
11 4, Miss Kelly.

12 Number 5, Caitlin Kessler, and I had her as answering
13 "yes" to one of the questions about too many lawsuits or
14 trials. But other than that, I didn't have anything.

15 MR. BIBB: Sudden acceleration.

16 THE COURT: Was she on that too?

17 Yeah, I see that.

18 MR. O'DELL: And she was involved in a head-on crash
19 in Mason County.

20 THE COURT: All right.

21 MR. BOGGS: And she's a claims adjuster.

22 THE COURT: Let's bring her in.

23 (The prospective juror entered the judge's chambers)

24 BY THE COURT:

25 Q. Good afternoon, Miss Kessler. How are you?

1 A. Hello. I am doing good.

2 Q. First, I just wanted to ask you, you indicated that one
3 of -- or that your job involves claims adjusting Workers'
4 Compensation claims.

5 A. Yes.

6 Q. Do you think that that would cause you to be skeptical of
7 people who bring a lawsuit seeking --

8 A. No.

9 Q. -- damages?

10 A. No.

11 Q. So the type of work you do wouldn't influence you either
12 way --

13 A. No, because --

14 Q. -- about the claim?

15 A. -- you get that type -- that -- you get that as being an
16 adjuster. You have to -- you just get both bad and good. I
17 mean, that's part of my job. No. I have to be impartial when
18 I get a claim.

19 Q. All right. And so that means if the evidence supports
20 it, you would be in favor of paying a claim.

21 A. Correct.

22 Q. And if the evidence doesn't support it, you'd be opposed
23 to paying that claim.

24 A. Correct.

25 Q. All right. I think you answered "yes" to one of my

1 questions about sudden unintended acceleration or a situation
2 where the gas pedal stuck or the car won't slow down.

3 A. Yes. I heard in the news the Prius, the Toyota Prius,
4 had a problem with the accelerator getting stuck.

5 Q. Now, what does that mean to you when you heard this?

6 A. The gas pedal just got stuck and the people had trouble,
7 I guess, controlling the car, stopping the car.

8 Q. Okay. So this was -- so, first, it was a news account of
9 some type?

10 A. Uh-huh.

11 Q. And your understanding of it was that when people took
12 their foot off of the gas pedal, the car didn't slow down.

13 A. Correct.

14 Q. Do you have any understanding about what might have
15 caused that to occur?

16 A. No. I just remember hearing about it while I was in
17 school.

18 Q. Okay. So when would this have been?

19 A. It would be anywhere from 2006 to 2010.

20 Q. Well, you know, in this case what we've got is a claim
21 against Ford that in this particular car, the Nease 2001 Ford
22 Ranger, that when the car was being operated, that Mr. Nease
23 claims he took his foot off of the gas pedal, but the gas
24 pedal didn't return to neutral or idle and that the car, in
25 fact, maintained its acceleration.

1 Do you think hearing this news about the Prius back when
2 you did would affect your view of the evidence in this case?

3 A. No.

4 Q. Is there anything about what you learned or heard about
5 with the Prius that you think would be an opinion that you
6 would rely upon as you start to hear the evidence here?

7 A. No.

8 Q. Would you be able to set aside whatever it was you
9 learned about the Prius and decide this case --

10 A. Yes.

11 Q. -- based just on the evidence here?

12 Other than -- other than that example of a sudden
13 unintended acceleration, are you aware of any other problems
14 with cars? I think maybe you answered "yes" to the
15 ignition --

16 A. I did not.

17 Q. Oh, you did not. Okay. Good.

18 Then the last thing I want to ask you about is, you did
19 answer that you had some concern about the number of lawsuits
20 and suits against big companies?

21 A. You just hear about it in the news all the time, the
22 different suits, you know, the McDonald's hot coffee, stuff
23 like that.

24 Q. Right.

25 A. It seems to be a constant thing, but that could also be

1 just the news, the media today.

2 Q. Okay. Well, first of all, then what you recall hearing
3 in the news media is about suits that didn't sound like they
4 really were deserving or meritorious claims? Is that what
5 you're saying?

6 A. Yes.

7 Q. All right. If you were a juror in this case, do you
8 think you would be able to be fair and impartial in
9 evaluating --

10 A. Yes. Every case is different.

11 Q. All right. And do you agree that there may be a case, if
12 the evidence supports it, where it's a proper lawsuit?

13 A. Yes.

14 THE COURT: All right. All right. Follow-up?

15 MR. O'DELL: Yes, Your Honor.

16 BY MR. O'DELL:

17 Q. You also indicated you were -- that your mother was
18 involved in a car crash years --

19 A. Yes, when she was 18 in New Jersey. I believe she was
20 rear-ended and she had some sort of injury to her lumbar spine
21 which she just treated at the time, but she's had back
22 problems on and off throughout the years, but nothing that
23 she's gone for treatment or had serious problems with.

24 Q. You also mentioned that she didn't bring a lawsuit --

25 A. No.

1 Q. -- or a claim. Do you know why?

2 A. No. She was just 18. She just didn't mention one, so
3 I'm not aware that there is one.

4 Q. Sedgwick, the third-party administrator --

5 A. Uh-huh.

6 Q. So basically you're hired by large companies --

7 A. Yes.

8 Q. -- to basically manage their claims, correct?

9 A. Uh-huh.

10 Q. And you have -- who are some of the companies that you --

11 A. The companies -- or my clients currently are Apple, Ebay,
12 Cisco, Dr. Pepper, EMCOR Group, which is like a big parent
13 company over a lot of subsidiaries, blue-collar type jobs,
14 welding, construction. What else? That's it right now.

15 Q. Are there some, like, products liability type --

16 A. I don't do any liability, no.

17 THE COURT: As far as Workers' --

18 A. Straight up Workers' Compensation. Some of the clients
19 require that I do subrogation, but I've not actually had to
20 pursue subrogation.

21 BY MR. O'DELL:

22 Q. But Sedgwick itself --

23 A. Yes --

24 Q. -- has hired you to defend products liability.

25 A. It depends on the contract. Like, they don't do that for

1 Apple. They're just the Workers' Comp. and disability. They
2 don't do general liability for Apple, but they have the
3 capability of doing it for other clients.

4 Q. Ford is the type of company that would use, like, a
5 Sedgwick --

6 A. Okay.

7 Q. -- would they not?

8 A. It sounds like they would, yeah. I'm not aware of Ford
9 as one of our clients or not, at least not in the Charleston,
10 West Virginia office.

11 Q. And, you know, you have co-workers and bosses that
12 basically you guys take into various branches that defend
13 these type of companies or work to keep their claims low,
14 correct?

15 A. Yes.

16 Q. And you would agree with me that if you were sitting on a
17 jury and you found evidence that perhaps the plaintiff should
18 get a large verdict, that would create a little bit of
19 pressure for you in terms of going back to your co-workers and
20 your bosses and them knowing you sat on a jury that
21 potentially was a large verdict.

22 THE COURT: Would that?

23 A. No, huh-uh. I'm -- I mean, not that I'd go back and
24 discuss all of this with my co-workers. We're entirely too
25 busy to be talking about that, no.

1 BY MR. O'DELL:

2 Q. Well, I'm talking about if they know you're out --

3 A. They know I'm here for the jury, but they don't know why,
4 and I'm not going to go back and tell them.

5 Q. Then if there's a newspaper article that says there was a
6 case, there was a verdict, and then they say, "Hey, were you
7 on that jury that" -- I mean, you're not worried about getting
8 a little bit of blowback or scorn --

9 A. No.

10 Q. -- for that at your office?

11 A. No.

12 Q. There's a chance that Ford may be --

13 A. They might be -- they might be a client of Sedgwick's. I
14 don't know, to my knowledge.

15 MR. JAVINS: Do you mind if I ask?

16 THE COURT: No, go ahead.

17 BY MR. JAVINS:

18 Q. You're a claims handler?

19 A. Adjuster, examiner. I'm the one who adjudicates the
20 claim.

21 THE COURT: Did you say --

22 A. Oh, I'm sorry. Manages the claim. Sorry. Sorry.

23 BY MR. JAVINS:

24 Q. When you manager a claim, do you consider the evidence?

25 A. Yes.

1 Q. And so how do you weigh the evidence, and how much
2 evidence do you have to have before you find in favor of a
3 claimant?

4 A. Basic principle is you have to talk -- if it's a lost
5 time claim where there's, you know, they're missing time from
6 work, I handle lost time type claims. I do medical only. I
7 have to contact the employer, which is generally a manager or
8 direct supervisor of the injured worker, and I have to obtain
9 the medical records from the initial visit for when they seek
10 treatment for the injury. And based upon everything I get
11 back in, that is what I base the decision off of. If there's
12 additional questions, then I generally talk to whoever I need
13 to talk to, an attorney in the jurisdiction I'm handling, go
14 back and I do another -- I take recorded statements of any
15 witnesses, the injured worker, the employer.

16 Q. So if the claimant's evidence of a worthy claim is more
17 likely than not, let's say 51 percent, does he get the claim?

18 A. Generally, yes. Rule of thumb is that you go in favor of
19 the injured worker. And it also depends on your client. My
20 clients, the type that I vet, that I work for, are more
21 employee-centered type. They give the injured worker the
22 benefit of the doubt in a lot of cases.

23 THE COURT: All right. Anything else?

24 Thank you.

25 (The prospective juror exited the judge's chambers)

1 THE COURT: What time is it?

2 MR. O'DELL: Twenty-five till one.

3 THE COURT: All right. I think we're just going to
4 have to take a break now. I don't want to keep them out here
5 any longer. We'll stop here and send the jury out for an hour
6 and then we'll resume when we come back.

7 I do have to instruct them briefly about it.

8 (End of conference in chambers)

9 THE COURT: All right, ladies and gentlemen. We're
10 making good progress, but obviously it's going to take a while
11 longer to get through all of this. So I've decided to go
12 ahead and take a lunch break now. I don't want you to sit
13 here and become uncomfortable.

14 As a result, we're going to recess for, I guess, a little
15 bit longer than an hour by this clock. That means we will
16 recess until one -- well, we'll recess a little bit more than
17 an hour. An hour and five minutes. That will give you enough
18 time hopefully to go out.

19 Typically when we have a jury, we will take a lunch break
20 and you can leave things here, but there's so many of you and
21 there's not really a place to do that, so I would advise,
22 although the courtroom will be secure, you can -- you should
23 take your things with you.

24 Also, as you depart, we're going to give you stickers.

25 Do we have jury stickers?

1 This is a sticker that I want you to wear on your outer
2 clothing. It shows that you are a juror in the case or in a
3 case. That helps prevent anybody from talking about the trial
4 or approaching you.

5 During this hour-and-five-minute break, don't discuss the
6 case among yourselves or with anyone else. Don't let anyone
7 discuss the case with you. You should go -- I'm assuming you
8 all will leave the courthouse. That's fine. When you come
9 back to the courthouse, please immediately report back here,
10 and we'll reconvene at 1:45. So that gives you about an hour
11 and five minutes.

12 And if I could, let me see counsel before we let the
13 jurors go.

14 (Bench conference off the record with counsel)

15 THE COURT: All right. See you back here at 1:45.

16 (Lunch recess from 12:40 p.m. to 1:45 p.m.)

17 (Conference in chambers on the record with counsel)

18 THE COURT: All right. Are we ready? I think we
19 were on Juror Number 6, Donna Carter.

20 Anybody have any follow-up for Juror Number 6?

21 (Counsel conferred privately off the record)

22 THE COURT: Well, what follow-up, if any, would you
23 propose with respect to --

24 MR. O'DELL: A Ford, she had it for ten years with
25 no problems. We'll be dealing with a Ford that's about ten

1 years old. So I think that's --

2 THE COURT: Okay. Let's bring Miss Carter in.

3 MR. O'DELL: I get the impression she didn't want to
4 be here, Judge.

5 THE COURT: Like the rest of us?

6 MR. O'DELL: Probably.

7 (The prospective juror entered the judge's chambers)

8 BY THE COURT:

9 Q. Hi, Miss Carter. Have a seat.

10 First, I just wanted to ask you a few follow-up
11 questions. So as I understand it, your husband had a Ford
12 Ranger for a long time.

13 A. Uh-huh.

14 Q. And tell me again, did he buy it new or used?

15 A. No, used.

16 Q. Used?

17 A. Uh-huh.

18 Q. Have any trouble with it?

19 A. None.

20 Q. So he liked the Ranger?

21 A. He did.

22 Q. And as far as you knew, it was a good deal for him?

23 A. Uh-huh.

24 Q. Why did he get rid of it?

25 A. It got old.

1 Q. It got old?

2 A. He got a new --

3 Q. Okay. Well, you know, this is a lawsuit over a Ford
4 Ranger. Is there anything about your husband and your
5 experience with your all's Ford Ranger that you think would
6 cause you to be biased for or against either side in this
7 case?

8 A. I don't have any thoughts about Ford, except, you know --

9 Q. Okay. So whatever thought you have is restricted to the
10 good experience you had, but that doesn't carry over to
11 anybody else's.

12 A. Right.

13 Q. And then did you tell me that -- did you have an
14 ignition -- one of the cars that had the ignition recall?

15 A. My sister's car --

16 Q. Okay.

17 A. -- that Chevy Cobalt.

18 Q. Okay. All right. But she didn't have -- or did she
19 actually have the problem in her car?

20 A. Uh-huh.

21 Q. And she tried to have it fixed a couple of times maybe
22 you said?

23 A. Yeah. And they didn't fix it. It kept doing it. I
24 guess she took it back. I didn't follow up --

25 Q. Okay.

1 A. -- or why it doesn't do it anymore.

2 Q. All right. First, do you think anything about your
3 sister's experience would spill over to cloud or affect your
4 judgment about a case like this?

5 A. No. It's singled out to just her and that car.

6 Q. Okay. All right. So nothing about that would cause you
7 to lean one way for or against either of the parties here.

8 A. No.

9 Q. Okay. I think you said you had -- did you have some
10 stomach surgery or --

11 A. No. I had back degenerative disk disease. Yeah, and
12 those comfy chairs out there for the jurors --

13 Q. Not so comfy?

14 A. No.

15 Q. Sorry to hear that.

16 A. Yeah.

17 Q. Well, we don't want you to fall asleep.

18 A. You notice I keep squirming.

19 Q. Do you still have back problems, then?

20 A. Yeah.

21 THE COURT: All right. Follow-up questions from
22 anybody?

23 BY MR. O'DELL:

24 Q. One thing I would ask, did the back problems cause you to
25 have pain down your legs?

1 A. Oh, yeah. Yeah. It puts me flat down on my back. I
2 mean, I can't --

3 Q. Does it kind of come and go or --

4 A. Well, you know, I might get up from this chair and all of
5 a sudden, no, you're not getting up, you've got to lay -- you
6 know, I have to lay down. I can't get up.

7 BY THE COURT:

8 Q. How often does that hit you?

9 A. Oh, thank goodness, it's not that often --

10 Q. Once a week?

11 A. -- like that. But probably -- that bad, probably -- I
12 don't know -- maybe once a year.

13 Q. Once a year. Okay.

14 A. But, you know, when it starts hurting, if I can catch it
15 just when it's starting to hurt and just take some pain
16 medication, then it will quit.

17 Q. Over-the-counter pain medication?

18 A. Yeah. Yeah.

19 BY MR. O'DELL:

20 Q. Has the doctor told you that's some kind of nerve issue?

21 A. Well, the sciatica is nerves.

22 Q. Okay. Out of curiosity, with your back and talking about
23 the chairs and everything, are you concerned about being able
24 to be here for two weeks?

25 A. I am. I am. I'm concerned about being here the rest of

1 the day.

2 BY THE COURT:

3 Q. Because of your back situation?

4 A. Yeah. I don't have any medicine on me.

5 Q. Uh-huh. What do you usually take?

6 A. Ibuprofen 800 or Naproxin.

7 Q. Okay. I take it you don't carry that with you, so you
8 don't necessarily use it every day.

9 A. No, huh-uh.

10 THE COURT: Okay. All right.

11 Any questions, Mr. Heiskell?

12 MR. HEISKELL: Your Honor, if I may.

13 BY MR. HEISKELL:

14 Q. I believe you responded that you take care of your sister
15 each day?

16 A. Yes. That's another thing I'm worried about.

17 Q. That's why I asked you about it. Can you explain a
18 little bit more about what her needs are and how you address
19 those?

20 A. She's not bedridden, but she's wheelchair -- she was born
21 with cerebral palsy, and so she doesn't walk or anything like
22 that. She has limited motion in her hands and arms. But you
23 have to actually get her up in a lift, a Hoyer lift, and you
24 get her out of bed and put her in her chair.

25 BY THE COURT:

1 Q. Does she live with you?

2 A. Huh-uh. No. She lives with my other sister.

3 Q. Okay.

4 A. But she has to have her diaper changed, and nobody is
5 willing to do that. So it's hard to get somebody to actually
6 take care of her.

7 BY MR. HEISKELL:

8 Q. And if you're here as a juror for two weeks, do you have
9 someone who can fill in for you?

10 A. For that long? I'm not sure. I don't know. Today I
11 have my daughter, but I don't know what -- I haven't asked her
12 any further if she would or not.

13 THE COURT: All right.

14 BY MR. O'DELL:

15 Q. Mrs. Carter, is the fact that you might have these
16 outside issues and pain issues, are you worried it could
17 distract from your being able to pay attention or --

18 A. I don't think it would distract me because I would surely
19 have it taken care of, you know, whatever the issue is. But
20 right now, I'm okay today.

21 THE COURT: All right. Thank you, ma'am.

22 MR. O'DELL: Thank you very much.

23 (The prospective juror exited the judge's chambers)

24 THE COURT: All right. Number 7, Mr. Joseph. Does
25 anybody have follow-up for Mr. Joseph?

1 MR. COOKE: I don't have anything.

2 MR. BIBB: He's a prior Ford Ranger owner, but
3 that's it that I have for him. Nothing from us.

4 THE COURT: Anything from the --

5 MR. O'DELL: No.

6 THE COURT: All right. Number 8, Roy Jarrell See,
7 Jr.

8 MR. O'DELL: Grand Prix recall.

9 (Counsel conferred privately off the record)

10 THE COURT: It's going to be hard to follow you
11 fellows on the record being you're just going back and forth
12 like this.

13 MR. BIBB: Sorry, Your Honor.

14 THE COURT: I don't mind. Just don't expect her to
15 get all that.

16 So does the defense have any follow-up questions for
17 Number 8, Mr. See?

18 MR. COOKE: I think we ought to ask him about his
19 ignition switch.

20 THE COURT: Ignition switch? I don't mind doing
21 that, but what are we looking for here?

22 MR. COOKE: Just whether we -- honestly, Your Honor,
23 I wrote down 14 and 15 on a couple of people, and I'm not sure
24 if I got it right every time.

25 THE COURT: Well, I don't disagree; there were a

1 number of people who said yes, they were aware of the recall.

2 A number of them knew somebody, family member or otherwise.

3 My question is just, okay, what is it we're trying to
4 follow up about with respect to them in particular?

5 MR. COOKE: So the questions would be along the
6 lines of "Your Honor has done it very artfully, I think, about
7 the fact that there was a recall with an automotive product.
8 Does that in any way affect your opinions in this case?"

9 THE COURT: Okay. Is that what you all --

10 MR. O'DELL: Well, he also has owned three or four
11 Fords. So there might be some loyalty there.

12 THE COURT: All right. Let's ask Mr. See to come
13 in.

14 MR. O'DELL: Also, Your Honor, if you look at his
15 juror questionnaire, he's saying something about he's got to
16 work six days a week and he is essential to the operation of a
17 business or a commercial --

18 THE COURT: Well, in my view, when a prospective
19 juror asks to be excused because of work or similar problems,
20 it's for the Court to determine. And for the most part, we've
21 just said no. And I told them out there if something new or
22 unique has arisen, they can raise it. But I'm not inclined to
23 invite all of them to reconsider their jury service because
24 they think we're now asking wouldn't they like to be excused
25 because of their work.

1 Let's ask Mr. See to come in.

2 (The prospective juror entered the judge's chambers)

3 BY THE COURT:

4 Q. Mr. See, how are you?

5 A. Oh, pretty good. How are you all doing today?

6 Q. Good.

7 A couple of things: One -- and I forgot until I invited
8 you in to even mention this, but you've got oral surgery
9 scheduled for Friday.

10 A. Friday morning.

11 Q. And you've had difficulty getting that scheduled; is that
12 correct?

13 A. It was set up January 6th. That was as soon as they
14 could get me in, was Friday.

15 Q. Yeah. And it's over a problem that you're experiencing
16 as you sit here today?

17 A. Uh-huh.

18 Q. All right. I'm going to excuse Mr. See based upon that.
19 I had asked him to remind me when he came in and glad that we
20 recognized it. But based on what he's told me, I don't expect
21 him to try to sit here and serve.

22 A. I appreciate it.

23 Q. In the meantime, although I am excusing you, keep that to
24 yourself for now. We don't want the excused virus to spread
25 throughout the jury pool. So just keep that to yourself and

1 we'll get you out of here this afternoon as quick as we can.

2 (The prospective juror exited the judge's chambers)

3 THE COURT: Number 9 is Mr. Miller, and we've
4 already determined to excuse him.

5 Number 10, Leslie Marie Delapas.

6 MR. BIBB: She is the one, Your Honor, who said that
7 she had seen something in a documentary.

8 THE COURT: About?

9 MR. BIBB: About runaway cars.

10 THE COURT: Yeah.

11 MR. BIBB: And you stopped her in her tracks.

12 THE COURT: Right. All right. Let ask her to come
13 in.

14 (The prospective juror entered the judge's chambers)

15 BY THE COURT:

16 Q. Hi, Miss Delapas. Is that correct?

17 A. Yes. You said it right.

18 Q. Good. Have a seat.

19 A. Well, this is awful.

20 Q. Oh, it is. And, remember, you're under oath.

21 A. Okay.

22 Q. I think you answered "yes" to several of my questions,
23 but one in particular, I think you reported you recalled

24 seeing something on a documentary or something perhaps on TV?

25 A. Yes.

1 Q. What was that about?

2 A. I watched a documentary called "Man versus Ford."

3 Q. Okay.

4 A. And it was pretty brutal against Ford Company.

5 Q. What was it about?

6 A. It was about they polluted this Indian Reservation, and
7 they did all these horrible, horrible things, and they just
8 weren't a good company.

9 Q. All right. So this was some manufacturing plant of
10 Ford's?

11 A. Yeah.

12 Q. Is that what you understood it?

13 A. Yeah.

14 Q. And it had nothing to do with the cars.

15 A. No.

16 Q. But it had to do with pollution in the local environment?

17 A. Yeah.

18 Q. How long ago did you see this?

19 A. It's been on HBO, like, recently.

20 Q. Okay. So this hasn't been too long ago.

21 A. No. I think they just settled the case. It was all
22 about they had a court case against them.

23 Q. Okay. So the documentary was about a person or the
24 people who were claiming that Ford was polluting the local
25 environment --

1 A. Uh-huh.

2 Q. -- and they ended up suing Ford over it, your
3 understanding?

4 A. Yes, yes. And they won.

5 Q. And they won.

6 A. Yes.

7 Q. Did they win a settlement or did they go with a jury
8 verdict or do you even remember?

9 A. I remember they got like 93 million --

10 Q. And you think that might have been pretty recent?

11 A. -- something like that. Yeah.

12 Q. Yeah. So was it part of the documentary that they won
13 and got this money?

14 A. Yeah.

15 Q. Okay. And as a result of that, did you form an opinion
16 or belief --

17 A. Yes.

18 Q. -- about Ford?

19 A. Yeah. It didn't look good.

20 Q. All right.

21 A. It wasn't pretty.

22 Q. Is that an opinion -- obviously Ford is a big company --

23 A. Right.

24 Q. -- manufactures everywhere in the United States and
25 beyond.

1 You've heard that this is a case over a Ford truck. Do
2 you believe that the view you adopted when you watched that
3 documentary would cause you to be biased against Ford or lean
4 against Ford in this case?

5 A. I would hope the answer is no, but I -- I don't have a
6 good opinion of Ford. And my husband works at Toyota. So
7 I've never had a good opinion of Ford.

8 Q. And what you last said, your husband works at Toyota, so
9 do you and your husband consider Ford a competitor?

10 A. No.

11 Q. Well, what is it, then, about his working for Toyota
12 that --

13 A. With the accelerant --

14 Q. Uh-huh.

15 A. -- I know that Toyota has had the same similar issues.

16 Q. Okay. You've heard about a claim about -- is it sudden
17 unintended acceleration? Does that sound familiar?

18 A. Yes. Yes.

19 Q. So you've heard about Toyota --

20 A. Yes.

21 Q. -- being the subject of claims like this?

22 A. Right.

23 Q. What's your understanding about those claims?

24 A. Well, my husband told me that if the -- they can't figure
25 out the problem.

1 Q. Does your husband imply to you that he thinks there is a
2 problem?

3 A. Yes.

4 Q. So --

5 A. He told me --

6 Q. Uh-huh.

7 A. -- that if -- because we only have Toyotas; that if that
8 were to happen, to put it in neutral and slam on the brakes.

9 Q. Uh-huh. Do you think that your -- first, do you think
10 your bias about Ford from watching the documentary --

11 A. Yes.

12 Q. -- would cause you to be -- lean against them in this
13 case?

14 A. I think I'd have -- I think I'd have sympathy.

15 Q. Do you think because of the documentary, you would be
16 more likely to believe a claim against Ford?

17 A. Yes.

18 Q. And then you've said that this sudden unintended
19 acceleration claim against Toyota, your understanding about
20 this is that there might be a real problem.

21 A. Right. Exactly.

22 Q. Okay.

23 A. And I don't know that that's the same case with Ford, but
24 I know there's something similar that they can't quite figure
25 out.

1 THE COURT: Okay. All right. Any follow-up
2 questions?

3 MR. O'DELL: I don't think so.

4 BY MR. COOKE:

5 Q. So, Miss Delapas, my name is Andy Cooke. I'm from
6 Charleston and I represent Ford.

7 So in your heart of hearts, you just don't think you
8 could set aside the preconceived opinion that you have?

9 A. I would love to. I would love to honestly say that. I
10 guess if -- I don't want to say if I was a better person, but
11 to be perfectly honest, I don't know that I could.

12 Q. We all have -- all of us have biases, and we understand
13 that, and we appreciate your honesty and your forthrightness,
14 and thank you very much.

15 THE COURT: All right. Thank you, ma'am.

16 (The prospective juror exited the judge's chambers)

17 MR. BIBB: Move to excuse her for cause.

18 THE COURT: Any response?

19 MR. O'DELL: No, Your Honor.

20 THE COURT: All right. I'm going to excuse her for
21 cause.

22 Mr. Ball, Number 11?

23 MR. CLARK: I think he's got a vacation we need to
24 ask him about.

25 THE COURT: Is that the one that said April 14th?

1 MR. CLARK: No. I'm talking about this week.

2 THE COURT: Is there anything other than that
3 anybody wants to ask him about?

4 MR. COOKE: He's been a juror frequently. It sounds
5 like it was recent.

6 MR. O'DELL: He had, like, a med mal case.

7 MR. COOKE: CSX case.

8 THE COURT: All right. Let's ask Mr. Ball to come
9 in.

10 (The prospective juror entered the judge's chambers)

11 BY THE COURT:

12 Q. Hi, Mr. Ball. How are you?

13 A. I'm fine. How are you all?

14 Q. We're doing well.

15 First, you indicated that you've got some travel plans
16 coming up?

17 A. Yes, Thursday. I have tickets to see the Penguins and
18 Hurricanes in Raleigh Thursday evening.

19 Q. Oh, this Thursday?

20 A. Yes.

21 Q. All right. What was your plan? To drive down there and
22 spend the night?

23 A. It was either to drive down and spend the night or drive
24 down and go to the game and come back. We haven't really
25 decided yet because my son has to work the following day.

1 Q. Okay. If you don't mind me asking, who all is planning
2 to go?

3 A. My wife -- myself, my wife, and my two boys.

4 Q. Okay. What time is the game?

5 A. Seven.

6 Q. That's about a -- what? -- a four-hour drive?

7 A. I was guessing four and a half, five. I'm not real sure.

8 Q. It's in Raleigh?

9 A. Yes.

10 MR. CLARK: It's long. Maybe more than that,
11 unfortunately.

12 BY THE COURT:

13 Q. Well, so if you're chosen as a juror, what would you do
14 about that trip?

15 A. I would ask you to adjourn at noon so I could go.

16 Q. What would your second choice be?

17 A. 12:30.

18 Q. Pretty good.

19 Well, there were other areas I think besides his travel
20 plan that counsel may have noted. Go ahead.

21 BY MR. COOKE:

22 Q. Mr. Ball, my name is Andy Cooke. You've served on a
23 number of juries I think in recent times?

24 A. Yes.

25 Q. Is that right?

1 A. Yes.

2 Q. So I remember one of them was a medical malpractice case;
3 is that right?

4 A. Yes.

5 Q. In Cabell County?

6 A. Yes, sir.

7 Q. When was that?

8 A. That was last year.

9 BY THE COURT:

10 Q. And that's the one you said got dismissed.

11 A. It was dismissed, yes.

12 BY MR. COOKE:

13 Q. Okay. Okay. So you were seated. And then it was
14 halfway through the trial, it was over?

15 A. It was three days into it.

16 Q. And then another one was a CSX case?

17 A. Yes.

18 Q. Okay. And when was that case?

19 A. About eight, nine years ago, I believe, sometime in that
20 timeframe. I don't really remember.

21 Q. Was there a -- I seem to remember there was a third case.

22 A. There was a man was accused of cocaine, selling cocaine,
23 I believe. Crack cocaine, I believe.

24 BY THE COURT:

25 Q. Was that in this court too?

1 A. Yes, sir.

2 BY MR. COOKE:

3 Q. And how long ago was that one?

4 A. That was after the CSX case. So I think it was the
5 same -- no, it was a different term. So it would've probably
6 been seven to eight years ago.

7 Q. If you're seated on this jury and not able to be with
8 your boys and your wife to the game on Thursday, would you
9 hold that against the parties here in this case?

10 A. No, because I understand. I mean, it's a -- it's my duty
11 to do this, you know, but --

12 Q. Prefer otherwise?

13 A. 12:45 at the latest, Judge.

14 BY THE COURT:

15 Q. What if the parties offered to fly you down there?

16 A. The whole family?

17 Q. Yeah, of course. All of us. The judge would have to go
18 with you probably.

19 A. That could be done. Okay.

20 THE COURT: All right. Thank you, Mr. Ball.

21 Appreciate it.

22 (The prospective juror exited the judge's chambers)

23 THE COURT: Well, I put a checkmark by Mr. Ball's
24 name. I am likely to decide, once we've gone through all or
25 more of the jurors, to let him go. I don't want to do that

1 unless we're sure we've got enough.

2 Miss Daniels, Glennia Daniels, Number 12?

3 MR. O'DELL: One second.

4 MR. CLARK: Son has a Cobalt.

5 MR. O'DELL: She's had jury duty too.

6 THE COURT: All right. Let's ask Miss Daniels to
7 come back.

8 (The prospective juror entered the judge's chambers)

9 BY THE COURT:

10 Q. Hi, Miss Daniels. How are you this afternoon?

11 A. Just fine.

12 Q. Good. Let me see. I forgot what I was going to ask you
13 about because I just started looking at something else.

14 First, you or somebody you knew had the recall over the
15 ignition?

16 A. My son.

17 Q. Okay. And I don't know if I asked you about this out
18 there, but I've forgotten now. Had he had the actual
19 experience with the ignition shutting off?

20 A. No, no, no.

21 Q. All right. So he got a recall.

22 A. Right, through the mail.

23 Q. All right. And then did he get it fixed?

24 A. Yes.

25 Q. Okay. So he had no problems with it.

1 A. No.

2 THE COURT: All right. What were the other areas
3 that counsel wanted to inquire about?

4 MR. O'DELL: Grandson.

5 BY THE COURT:

6 Q. Oh, did you have a family member who owned a Ford Ranger
7 for a while?

8 A. Grandson.

9 Q. And how long did he have the Ranger?

10 A. About three years.

11 Q. And he liked it?

12 A. Oh, yes.

13 Q. No trouble with it?

14 A. No.

15 Q. Okay. Did he buy it new or used?

16 A. Used.

17 Q. And why did he get rid of it when he did?

18 A. A bigger vehicle.

19 Q. Okay.

20 A. Went to another Ford.

21 Q. All right. Was there anything about your grandson's
22 experience with his Ranger that you think would cause you to
23 have any leanings one way or the other in this case?

24 A. No.

25 THE COURT: All right. Any other questions?

1 Thank you, ma'am.

2 (The prospective juror exited the judge's chambers)

3 THE COURT: Well, next is Miss Egnor, who's quite
4 chatty.

5 What areas do counsel want me to --

6 MR. COOKE: She said that she had a vehicle, the
7 brakes would not stop the car. It was a used GM, I believe.

8 THE COURT: And she also mentioned about the hot
9 coffee case. Let's bring her back.

10 (The prospective juror entered the judge's chambers)

11 BY THE COURT:

12 Q. Miss Egnor, how are you this afternoon?

13 A. Oh, been better.

14 Q. Have you? I wanted to ask you about a few things.

15 A. Okay.

16 Q. One, I think you told me you actually sat in as a juror
17 in a case involving somebody that got hurt and brought a claim
18 because of --

19 A. It was something about food, yes.

20 Q. Okay.

21 A. It was in Putnam County, in Winfield, and I don't know
22 the exact year, but it was right after having a kid, and I had
23 him in '08.

24 Q. Okay.

25 A. So it's from '08 till now. It was there.

1 Q. All right. And so who did they sue about this?

2 A. It was something in Poca. That's all I remember.

3 Q. A business?

4 A. Yes.

5 Q. Okay. And was it something that was -- a beverage or
6 something that was too hot?

7 A. I think it was food. Preferably I think it was a hot dog
8 and they got burned.

9 Q. They got burned.

10 A. Yes.

11 Q. Okay. And you sat in on the trial of that?

12 A. Yeah.

13 Q. How did it turn out?

14 A. They were not guilty. It was something about they were
15 not guilty because there were labels that were saying "Warning
16 Hot."

17 Q. Okay.

18 A. And so it was dropped.

19 Q. All right. So you all found in favor of the business?

20 A. Yes.

21 Q. Decided that they had warned about how hot it was.

22 A. They had the labels and everything.

23 Q. Okay.

24 A. So there was no reason to be guilty.

25 Q. Well, did you think that that was a frivolous case or

1 claim to begin with? Do you know what I mean by that?

2 A. No.

3 Q. Well, you heard the evidence.

4 A. Uh-huh.

5 Q. Did you think it was a fair case for the plaintiff to
6 bring?

7 A. At first, I thought it was --

8 Q. Okay.

9 A. -- until we heard the rest of it --

10 Q. Okay.

11 A. -- like with the warning labels and stuff like that.

12 Q. All right. So you decided in favor of the business, but
13 just hearing what the case was about, did you think at the end
14 of it that it was kind of ridiculous for the plaintiff to
15 bring that?

16 A. Yeah. Yeah.

17 Q. So you --

18 A. But everybody has issues because if they didn't have a
19 warning saying it was too hot, think about it, because what if
20 they got third degree?

21 Q. Well, so if they hadn't had the warning, then --

22 A. Then they would have been guilty.

23 Q. -- you would've found --

24 A. I would have been that way.

25 Q. Okay.

1 A. Because I just do it for the -- like, if you've got a
2 warning and stuff that you can read and see plain as day --

3 Q. Uh-huh.

4 A. -- then, you know --

5 Q. Now, this is a completely different case.

6 A. Yeah.

7 Q. This case involves personal injuries.

8 A. Yes.

9 Q. But it involves a claim that Ford manufactured and then
10 sold --

11 A. Uh-huh.

12 Q. -- a truck that was defective.

13 Do you think that there's anything about your experience
14 with the hot food case that would cause you to lean for or
15 against either side in this case?

16 A. No, because that's totally different. That's other
17 things.

18 Q. All right.

19 A. I don't bring other issues to anything else, no. No.

20 THE COURT: Okay. All right. What other areas of
21 questions did anybody have?

22 BY MR. O'DELL:

23 Q. You were hurt pretty badly it sounded like in a crash.

24 A. Oh, yeah.

25 Q. And it sounded like your mom started a lawsuit and it

1 didn't go anywhere?

2 A. It didn't, because I wasn't driving my car. One of my
3 friends was, and he didn't have a license, and they were going
4 to sue him for driving my car with no license. They couldn't
5 because he was, like, bouncing house to house. You know what
6 I mean? He wasn't, like, located anywhere. So if they would
7 have sued him, they wouldn't have got nothing.

8 Q. Do you think you were entitled to something?

9 A. Me? I don't know, honestly, because I don't remember
10 anything. I don't remember being in the hospital. I don't
11 remember nothing because I was in a coma for a week and a
12 half. And then I was there going through therapy and
13 everything. The only thing I remember doing there is going up
14 steps, learning how to walk again. That's the only thing I
15 remember. And now I have checkups, but other than that, no.

16 Q. We really appreciate your honesty and we're just
17 asking --

18 A. Oh, you're fine.

19 Q. The fact that you were hurt so badly and were able to
20 recover --

21 A. Uh-huh.

22 Q. -- do you think you would hold that against the Neases --

23 A. No.

24 Q. -- and say, "Well, they weren't as hurt as me, and" --

25 A. No, because it's different for everybody. It's not --

1 no, it's different on everybody. No.

2 MR. O'DELL: Okay. Thank you very much.

3 PROSPECTIVE JUROR: Anything else?

4 MR. COOKE: Yes. Yes.

5 THE COURT: Have you got something?

6 MR. COOKE: Yes.

7 THE COURT: Go ahead.

8 BY MR. COOKE:

9 Q. You talked about, I think, knowing about a vehicle that
10 you may have been in it where the brakes had failed.

11 A. Yes. That was my Grand Prix.

12 Q. Okay. So that car, that was a General Motors --

13 A. Yes. And that's -- my neighbor, I gave it to her because
14 she got her license. I just gave it to her, and I told her
15 dad, so I don't know whether to fix them or not, but sometimes
16 the anti-light -- like the light kicks on. Sometimes when you
17 hit it --

18 Q. Uh-huh.

19 A. -- it will stop, but not as quick as it's supposed to.
20 So it feels like it's going all the way to the floor.

21 Q. Okay. So are you talking about the anti-lock brakes?

22 A. Yes.

23 Q. Like when you hit it --

24 A. You know how sometimes -- yes. Sometimes it will jerk.

25 Q. And it bounces, like bouncing --

1 A. Yes, yes, but sometimes it don't work. Like, I don't
2 know how to explain it.

3 BY THE COURT:

4 Q. Had you complained to a dealership or --

5 A. Yeah.

6 Q. And --

7 A. Nothing.

8 Q. They couldn't fix it?

9 A. Because they say I'm a kid and I don't know my cars from
10 nothing. I'm, like, "I'm not a kid. I'm 29. I'm not a
11 child." You know what I mean? They just assume everything.

12 BY MR. COOKE:

13 Q. And so ultimately you just got rid of that car; is that
14 right?

15 A. Yeah. Oh, yeah. I ain't going to drive it.

16 Q. Did you have an accident?

17 A. Huh-uh.

18 Q. Okay.

19 A. I mean, I hit a curb, but that's my way to stop, and I
20 replaced a tire because it scraped it or did something to the
21 tire. And then the hubcap, it came off. So I had to get a
22 new one or be tacky.

23 Q. Were you frustrated with -- I guess the manufacturer of
24 that would've been Pontiac or General Motors?

25 A. Yeah. Yeah, but I couldn't do anything about it because

1 they don't believe me --

2 Q. Okay.

3 A. -- because I'm a kid.

4 Q. Would that experience with Pontiac, would that affect the
5 way that you would view --

6 A. That I would? Yes.

7 Q. -- that you would view Ford Motor Company?

8 A. No. I won't buy another one --

9 Q. Okay.

10 A. -- since they didn't fix it.

11 THE COURT: Wouldn't buy another Pontiac?

12 PROSPECTIVE JUROR: No, no, I won't. It turned me
13 from it.

14 BY MR. COOKE:

15 Q. Does that experience bleed over to any other car
16 manufacturer --

17 A. No.

18 Q. -- like my car?

19 A. No. Because I drive a Honda right now. That's a great
20 car. Love it. I mean, my transmission, it's ticking, but
21 that's just because it's an old car.

22 Q. Okay. So it would -- you would try to hear all the
23 evidence --

24 A. Yeah.

25 Q. -- as best you could?

1 A. You have to. Yeah.

2 MR. COOKE: That's all I have.

3 THE COURT: All right. Thank you.

4 PROSPECTIVE JUROR: You good?

5 THE COURT: Yeah.

6 PROSPECTIVE JUROR: Okay. Thank you.

7 (The prospective juror exited the judge's chambers)

8 THE COURT: Mr. Smith, Number 14?

9 MR. BIBB: He's the one who said he heard about this
10 in the news.

11 THE COURT: Oh, yeah. Okay.

12 (The prospective juror entered the judge's chambers)

13 BY THE COURT:

14 Q. Mr. Smith, have a seat. How are you?

15 A. Pretty good. How are you today?

16 Q. Doing well.

17 A. I wanted to apologize to the Court and all these
18 gentlemen because of the cough I've got right now. I know
19 it's disruptive.

20 Q. Well, if you have to cough, just cough towards the
21 lawyers.

22 You indicated that you remembered seeing or hearing
23 something about cruise control problems on --

24 A. My mother's car.

25 Q. Okay. And it was a Ford?

1 A. No, it was a Lincoln.

2 Q. Lincoln. Okay.

3 A. Marquis is what it was.

4 Q. All right. And so can you tell us a little bit more
5 about what the problem seemed to be and how often it happened?

6 A. It just happened once. Like I said, it was just
7 something happened to the car. Like I said, she was going in
8 that big curve going into Charleston on the bridge up there --

9 Q. Uh-huh.

10 A. -- and she said it just took off on her.

11 Q. Did she have the cruise control on?

12 A. Yeah, she had it on.

13 Q. All right. And the car she felt like just kind of kept
14 going?

15 A. Started to speed up. So she tried to hit the brake and
16 tried to get it stopped and everything, and it wouldn't do it.
17 So she finally turned the key off and turned it back on real
18 quick, which I guess knocked it out, and she was okay after
19 that.

20 Q. Okay. So she took it to the dealership?

21 A. Yes.

22 Q. And the dealership did what?

23 A. They just -- I guess they checked it out and said there
24 was some kind of malfunction. I don't know exactly what it
25 was, but they fixed it.

1 Q. All right.

2 A. And it was fine after that.

3 Q. And she drove it for some period of time after?

4 A. Yes. Yes.

5 Q. So whatever the problem with the cruise control or
6 acceleration was, the dealership fixed it?

7 A. Yes.

8 Q. And it was okay?

9 A. I was thinking it was just something to do with the
10 linkage or something like that. Like I said, they fixed it
11 and had no problem whatsoever.

12 Q. Okay. How long ago was this?

13 A. It's been 20 years ago.

14 Q. Okay. All right. Well, this is a case where there's a
15 claim against Ford over the Ranger, claiming that it was
16 defective.

17 Is there anything about your mother's experience or your
18 knowledge of it that you think would cause you to lean one way
19 or the other in listening to the evidence and hearing this
20 kind of case?

21 A. I don't believe so.

22 Q. Would you be able to set all that aside and just decide
23 this case based on the evidence at this trial?

24 A. Things are going to happen. Nobody is perfect. Nothing
25 is perfect.

1 Q. Okay. So would you just listen to the evidence here and
2 decide the case based only on that?

3 A. Yes, sir.

4 THE COURT: Okay. Any other questions?

5 MR. O'DELL: No, Your Honor.

6 MR. COOKE: Yes.

7 THE COURT: Go ahead.

8 BY MR. COOKE:

9 Q. You said, I think, something about a linkage. What did
10 you mean by that?

11 A. I don't know exactly what it was. They just said that
12 something had messed up in the linkage or something about it,
13 and they fixed it for her and everything was fine. She never
14 had another problem.

15 Q. Okay. So that was a car that was 20 years old or so?

16 A. Well --

17 THE COURT: No, it happened 20 years --

18 A. It was fairly new when she got it.

19 Q. I'm sorry. It happened 20 years ago?

20 A. Yeah, it happened about 20 years ago.

21 Q. So that would have been a --

22 A. Probably somewhere around a '90 or something like that.

23 Q. Was that an electronic problem with the car?

24 A. Like I said, I don't know for sure. All I know is they
25 said something to do with the linkage or something like that

1 on there, and just something stuck. I don't know.

2 Q. So if in this case you heard evidence about linkage or
3 something like that about a Ford Ranger, would you reach back
4 to that experience and think, well, gosh, that must be
5 something wrong with this Ford Ranger because of your prior
6 experience?

7 A. I don't think so. If it happened in every one, it would
8 be a different story, you know. Like I said, something is
9 going to happen every once in a while.

10 Q. Okay.

11 A. Nobody is perfect, and you never make a perfect car or a
12 truck or anything else.

13 Q. And if there was evidence in this case that this is not a
14 case about a cruise control being turned on and off, would you
15 be able to distinguish your prior experience with the evidence
16 in this case?

17 A. I believe so.

18 Q. And when you -- do you understand that, you know, that
19 your duty is to listen to not just what the party that goes
20 first says but then the defense says --

21 A. Both sides.

22 Q. -- before you make up your mind?

23 A. Uh-huh.

24 MR. COOKE: Okay. That's all I have.

25 THE COURT: All right. Thank you, sir.

1 PROSPECTIVE JUROR: Thank you.

2 (The prospective juror exited the judge's chambers)

3 THE COURT: Rebecca Byus, Number 15?

4 MR. O'DELL: She didn't say much.

5 THE COURT: I didn't mark her down for anything.

6 MR. BOGGS: Been a juror in a murder trial.

7 MR. CLARK: Went to high school. That's about it.

8 THE COURT: All right. I assume no questions, then.

9 Miss McMillin, Number 16?

10 MR. BOGGS: Same thing. Juror in a murder trial,
11 went to high school.

12 THE COURT: All right. Number 17, Patrick Debord?
13 I had him listed as a sudden unintended acceleration.

14 All right. Ask Mr. Debord to come in.

15 (The prospective juror entered the judge's chambers)

16 BY THE COURT:

17 Q. Good afternoon, Mr. Debord. How are you?

18 A. Good. Good.

19 Q. I made a note that when I asked about anybody hearing
20 about a sudden unintended acceleration or, like, a stuck
21 accelerator, I think you said you maybe had heard something?
22 What?

23 A. Well, I mean, I read the paper.

24 Q. Okay. Well, that's fine.

25 A. You know --

1 Q. Good.

2 A. -- Toyota had it.

3 Q. All right.

4 A. You know, everybody knows that. I mean, I watch CNN all
5 the time.

6 Q. Okay. So you were referring to the claims against Toyota
7 that there were sudden unintended acceleration problems with
8 the cars.

9 A. True. And some people even got prosecuted for, you know,
10 killing somebody, manslaughter or whatever, maybe, and they
11 went to prison over it.

12 Q. And so who are you talking about there? Somebody who was
13 driving a car or somebody who --

14 A. I think it was an Asian guy, and he had him a Toyota
15 Camry or Corolla or something.

16 Q. Uh-huh.

17 A. Camry I believe it was. But he was -- he had his family
18 in the car with him and he hit a stopped car at a red light, I
19 believe, in the rear end. He couldn't stop the car. And he
20 got convicted of -- well, whatever, manslaughter or whatever.

21 Q. Right. And he claimed that the car was subject to this
22 sudden unintended acceleration and it wasn't his fault.

23 A. That's correct.

24 Q. Okay. Other than this stuff about Toyota, have you heard
25 about that about other car manufacturers?

1 A. Well, I know Chrysler's ignition switch, you know.

2 Q. Okay.

3 A. Like the keys were too heavy, too many keys on the ring,
4 you know, stuff like that.

5 Q. All right. And that's the recent recall that GM did over
6 the ignition.

7 A. Well, Chrysler did it.

8 Q. Oh, that's Chrysler did that. Okay.

9 Well, as a result of your staying up with the news and
10 learning about those things, do you come into this with any
11 prejudice or preconceived idea about these claims in this
12 case?

13 A. No, no, because I don't prejudge.

14 Q. All right. So you've heard in these other examples
15 you've talked about that Toyota, Chrysler, maybe GM, have had
16 valid claims against them for problems with their cars.

17 Is that a fair conclusion?

18 A. Probable, yes.

19 Q. Okay. Does that make you think at this point that
20 there's probably something wrong with this car because of the
21 claims?

22 A. No.

23 Q. If you were asked to be a juror in this case, would you
24 be able to set aside any -- the knowledge or information or
25 beliefs that you've formed as a result of learning about the

1 Toyota and Chrysler and GM situations and decide this case
2 based strictly on the evidence in this trial?

3 A. Yes.

4 THE COURT: Okay. Follow-up questions?

5 MR. COOKE: Just one, Your Honor.

6 THE COURT: Okay.

7 BY MR. COOKE:

8 Q. So was it the ignition switch stuff that you talked about
9 and the Toyota, those were recalls; is that right?

10 A. Well, I think -- yeah, I think the ignition switch, the
11 recall, was for Chrysler. But, you know, initially I think
12 they said, well, you've got too many keys on your ring. So
13 their remedy at the first part was to remove keys from the
14 ring so they wouldn't have so much weight on the ignition
15 switch itself, the tumblers.

16 Q. So when you -- when you listened to all that and forming
17 your opinions about it, did the fact that there was a recall
18 in those matters affect your opinion one way or the other?

19 A. No, no, not really. I mean, just all the proof wasn't
20 out yet. How could you make a decision on something like
21 that?

22 Q. Okay. Okay. So when the government, when the safety
23 agencies make recalls, do you -- does that suggest to you that
24 there must be other manufacturers have the same problem if
25 there's a recall focused on one particular product like a

1 Toyota or a Chrysler?

2 A. I would look at where they got this tumbler at. Now,
3 just because Chrysler had it doesn't mean Ford had it or GM
4 had it. You'd have to look at your producer where you
5 outsourced that switch from.

6 Q. Okay. So you'd want to look at the evidence in that
7 particular case --

8 A. Yeah.

9 Q. -- and consider that on your own like you would if you
10 were sitting on a jury on this case?

11 A. Uh-huh.

12 Q. And you wouldn't grab something from something that's not
13 before you and let that influence your opinion.

14 A. No.

15 MR. COOKE: Okay. Okay. I appreciate it.

16 THE COURT: All right. Thank you, sir.

17 (The prospective juror exited the judge's chambers)

18 THE COURT: 18, Mr. Hanna? I had him down for a
19 sudden unintended.

20 MR. O'DELL: And too many lawsuits.

21 THE COURT: All right. Let's bring him in.

22 MR. BOGGS: Back problems.

23 (The prospective juror entered the judge's chambers)

24 BY THE COURT:

25 Q. How are you, Mr. Hanna?

1 A. Doing well. How are you, Mr. Chambers?

2 Q. Doing well. Thank you. Have a seat.

3 I want to ask you a few follow-up questions. One, I
4 think you told us that you were aware of some sudden
5 unintended acceleration problem from some source. What is
6 that?

7 A. Well, I remember hearing something in the news, but not
8 Ford Motor Company, but other motor companies having that
9 problem.

10 Q. First, what's your understanding of what the problem was
11 that you were hearing about?

12 A. Apparently it was some electrical problem or malfunction
13 in the car --

14 Q. Uh-huh.

15 A. -- that caused the accelerator to stick, and then --

16 Q. Okay. You say you don't think it was Ford, but do you
17 remember who it was?

18 A. I can't remember. It was one of the --

19 Q. Toyota?

20 A. Toyota. It was one of the foreign motor companies. I
21 can't remember which one.

22 Q. Okay. And was this something in the last two or three
23 years?

24 A. Yeah.

25 Q. Okay. Do you know or have any understanding of what

1 happened as a result of the claims, whether they were --

2 A. Oh, I'm sure I heard, but I can't remember what it was.

3 Q. All right. So you don't know how it turned out.

4 A. No.

5 Q. Okay. I think you also mentioned that you thought maybe
6 there were too many lawsuits.

7 A. Seemingly, yes.

8 Q. All right. What do you mean by that?

9 A. Well, I think that there are far too many frivolous law
10 cases --

11 Q. Uh-huh.

12 A. -- that tend to be a burden on the court system.

13 Q. And so what would you mean by "frivolous"?

14 A. I mean, there are certain people in our society today
15 that are looking to get money the easy way, and they tend to
16 do it on the backs of the taxpayer.

17 Q. Uh-huh. Well, do you agree that there are cases where
18 people are entitled to their claims and where lawsuits should
19 be brought for people who have injuries?

20 A. Yes, sir, I do believe that there are legitimate claims;
21 but, unfortunately, what we see mostly these days, we don't
22 see very many of them, or at least in my opinion.

23 Q. Okay. And is that basically what you're talking about,
24 is the media reports that you hear about cases?

25 A. That, and personal experience of those that I have known

1 that have made such claims in the courts, you know.

2 Q. Okay. Well, you've heard this is a claim where Mr. and
3 Mrs. Nease claim that this Ford product was defective and that
4 it caused Mr. Nease to be injured.

5 Do you -- but because of your concern about too many
6 frivolous lawsuits, do you start out this case leaning against
7 the Neases or in favor of the defendant because this might be
8 one of those frivolous cases?

9 A. Well, I do have certain preconceived notions, and it does
10 kind of weigh that way, but --

11 Q. All right. So what preconceived notions do you --

12 A. Well, just a matter of seeing so many people that are
13 trying to --

14 Q. Uh-huh.

15 A. -- grab money or whatever that -- now, not to say that
16 these people aren't entitled to something, but machinery
17 breaks down and maybe they are necessarily entitled to the
18 case, but --

19 Q. How would you decide that if you were a juror?

20 A. Well, I'd have to see all the evidence for both sides,
21 but it's hard to get over early impressions.

22 Q. All right. So as you sit here now, do you have an
23 impression that this case may be a frivolous case or one in
24 which the plaintiffs really don't have a valid claim?

25 A. That's my initial --

1 Q. Okay.

2 A. -- impression, yes.

3 Q. And so if you sat as a juror in this case, the plaintiffs
4 would have to overcome that? Is that what you're saying?

5 A. Yes.

6 THE COURT: Okay. All right.

7 Any other questions?

8 MR. O'DELL: No. We appreciate your being open and
9 forthright.

10 THE COURT: Thank you a lot.

11 (The prospective juror exited the judge's chambers)

12 MR. O'DELL: Your Honor, we'd move to strike him.

13 THE COURT: All right. Any response?

14 MR. COOKE: No, sir.

15 THE COURT: He's stricken, Number 18.

16 All right. Let's go to Number 19, and I think he was --
17 similar answers about too many lawsuits and about a sudden
18 unintended acceleration. So Number 19 is Mr. Dyer.

19 MR. COOKE: I had him down for unintended
20 acceleration.

21 THE COURT: Yeah. I've got him down for, I thought,
22 a lawsuit problem too.

23 THE CLERK: It's Miss.

24 (The prospective juror entered the judge's chambers)

25 BY THE COURT:

1 Q. Hi, Miss Dyer. How are you?

2 A. Fine. How are you all today?

3 Q. We're doing well. Thank you.

4 I just wanted to ask you a few questions.

5 A. Yes, sir.

6 Q. One, by my notes, I think you told me that you maybe
7 heard something about a sudden unintended acceleration with a
8 car.

9 A. No.

10 Q. Do you know what I'm talking about?

11 All right. Have you heard or seen news articles about
12 it?

13 A. Yes. Yes, I have.

14 Q. What was that? What do you recall hearing or seeing in
15 the news?

16 A. I mostly seen about Toyotas --

17 Q. Okay.

18 A. -- not Fords, but the Toyota Camry was one of the ones.

19 Q. All right. And that was something that's been out here
20 in the last couple of years?

21 A. Yes, sir.

22 Q. And did you form a conclusion one way or another about
23 it?

24 A. No.

25 Q. Do you know how those claims turned out? Do you know --

1 A. No, I hadn't heard.

2 Q. Okay. So you don't know whether the claims were proven
3 or not proven.

4 A. No.

5 Q. Okay. As you sit here today, do you have any concern
6 about whether Ford might have done something that would cause
7 sudden unintended acceleration like Toyota was accused of? Do
8 you have any reason to believe that or --

9 A. No.

10 Q. -- you haven't heard anything like that?

11 A. No.

12 Q. Okay. You mentioned also, I think, you think maybe there
13 are too many lawsuits and some are frivolous; is that right?

14 A. Yes, absolutely.

15 Q. Can you just briefly explain what your --

16 A. Well, I see it in the medical field a lot --

17 Q. Uh-huh.

18 A. -- medical malpractice suits for things that you sign
19 saying that, you know, you know this can happen when you have
20 surgery, when you have this done --

21 Q. Right.

22 A. -- and people still --

23 Q. Have you been involved as a witness in any of those?

24 A. I have in one, yes.

25 Q. Okay. Outside of the medical malpractice claims, is it

1 still your opinion that there are too many lawsuits and that
2 many are frivolous?

3 A. Yeah, like the medicine. You see the advertisements on
4 TV all the time suing for this medication --

5 Q. Uh-huh.

6 A. -- side effects and that medication side effects.

7 Q. Okay. Well, what about claims against carmakers?

8 A. I don't know so much about those.

9 Q. All right. So you haven't formed an opinion that there
10 are frivolous or too many lawsuits against carmakers over
11 things.

12 A. I don't know anything about those.

13 Q. Okay. Is there anything about your experience with
14 these -- you know, seeing that there are too many malpractice
15 claims and that there are too many claims being sought over
16 pharmaceuticals, that do you think any of that would cause you
17 to lean for or against either party in this case?

18 A. No.

19 Q. So do you start off at this point of the trial feeling
20 like the plaintiffs may have brought a frivolous claim or an
21 unfounded lawsuit?

22 A. No.

23 Q. If you were chosen as a juror in this case, would you
24 decide this case based solely on the evidence you hear in the
25 trial?

1 A. Absolutely.

2 Q. So you wouldn't let your feeling about malpractice cases
3 or those other things influence your judgment here?

4 A. No. I need to hear the evidence first.

5 THE COURT: Okay. All right.

6 BY MR. O'DELL:

7 Q. Miss Dyer, we appreciate you being so open and
8 forthright. The fact that you're in the medical profession
9 and you've dealt with lawsuits and things like that and you
10 think they're frivolous and you see things that shouldn't
11 happen, when you found out this was a civil case and that
12 someone -- because, you know, in civil cases, people are, you
13 know, are suing and they sue for money --

14 A. Right.

15 Q. -- because that's all that happens in civil cases. You
16 know, we can't put people in jail.

17 So when you heard it was a civil case, did you kind of
18 revert back to your feelings about civil court and think that
19 the plaintiffs would kind of start a square back and have to
20 prove more than, say, the defendant?

21 A. I really hadn't thought about it, to be honest.

22 Q. Okay. As you sat through there and you listened to
23 things and you think about your own personal experience --

24 A. Uh-huh.

25 Q. -- did that happen? It's okay to be honest.

1 A. To be honest, yes, a little bit, listening about, you
2 know, people's opinions on the Fords and things like that,
3 yes.

4 Q. Right. And we all have biases and things like that.

5 A. Uh-huh. Absolutely.

6 Q. We all bring our own opinions into things.

7 A. Yeah.

8 Q. So that's why it's important to be open and honest about
9 these things.

10 And given your experience with frivolous lawsuits and too
11 many claims, if you were sitting -- if you were the person
12 bringing a claim, would you want someone like you sitting on
13 their jury?

14 A. Well, yeah, because I like listening to both sides. I
15 mean, I'm not going to be biased to one side or the other. I
16 just need to listen to the evidence on both sides before I
17 decide anything.

18 Q. You think -- I thought you told me the Neases kind of
19 started a square back because of your experience.

20 A. Well, yeah, but I mean to sit there and listen to both
21 sides in court, but that's what I want to do. I want to
22 listen to both sides.

23 Q. But you do bring this little bit of bias with you into
24 the --

25 A. Well, yes.

1 Q. Yeah. Okay. You can't stop that.

2 A. I know.

3 Q. That's just who you are, right?

4 A. Yeah.

5 MR. O'DELL: I appreciate it. Thank you.

6 BY MR. COOKE:

7 Q. There was one question I think that you answered about --
8 we talked about whether you thought Ford was superior or
9 inferior. I think you had an opinion about Ford that might be
10 a bias.

11 A. Yes, sir. I had a bad experience. I bought a 2011 Ford
12 Fusion right off the lot, brand new.

13 Q. Uh-huh.

14 A. And within the first two days, the car wouldn't start.
15 So I took it back to the Ford garage, and they said they fixed
16 the problem.

17 Two days later, it wouldn't start again. I had it towed
18 back to the garage and worked on again. And then for a year,
19 it was fine.

20 And then after about a year, it started acting up. It
21 got to the point where I was scared to death to pull out into
22 traffic --

23 Q. Uh-huh.

24 A. -- because it would bog down and almost die on me as I
25 was pulling out. So that's when I traded it in --

1 Q. Okay.

2 A. -- because they couldn't find anything wrong with it when
3 I took it to the garage.

4 Q. Okay. And did that -- did that experience -- it sounds
5 like that formed a bias.

6 A. Yeah, it did. It really turned me off to Fords I will
7 have to say.

8 Q. Okay. So in this case, given that we're talking about a
9 Ford product, just like Mr. O'Dell was asking, does Ford start
10 out a little bit behind because of your bias?

11 A. Absolutely. I'm sorry, but yes.

12 MR. COOKE: Okay. Thank you.

13 THE COURT: All right. Thank you, ma'am.
14 Appreciate it.

15 (The prospective juror exited the judge's chambers)

16 THE COURT: You both want her off?

17 MR. O'DELL: Actually, based on that, we start at
18 ground zero.

19 THE COURT: That's what I was going to say. You're
20 pretty even.

21 MR. O'DELL: Full circle. They brought her right
22 back.

23 MR. BIBB: Nobody wins with her.

24 THE COURT: All right. So both sides agree she
25 should be stricken for cause?

1 MR. O'DELL: Yes.

2 MR. COOKE: Yes.

3 THE COURT: All right. She's excused.

4 Mr. Rainey, Number 20?

5 MR. COOKE: He has a -- it sounds like he has an
6 active case that maybe he hasn't filed yet.

7 MR. JAVINS: I think it's in arbitration.

8 MR. BOGGS: He won the arbitration and now he's
9 looking at bringing a civil action for the back pay.

10 THE COURT: If you all -- do you all want to ask him
11 any questions or pass him a card?

12 MR. BOGGS: I'd like to pass him a card.

13 THE COURT: I assume there are no questions of
14 Mr. Rainey.

15 All right. Miss Groves? Her husband has got a stress
16 test on Thursday, and I'm going to save her. I may excuse her
17 just based upon that, but I want to see if we need her first.
18 So we're going to pass her for now.

19 Number 22, Mr. Knapp? Anybody want to ask him anything?

20 MR. JAVINS: He's got an '01 Ranger, traded.

21 MR. CLARK: His son.

22 THE COURT: Well, any questions of Mr. Knapp?

23 MR. BIBB: I think we'd like to talk to him. He had
24 a Ford Focus that he had a lot of -- he had to have the
25 transmission replaced on.

1 THE COURT: Okay. Do you want me to ask him about
2 that?

3 MR. BIBB: See if he has any bias.

4 THE COURT: All right. Bring Number 22, Mr. Knapp,
5 in.

6 THE CLERK: Juror Number 7 wants to know if he can
7 take a smoke break.

8 THE COURT: Yeah.

9 (The prospective juror entered the judge's chambers)

10 BY THE COURT:

11 Q. Hi, Mr. Knapp. How are you?

12 A. Fine.

13 Q. I just wanted to ask you a couple of questions.

14 Foremost, as I recall, you said you had a Ford Fusion you had
15 a lot of trouble with.

16 A. Uh-huh.

17 Q. Tell us about that.

18 A. The transmission was making a noise and I took it to I-77
19 Ford, Fairplain.

20 Q. Is that where you bought it?

21 A. No. I'd gotten it up at Bert Wolfe, up at Charleston.

22 Q. And this was still a new car?

23 A. Yeah.

24 Q. Still under warranty?

25 A. It had 50,000 miles on it, but I had the extended

1 warranty on it.

2 Q. Okay.

3 A. And it took them probably four months before they finally
4 decided that it was the transmission. I kept telling them it
5 was the transmission, but they said it didn't show up on the
6 computer.

7 Q. I assume at that point you were dealing with the
8 dealership.

9 A. Right.

10 Q. At any point did you start dealing with the manufacturer?

11 A. No.

12 Q. And the dealership didn't come to you and say, "Well, the
13 manufacturer said this" or "The manufacturer said that."

14 A. No.

15 Q. Okay.

16 A. No.

17 Q. So I assume you were dissatisfied with the dealership's
18 reaction.

19 A. Yes, but then they -- whenever they finally decided it
20 was the transmission and they tore it apart and it was full of
21 shavings and everything, I felt that they should have put a
22 new transmission in it instead of rebuilding the old one.
23 But, no, they wouldn't do that. They just went ahead and
24 rebuilt the one that was in it.

25 Q. And has that worked out all right?

1 A. Yeah, but I've only put about less than 10,000 miles on
2 it.

3 Q. Is that in part because you're concerned that the car --

4 A. No, it's just because I ain't using it as much. I used
5 it to drive to work all the time. When I retired, why, I
6 don't drive it as much.

7 Q. All right. At this point was your relationship with the
8 dealership such that you wouldn't want to do business with
9 them anymore?

10 A. Oh, no, I'm satisfied with their work --

11 Q. Okay.

12 A. -- other than they wouldn't take my word. I think they
13 felt I was trying to pull a slick one on them.

14 Q. All right. But you were satisfied enough with the
15 outcome that you would go back to them to buy a car?

16 A. Probably, yes.

17 Q. Or to have a car repaired?

18 A. Uh-huh.

19 Q. Okay. And what was your understanding of what the
20 problem was all along with the transmission? Was it something
21 that happened in the manufacturing of the car, or do you know?

22 A. Well, I'd say it was, because the gears in it
23 deteriorated, just came apart.

24 Q. All right. You said you saw shavings in it. Was that in
25 your mind an indication that the gears weren't meshing

1 right --

2 A. Uh-huh.

3 Q. -- and that that resulted in the gears --

4 A. Whenever you got up to a certain speed, it would make
5 that -- just like if you're going down the interstate, you
6 know that rubble strip along the edge?

7 Q. Uh-huh.

8 A. It would do that.

9 Q. Well, knowing that the Ford Focus you bought had a
10 manufacturing defect in it, would you hold that against Ford
11 in this case at all?

12 A. No.

13 Q. So the fact that you had an experience with a Ford that
14 turned out to be that it was -- had a defect, you wouldn't
15 consider that as creating any bias against Ford or leaning
16 against Ford?

17 A. No.

18 Q. You'd be able to set that aside and decide this case
19 based just on this evidence.

20 A. Uh-huh.

21 Q. Is that right?

22 A. Yeah.

23 THE COURT: All right. Any other questions?

24 MR. O'DELL: No, Your Honor.

25 BY MR. COOKE:

1 Q. The warranty, the extended warranty, was that one that
2 the dealer sold you or was it one that came from Ford?

3 A. The dealer sold it to me, but I think it was with Ford
4 too because, like I say, I bought the car at Bert Wolfe in
5 Charleston and they done the work at I-77 at Fairplain.

6 Q. Okay. And so ultimately you think it was -- it was Ford
7 that actually paid to have it repaired; is that right?

8 A. Yeah, uh-huh.

9 Q. Okay. And there's no problems with it now.

10 A. No.

11 Q. Did you say you worked -- used to work in a pack room
12 down at Alcan?

13 A. No, I worked in the fab side.

14 Q. In the fab side. And I think you've said -- we hate to
15 pry a little bit, but it sounds like you had some back pain
16 that radiated down your leg?

17 A. Yeah. I had -- got a deteriorating disk in my back.

18 Q. Okay. And what sort of symptoms does that produce for
19 you?

20 A. Well, there's different times that it hurts whenever I
21 move. Or if I do too much, it will hurt. Of course, whenever
22 the doctor -- he knows right where it's at and he can push on
23 it and the pain is right now.

24 Q. Is it pain that radiates down one of your legs?

25 A. Well, it started out down my right leg, and I went to him

1 and he give me medicine to take care of it. It's a -- I
2 forgot now. It's an anti-inflammatory.

3 Q. Okay.

4 A. And I take it.

5 Q. Okay. So is it nerve -- it must be nerve pain; is that
6 right?

7 A. Yeah, I think so.

8 Q. Does it go all the way down to your foot?

9 A. No, just down my leg.

10 MR. COOKE: Okay. Thank you.

11 THE COURT: Thank you, sir.

12 (The prospective juror exited the judge's chambers)

13 THE COURT: Next, Mr. Deahl, Number 23?

14 MR. O'DELL: Mr. Deahl said there were too many
15 lawsuits.

16 THE COURT: Okay. Let's bring Mr. Deahl in.

17 MR. BOGGS: He also said he takes prescription back
18 pain -- back medicine every day.

19 (The prospective juror entered the judge's chambers)

20 BY THE COURT:

21 Q. Mr. Deahl, how are you?

22 A. Pretty good.

23 Q. First, I do want to talk to you some about your back
24 problem, and you indicated it's a pretty steady problem for
25 you; is that right?

1 A. Yeah. It about killed me going out to Jim's, you know.

2 Q. Uh-huh.

3 A. And I'm trying -- my doctor is trying to get a referral
4 to a new rheumatologist.

5 Q. Yeah.

6 A. And change my medication, maybe.

7 Q. Are you working now?

8 A. No. I retired in 2002.

9 Q. Okay. Has it been really uncomfortable to be sitting out
10 here?

11 A. Sort of, yeah. I have to shift a lot.

12 Q. Would you be doing anything different if you were at
13 home?

14 A. I would just be sitting with ice, you know.

15 Q. Yeah.

16 A. And at night I have to put pillows under my knees so my
17 back lays straight.

18 Q. Right, uh-huh. And are you taking medication?

19 A. Yes, sir.

20 Q. What are you taking?

21 A. Lodine.

22 Q. Have to take it every day?

23 A. I can take it every four hours. I usually take it in the
24 morning and then in the evening.

25 Q. Uh-huh. And that relieves the pain?

1 A. Sort of.

2 Q. Reduces it?

3 A. It doesn't relieve it like it did a year ago. That's why
4 I probably need, you know, a little different --

5 Q. Well, do you think it would just be too uncomfortable for
6 you to serve as a member of a jury given that this is the way
7 we do it?

8 A. Yeah, I would think it would, but I'm not trying to get
9 out of anything.

10 Q. Do you think you'd have a hard time maintaining attention
11 and being comfortable enough to stay focused?

12 A. At times it gets that way, yes, sir. Like when I walked
13 up to Jim's, my leg was asleep, you know.

14 Q. Does it help you to stand up and move about periodically
15 or --

16 A. Sometimes it does, but not very long, you know. Then I
17 have to sit back down.

18 Q. Well, you know, you've been real honest and candid about
19 all this, and I don't think you're just trying to get out of
20 jury service.

21 So given your back condition and what you've experienced
22 being here today, do you think that it would be difficult for
23 you to serve as a juror and provide your attention for a trial
24 that could last a week or two?

25 A. Yes, sir, I do.

1 THE COURT: All right. Any other questions?

2 MR. O'DELL: No, Your Honor.

3 THE COURT: All right. Thank you, sir. Appreciate
4 it.

5 PROSPECTIVE JUROR: Thank you.

6 (The prospective juror exited the judge's chambers)

7 THE COURT: Well, I'm going to excuse for cause
8 Mr. Deahl.

9 MR. HEISKELL: Can I just stand for a second, Your
10 Honor?

11 THE COURT: Certainly. Yeah.

12 Next is 24, Lisa Bowles.

13 MR. O'DELL: Your Honor, Miss Bowles I think
14 recognized me, and that's the one that she didn't raise her
15 hand after we came back, but --

16 THE COURT: Okay. Other than that, is there
17 anything -- I didn't mark her down for anything else.

18 MR. COOKE: I don't have anything.

19 THE COURT: All right. Is there anything you want
20 to ask her other than just to confirm that she knows you
21 and --

22 MR. O'DELL: I mean, I don't know her. I just
23 recognize her face, and I think she recognized my face.

24 MR. COOKE: I don't know how counsel -- I don't know
25 what the -- I wasn't privy to what the discussion was.

1 THE COURT: Tell him.

2 MR. O'DELL: She looked at me and she goes, "Oh, do
3 you think I should tell them that I recognize you?" And I
4 said, "Yeah."

5 And I think she may go to my church is the only thing I
6 can think of. I'm not sure where I know her from, but I
7 recognize her face.

8 THE COURT: Do you want me to ask her about it?

9 MR. COOKE: Yeah.

10 THE COURT: Bring her in. Miss Bowles.

11 (The prospective juror entered the judge's chambers)

12 BY THE COURT:

13 Q. All right. Miss Bowles, sit over here. Thank you.

14 First, Miss Bowles, Mr. O'Dell indicates that maybe you
15 all recognize each other.

16 A. (Nods head up and down)

17 Q. Can you tell us, first, do you know Mr. O'Dell?

18 A. Yes, I do.

19 Q. And how? Go ahead.

20 A. Well, his wife and sister -- his wife's sister and I grew
21 up together --

22 Q. Okay.

23 A. -- and then through church.

24 Q. You all go to the same church now?

25 A. Well, when we go, yes.

1 Q. Okay. Other than seeing Mr. O'Dell or other members of
2 his family at church, do you all socialize, see each other,
3 have any contact?

4 A. No.

5 Q. Do you think knowing his -- having grown up with his wife
6 and her sister and knowing that you all go to the same church,
7 would that influence you in any way in this case?

8 A. No.

9 Q. So if the evidence justified a verdict in favor of Ford,
10 you wouldn't -- your situation with Mr. O'Dell and his family
11 wouldn't influence that at all.

12 A. No. No.

13 Q. And I take it there's nothing about Mr. O'Dell or his
14 wife or his sister-in-law that would cause you to be biased
15 against him in any way.

16 A. No.

17 Q. Okay. So it wouldn't be a factor in your --

18 A. No.

19 THE COURT: All right. Any other questions?

20 BY MR. COOKE:

21 Q. So is it Tammy, Tony's sister, or is it Jay's sister?

22 A. Jay's.

23 Q. Jay's sister. Okay.

24 A. Louise.

25 MR. COOKE: Okay. Thanks.

1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR: You're welcome.

3 (The prospective juror exited the judge's chambers)

4 THE COURT: So, Mr. O'Dell, you said there was some
5 problem out there?

6 MR. O'DELL: Apparently, according to Rich Katz,
7 who's our guy out there, Number 13, Juror Number 13 and Number
8 7 apparently are going on and on about frivolous lawsuits and
9 how he was solicited by lawyers to sue when he was hurt
10 himself, getting into his scale, and apparently it was
11 extremely loud and inappropriate in this environment.

12 MR. COOKE: 13?

13 THE COURT: 7 and 13. All right. Bring Mr. --
14 bring Juror Number 7 in. Stephen Joseph.

15 Are the CSOs standing around out there?

16 J. T., are you the only one out here now?

17 MR. COMBS: Yes, sir.

18 THE COURT: Okay.

19 MR. COMBS: I can get somebody else.

20 THE COURT: Well -- come on in, Mr. Joseph.

21 (The prospective juror entered the judge's chambers)

22 THE COURT: I just want to make sure that nobody is
23 out -- none of the jurors are out there talking about it.

24 MR. COMBS: I'll get somebody up here to help.

25 BY THE COURT:

1 Q. All right. Mr. Joseph, sorry to have to call you back
2 in, but --

3 A. You all missed me the first time. I thought you didn't
4 want to talk to me.

5 Q. Well, we do. We hate to leave anybody out. But have you
6 been talking out there about --

7 A. No, we weren't talking about the court.

8 Q. Well, one of the staff people out there told me that you
9 and Miss Egnor -- I think it's Juror Number 13 -- were talking
10 about people bringing lawsuits and --

11 A. We were talking about church. We was just talking about
12 St. Francis of Assisi is what we was just talking about just
13 now.

14 Q. Were you also talking about people -- they understood you
15 to say that maybe you had had lawyers talking to you about
16 bringing a case or --

17 A. No, but I told one guy -- I had a friend that had the law
18 firm of Bailey & Wyatt and I was roommates with him. That's
19 the only thing I was really talking about lawyers.

20 Q. Okay. Did Miss Egnor say anything about frivolous cases
21 or too many lawsuits?

22 A. No. We weren't talking anything about lawsuits.

23 THE COURT: Okay. All right. Well, thank you.

24 Make sure nobody is --

25 PROSPECTIVE JUROR: Yeah, we wasn't talking a lot of

1 stuff, but mainly not -- I was just talking about, like I say,
2 we were talking about the new Pope and everything else like
3 that.

4 THE COURT: All right. Thank you, sir.

5 (The prospective juror exited the judge's chambers)

6 THE COURT: Ask Steve to come in, Steve Bragg.

7 THE CLERK: I don't think Steve --

8 THE COURT: Steve is right there. I just saw him.

9 (CSO Steve Bragg entered the judge's chambers)

10 THE COURT: Steve --

11 MR. BRAGG: Yes, sir.

12 THE COURT: -- one of the staff people out there
13 reported to the lawyers that that juror that just left, Number
14 7, and Miss Egnor, who's Juror 13 sitting in the back row of
15 the jury box, that they were talking rather loudly about
16 lawsuits and about people bringing too many lawsuits and that
17 maybe he said something about lawyers trying to get him to
18 bring suits.

19 I know you haven't actually been out there, have you?

20 MR. BRAGG: No, sir. I just came.

21 THE COURT: Well, is J. T. up here now with you?

22 MR. BRAGG: Yes, he's going to be up here.

23 THE COURT: Well, then, here's what I'd like you to
24 do. Why don't you go over there near the jury box or in
25 between the area of the jurors. Let J. T. stay here at the

1 door. And then just make sure that nobody starts talking
2 about anything about the case or anything about the questions
3 or answers or anything about lawsuits. And if they do, stop
4 them and then let me know.

5 MR. BRAGG: Okay.

6 THE COURT: Okay. Thank you.

7 (CSO Bragg exited the judge's chambers)

8 THE COURT: Steve will know how to handle it.

9 Okay. Where are we now?

10 MR. CLARK: 25, Mr. Pyles.

11 THE COURT: Yeah. Any questions of Mr. Pyles?
12 Anybody?

13 MR. COOKE: Your Honor, Mr. Pyles already had a
14 conversation about Mrs. Nease, and I guess he was mistaken.

15 THE COURT: Right.

16 MR. COOKE: But we don't need any follow-up.

17 THE COURT: Mr. Pyles had approached me during the
18 break to say that he thought he had dated Mrs. Nease's
19 daughter from a previous marriage, but obviously he was
20 mistaken. He didn't know for sure, thought she looked
21 familiar.

22 All right. No questions of Mr. Pyles.

23 Lilly Relf, Number 26?

24 You know, I think I'm close enough to the last numbers
25 here that I'm inclined to excuse her based on her medical

1 condition.

2 MR. BIBB: No opposition from Ford.

3 THE COURT: Or plaintiffs?

4 MR. O'DELL: No.

5 THE COURT: All right. I'm going to excuse Miss
6 Relf, Number 26.

7 27, Donna Jean Dickson? She had a sudden unintended
8 acceleration answer. So I don't see anything else, but let's
9 bring her in. Miss Dickson, Number 27.

10 MR. BOGGS: Granddaughter is an intern for Larry
11 Tweel.

12 THE COURT: You take awful good notes, Thom.

13 (The prospective juror entered the judge's chambers)

14 BY THE COURT:

15 Q. Hi, Miss Dickson.

16 A. Hi. How are you?

17 Q. I'm well. Thank you.

18 You answered "yes" to one of my questions about a sudden
19 unintended acceleration or a stuck accelerator problem.

20 Do you remember this?

21 A. Yeah. I think you asked if we'd ever heard of it.

22 Q. Yeah.

23 A. And I have on the news.

24 Q. So what have you heard?

25 A. Just where there was some incidents on the news where --

1 what was the one time where the person in the car had to call
2 the police or something because the accelerator was stuck --

3 Q. Okay.

4 A. -- and they were trying to get the car stopped, that sort
5 of thing.

6 Q. Do you remember what manufacturer that was?

7 A. No.

8 Q. Would it refresh your memory if Toyota was mentioned?

9 A. I know Toyota was one of the -- but I didn't know what
10 particular one that was.

11 Q. All right. As a result of learning about that
12 accelerator problem, do you have any bias or leaning against
13 Ford because it manufactures cars and it may be accused of an
14 unintended acceleration problem?

15 A. No. I own a Ford, I own a Toyota, and I own a Dodge.

16 Q. Okay. All right. So you don't walk into this case with
17 any preconceived notion for or against either side based on
18 what you learned.

19 A. No.

20 THE COURT: All right. Any other questions?

21 MR. COOKE: No, sir.

22 THE COURT: Thanks a lot, ma'am.

23 (The prospective juror exited the judge's chambers)

24 THE COURT: Number 28, Janette Sigman?

25 MR. COOKE: No questions.

1 THE COURT: And had no answers.

2 Any questions of Miss Sigman?

3 MR. O'DELL: One second, Your Honor, just to make
4 sure. She didn't say much, did she?

5 THE COURT: Huh-uh.

6 All right. 29, Debra Cart?

7 MR. JAVINS: Yes.

8 THE COURT: All right. Let's bring Number 29,
9 Miss Cart, in.

10 She may have gone to the rest room. She's the one who
11 has --

12 MR. BIBB: The bladder.

13 MR. JAVINS: So do you want to go through the whole
14 list now? I was under the impression we'd stop and --

15 THE COURT: No, we'll do them all, and then you'll
16 get to strike from all of them.

17 (The prospective juror entered the judge's chambers)

18 PROSPECTIVE JUROR: I'm on the hot seat.

19 THE COURT: The hot seat.

20 BY THE COURT:

21 Q. All right. Miss Cart, first, you indicated "yes" when I
22 asked a question about hearing about sudden unintended
23 accelerations --

24 A. Uh-huh.

25 Q. -- or stuck gas pedal. What is it you remember hearing

1 or seeing?

2 A. Just from the news, that some cars in different states
3 and around were having the problem.

4 Q. Do you remember was it all about one manufacturer in
5 particular?

6 A. I don't remember.

7 Q. Okay. It's been in the last two or three years?

8 A. (Nods head up and down)

9 Q. You're not sure? Okay.

10 Did you form any conclusions or opinions about whether
11 these were valid claims or not valid claims or anything like
12 that?

13 A. No.

14 Q. Okay. So as you sit and hear this case -- and from what
15 you've heard, you know it's a suit where the Neases claim that
16 the Ford Ranger was defective.

17 Do you start off with any preconceived notion about the
18 manufacturer or the people bringing the suit or the claims?

19 A. No.

20 Q. Would you be able to decide this case based strictly on
21 the evidence you hear in the trial?

22 A. As long as they can keep me awake, we'll be good.

23 Q. You and me both.

24 Now, I know you told me -- I'm glad you were comfortable
25 saying this, but you've got bladder concerns.

1 A. Uh-huh.

2 Q. So has this been okay so far today?

3 A. Well, just every day is different.

4 Q. Right.

5 A. You know, there's some days I can be at work and I can be
6 there for two or three hours and not go, and then there's
7 other days I go every 15 minutes.

8 Q. Okay. But as long as --

9 A. But, you know, it's embarrassing to answer your
10 questions --

11 Q. Sure.

12 A. -- because, you know, I'm thinking where's the HIPAA law?
13 You know, the HIPAA law is supposed to be the Privacy Act, and
14 here we are announcing it in front of everyone, people I don't
15 know.

16 Q. Yeah. I feel badly about that. I can tell you that,
17 you know, HIPAA relates to medical records and things like
18 that. So this is a different process, and, frankly, we don't
19 really have an alternative. We have to ask questions like
20 this. And, you know, you could have said, "Judge, could I
21 approach the bench? I don't really want to answer in front of
22 everybody."

23 A. Okay.

24 Q. Having said that, don't feel unique, because in many
25 cases we've had people who have the same problems.

1 A. Right.

2 Q. So there's nothing unusual or uncommon about it now, and
3 I'm glad that you were willing just to speak up.

4 A. And also I know Juror Number 7. He was my son's golf
5 coach.

6 Q. Oh, okay.

7 A. I thought it was his twin brother because he never said
8 anything to me when he saw me, so I just kind of ignored him.

9 Q. Right.

10 A. But then he come up and said something to me. And I
11 said, "I didn't know if it was you or your brother."

12 Q. How long ago was he your son's golf coach? Years and
13 years?

14 A. Eight years ago.

15 Q. Eight years. Other than that being his golf coach, you
16 don't have any contact with him?

17 A. Huh-uh.

18 Q. So if you all were on a jury together, his opinion about
19 things wouldn't influence yours necessarily.

20 A. No.

21 THE COURT: Okay. Any other questions?

22 BY MR. O'DELL:

23 Q. You had also mentioned, I think, you think there are too
24 many lawsuits.

25 A. Well, just -- I think frivolous ones, yes.

1 BY THE COURT:

2 Q. What do you mean by "frivolous"?

3 A. Well, I mean like somebody gets burned by spilling
4 something hot on them. They should actually know it was hot
5 anyway, like McDonald's and coffee.

6 Q. Uh-huh.

7 A. You know it's hot, stuff like that.

8 Q. Well, as you start -- if you were a juror on this case,
9 would you start off with a feeling that you were skeptical
10 about the plaintiffs in this case because you know that there
11 are people that bring cases that you think are frivolous?

12 A. I don't know.

13 Q. So do you think that you would be able to decide the case
14 based strictly on the evidence and decide whether this claim
15 is valid or not valid based on the evidence, not on any
16 preconceived ideas about --

17 A. Not on any preconceived ideas, no.

18 THE COURT: Okay. All right.

19 BY MR. O'DELL:

20 Q. Miss Cart, we all bring biases, and, you know, it sounds
21 like to me that when you heard it was a civil lawsuit, the
22 first thing you thought is maybe it's a frivolous claim and
23 then that the Neases might start out like kind of one step
24 back and have to kind of catch up because you've been, you
25 know, with the media and people, you know, the McDonald's

1 thing, that it kind of starts one step back and they're going
2 to have to work a little harder to prove their case than
3 starting out on even footing.

4 A. Uh-huh.

5 Q. Do you agree that that's kind of what you're saying?

6 A. Probably.

7 Q. So, I mean, if you were somebody who wanted somebody that
8 was completely unbiased in a case, you wouldn't necessarily
9 want someone like you sitting on their jury because you bring
10 in a little bit of preconception to the table, right?

11 A. I guess. I don't know.

12 Q. You're also in the medical profession, right?

13 A. No, sir.

14 Q. Okay. I thought you were.

15 A. No.

16 Q. Okay. I'm sorry about that.

17 A. Been a housewife for 32 years.

18 THE COURT: All right. Do you have any questions?

19 BY MR. COOKE:

20 Q. I thought you mentioned that maybe you had a Lincoln Town
21 Car.

22 A. That was my mother's.

23 Q. Okay. And this was some years ago that she had a -- it
24 was used and she had a brake problem?

25 A. Uh-huh.

1 Q. Tell me about that again.

2 A. They had just bought it from a dealer in Charleston. She
3 had drove it to Bluefield. And on the way home, in the last
4 toll, she went to hit the brakes, and all five of us girls
5 were in the car, and she hit the man in front of her because
6 she didn't have any brakes.

7 Q. And that was something that was related to the brakes.

8 A. Yes.

9 Q. And was there any sort of investigation, or did the
10 dealer figure out what was wrong with it? Do you remember?

11 A. This is just from hearsay because I wasn't very old, just
12 from hearing my parents talk about it. But it was worked out.
13 The man that they rear-ended, he didn't want to do anything
14 about it. So the dealer took care of the car.

15 Q. Okay. And you said it was a used car?

16 A. Yes.

17 Q. And you said the dealer didn't do something right; is
18 that correct?

19 A. Well, my dad figured -- it had a brand new inspection
20 sticker on it, and he figured they didn't check it like they
21 were supposed to.

22 Q. So maybe they were just old brakes, right?

23 A. Right.

24 Q. Okay. And so there's no -- in this case, there's no
25 defect that I've raised.

1 A. No, sir.

2 Q. So does your experience with the Lincoln, does that in
3 any way influence how you would view evidence --

4 A. No. I like driving.

5 Q. Okay. Would it influence any evidence about the
6 accelerator or the speed control cable on a Ford Ranger?

7 A. No.

8 MR. COOKE: Okay. Thank you.

9 BY MR. O'DELL:

10 Q. It was your son and daughter that are in the medical
11 profession, right?

12 A. Yes, sir.

13 Q. Okay. Either one of them ever been involved in any
14 litigation --

15 A. No.

16 Q. -- that you're aware of? Anybody have to testify or
17 anything?

18 A. No, sir.

19 MR. O'DELL: Okay.

20 THE COURT: Thank you, ma'am.

21 (The prospective juror exited the judge's chambers)

22 MR. O'DELL: Your Honor, we would move to strike
23 Miss Cart for -- she basically stated that the Neases would
24 start a step behind Ford in this case. And I think that makes
25 her unfit for a juror on this case.

1 MR. COOKE: I thought she -- I thought she very
2 truthfully answered that. I mean, she was being led into the
3 bias, and I think she said, "I don't know. I think I'd listen
4 to the evidence."

5 THE COURT: Yeah. I'm going to deny your request.
6 I think she indicated she could be fair and decide the case
7 based on the evidence.

8 Number 30, Miss Kelley? I had her for lawsuits and
9 sudden unintended acceleration. No, not that, I guess.

10 MR. COOKE: She said the Ranger, her '98 Ranger was
11 the worst vehicle that she ever had.

12 THE COURT: Do you want to ask her some more?

13 All right. Ask Number 30, Miss Kelley, to come in.

14 (The prospective juror entered the judge's chambers)

15 BY THE COURT:

16 Q. Hi, Miss Kelley. How are you?

17 Have a seat over here.

18 A. How are you?

19 Q. I'm good. Thank you.

20 I just wanted to ask you a few follow-up questions. One,
21 you told us you had a really bad experience --

22 A. Yes.

23 Q. -- with a Ford Ranger.

24 A. Yes.

25 Q. Can you tell us a little more about that?

1 A. I honestly have no idea what went wrong with it. I just
2 know I was driving down the interstate, it started making a
3 noise, and then it started smoking.

4 Q. How long had you owned the car -- or the truck?

5 A. At that point, two years.

6 Q. Was it bought new?

7 A. My brother bought it new.

8 Q. Right.

9 A. And then I bought it off of him.

10 Q. Were you pretty familiar with how it worked for him when
11 he --

12 A. Yeah. He never had --

13 Q. He never had problems with it?

14 A. Huh-uh.

15 Q. And so he drove it for a couple of years without trouble?

16 A. Right.

17 Q. And then you started driving it. And how long after you
18 started driving it did you start having trouble?

19 A. It was a couple of years.

20 Q. A couple of years?

21 A. Yeah.

22 Q. All right. And so the trouble just suddenly started one
23 day?

24 A. Yes.

25 Q. And what did you try to do about it?

1 A. Oh, I couldn't do anything.

2 Q. Well, I mean --

3 A. I mean, just putting in a new motor in it is all I
4 could've done, but I just got rid of it.

5 Q. Okay. Did you take it to the dealership then?

6 A. No.

7 Q. Did you take it to a car repair place?

8 A. Yes.

9 Q. And where was that? It wasn't a dealership?

10 A. No.

11 Q. All right. So you --

12 A. My dad had it towed somewhere.

13 Q. All right. So it broke down completely on the road?

14 A. Yeah. I had to have it towed from the rest area there at
15 Winfield.

16 Q. Okay. What did the car repair place tell you was wrong?

17 A. That the motor blew up.

18 Q. Did they say why or how that would happen?

19 A. Huh-uh.

20 Q. Did you believe at that point that the problem was it was
21 a bad motor to begin with?

22 A. I don't know. I just know it wouldn't run anymore. I
23 just know that.

24 Q. Well, did you blame that, in your own mind, on Ford, the
25 maker of the truck?

1 A. I've never liked Fords.

2 Q. Why not?

3 A. How I grew up. My dad was always -- never liked Fords.

4 Q. Did he like some other car or make?

5 A. Yeah.

6 Q. To your knowledge, did your dad or anybody in your family
7 have Fords before this Ranger that they had trouble with?

8 A. Not that I know of.

9 Q. You just know your dad said don't buy Fords.

10 A. Yes, as I was growing up.

11 Q. How is it that your brother bought a Ford, then?

12 A. It's my stepbrother.

13 Q. Stepbrother.

14 A. Now, my ex-husband and my husband are both Ford people,
15 but I drive a Chevy.

16 Q. Okay. Well, now, you know, this is a case where this
17 particular Ford Ranger, a 2001 model, is alleged by the
18 plaintiffs to be defective.

19 Because of your own experience with the Ranger you had,
20 do you start off with this case believing that there's
21 something wrong with this truck?

22 A. I probably would. I would try not to, but I can't a
23 hundred percent say that that wouldn't sway me a bit.

24 Q. All right. So you think you would -- I use this
25 expression. You may be too young for this to matter to you.

1 But have you ever heard the expression that someone has their
2 thumb on the scales? Like if you go to a grocery store and
3 they're weighing things --

4 A. Yeah.

5 Q. -- and they've got their thumb on the scale, it weighs a
6 little more.

7 Do you feel like you've kind of got your thumb on the
8 scale --

9 A. Probably.

10 Q. -- in favor of the plaintiffs?

11 A. More than likely.

12 Q. You start off thinking they're probably right because I
13 know I had a bad experience before?

14 A. Right. Even though you don't want to, it's still back
15 there.

16 THE COURT: Okay. All right.

17 Any other questions?

18 MR. O'DELL: No, Your Honor.

19 THE COURT: Thank you.

20 (The prospective juror exited the judge's chambers)

21 MR. O'DELL: Your Honor, objections like when we
22 make a motion and you denied it, I want to make sure the
23 objections are preserved for -- I'm just --

24 THE COURT: Yeah.

25 MR. O'DELL: Okay.

1 MR. COOKE: We would move for cause.

2 THE COURT: We'll strike her for cause, Juror Number
3 30.

4 MR. O'DELL: Her thumb is a little heavier, I guess,
5 than the other.

6 THE COURT: 31, Dakota Moles? I don't have any
7 answers.

8 MR. COOKE: I think there was either an ignition
9 switch or an acceleration.

10 THE COURT: Well, which? What do we want to ask her
11 about?

12 MR. COOKE: I'd like to get clarification just on
13 the ignition switch or unintended acceleration.

14 THE COURT: All right. Let's ask her to come in,
15 Miss Moles, Dakota Moles, 31.

16 MR. BIBB: He.

17 THE COURT: He.

18 MR. BIBB: He's young. When he was 18, he blew up
19 his car.

20 THE COURT: Oh, yeah. Okay.

21 (The prospective juror entered the judge's chambers)

22 BY THE COURT:

23 Q. Hi, Mr. Moles. How are you?

24 A. I'm good. How are you, sir?

25 Q. Doing well. Thank you.

1 I wanted to ask you a couple of things. One, did you
2 tell me that you had heard of this ignition switch problem
3 with cars?

4 A. Yeah.

5 Q. What did you know about it or hear about it?

6 A. All I heard was, like, on the news and the radio
7 something about there was an ignition switch recall.

8 Q. Did you have some friend or relative that had one of
9 those?

10 A. I don't think so.

11 Q. Okay. What did you understand the recall to be about?
12 Just the ignition switch?

13 A. Yeah. It was either on the news or the radio. I heard
14 there was an ignition switch recall from somebody.

15 Q. Well, I was going to ask that next. Do you know who the
16 car manufacturer was?

17 A. I didn't pay that much attention to it.

18 Q. Okay.

19 A. I think I was probably in my truck driving down the road
20 or something and it popped up.

21 THE COURT: Okay. All right.

22 What else did counsel want me to ask him about?

23 Go ahead.

24 MR. COOKE: I don't remember if he was asked about
25 the unintended acceleration.

1 BY THE COURT:

2 Q. Did you ever hear about or read anything about people
3 claiming they had a sudden unintended acceleration problem
4 with their cars or trucks, the gas pedal would stick or be --

5 A. I think I remember something like that being mentioned a
6 couple of years ago, but that was for, like -- that was a
7 couple of different people, wasn't it, like companies or
8 something?

9 Q. Different companies?

10 A. Yeah, I think so.

11 Q. You don't remember which?

12 A. No. I've never really followed big corporations and
13 stuff like that. I'd see something on the news or hear it on
14 the radio and say, "Oh, well," that's the thing.

15 THE COURT: Okay. All right. Follow-up?

16 MR. COOKE: Just real quickly.

17 BY MR. COOKE:

18 Q. So, Mr. Moles, there was some news about some Toyota
19 unintended acceleration cases or claims sometime ago. Does
20 that in any way -- if that's about Toyota, does that in any
21 way affect what you think of Ford Motor Company?

22 A. No. As far as I know, that's a Toyota problem.

23 Q. So you'd separate that out?

24 A. That's two completely different things.

25 Q. Okay. And if the ignition switch recall had to do with a

1 General Motors product, you can separate that out also?

2 A. Yeah. I'm not going to lump together, like, GM, Ford,
3 and Toyota, and whatever. They're all different things and
4 they all have their own faults here or faults there or
5 whatever, and they're not all the same company. They're not
6 all the same thing.

7 Q. Okay. We appreciate that. One of the reasons why we
8 have this process is to make sure that everybody has, you
9 know, a clear mind --

10 A. Right.

11 Q. -- and not bringing bias to the table. So it sounds like
12 that you don't have any bias that you would hold against Ford
13 Motor Company or against Mr. Nease in a case like this.

14 A. I'm not biased about anything. I listen to what people
15 say and go with what I hear and the facts and evidence and
16 whatever.

17 THE COURT: All right.

18 MR. COOKE: That's all we can ask.

19 THE COURT: Mr. O'Dell?

20 BY MR. O'DELL:

21 Q. Mr. Moles, you mentioned that you had a friend that was
22 killed not too long ago riding a motorcycle.

23 A. Yes.

24 Q. Sorry about that. Do you know whether his family pursued
25 a lawsuit or anything came of that?

1 A. I don't know. I didn't ask too much about it. All I
2 know is the person driving the van that ended up hitting him,
3 I know that they had been in talks about, like, insurance
4 claims and all this stuff. But other than that, I didn't ask
5 them any questions about it.

6 Q. Do you think you should have?

7 A. Now, in that situation, I am biased. He was a real good
8 friend of mine, and I do think that the person running over
9 and killing him should have had to pay some kind of something
10 for it. But, again, I was biased in that opinion.

11 MR. O'DELL: Okay. Appreciate that. Thank you very
12 much.

13 THE COURT: Thank you, sir.

14 (The prospective juror exited the judge's chambers)

15 THE COURT: Linda Adkins, Number 32?

16 MR. BIBB: She's had a back surgery due to a fall.

17 MR. COOKE: I thought she answered "yes" to UA. Am
18 I wrong about that?

19 THE COURT: No questions?

20 MR. BIBB: I don't see a need for it.

21 THE COURT: Number 33, Mr. Jeffrey, chemical
22 engineer?

23 MR. JAVINS: South Carolina grad, right?

24 MR. BOGGS: Trained in human factors.

25 THE COURT: Any questions of Mr. Jeffrey?

1 MR. COOKE: No.

2 THE COURT: All right. The last one is Mr. Hupp.
3 He's number 34.

4 MR. BOGGS: He answered everything.

5 THE COURT: He did. And based upon his first
6 response, he said he's got six kids and circumstances are such
7 that he expressed concern about how he'd manage jury duty. So
8 I'm inclined to exclude him for cause based on that.

9 Does anybody have any objection?

10 MR. JAVINS: I don't.

11 MR. O'DELL: No, Your Honor.

12 MR. BIBB: No.

13 THE COURT: Then let me run down this list and make
14 sure we've all got the same decisions, and then I'm going
15 to --

16 THE CLERK: You're going to excuse him?

17 THE COURT: Yes, I'm going to excuse Mr. Hupp,
18 Number 34.

19 So here are the ones I've excused for cause: Number 1,
20 Mr. Sexton. Number 4, Miss Kelly. Number 8, Mr. See. Number
21 9, Mr. Miller. Number 10, Miss Delapas. Number 18,
22 Mr. Hanna. 19, Miss Dyer. 23, Mr. Deahl. 26, Miss Relf.
23 30, Miss Kelley. And 34, Mr. Hupp.

24 In addition, I'm going to excuse Number 11, Mr. Ball.
25 He's got the trip. Number 21, Miss Groves. Her husband is

1 having a stress test. And Number 29, Miss Cart. Although she
2 indicated she thought she could serve, with her urinary
3 problems it might be difficult.

4 So I'm excusing those people as well. So let's -- have
5 you all got all those?

6 MR. COOKE: Yes, sir.

7 THE COURT: By my count, that's 14.

8 MR. CLARK: 14 excused and 20 left.

9 THE COURT: 20 left. We'll have an eight-person
10 jury. It takes six to go to verdict. Got to have enough --

11 MR. JAVINS: I'm trying to subtract 8 from 20.

12 THE COURT: Twelve. Six each.

13 So what I'd like to do is -- this has taken a long time
14 already, and I would like for us to get into instructions and
15 openings. What time is it?

16 MR. BIBB: Almost 3:30.

17 THE COURT: Almost 3:30.

18 MR. COOKE: The openings may not be as long as you
19 might anticipate.

20 THE COURT: Well, in any event, I'd like you to do
21 the strikes in three rounds, two strikes each turn, okay?

22 We'll do this a simple way. Sandy will come to you.
23 Plaintiffs go first. You'll mark your two strikes on the
24 official one. She'll show it to you, back and forth.

25 Do you all want a few minutes?

1 MR. O'DELL: Yes.

2 MR. BIBB: If we could.

3 THE COURT: Okay. How long? Five minutes? Ten
4 minute?

5 MR. BIBB: Ten.

6 MR. O'DELL: Ten would be great.

7 THE COURT: All right.

8 MR. BOGGS: Is the visiting judge's conference room
9 open?

10 THE COURT: Sure. Do you all want to just -- if
11 we're going to be ten minutes, let's all go out and let me do
12 this on the record and then tell them what we're doing and
13 then excuse you all.

14 (End of conference in chambers)

15 THE COURT: All right. Ladies and gentlemen, I
16 really appreciate your patience. I know this is a difficult
17 thing to sit here. It's worse than trying to go to the doctor
18 sitting there all day. We all do that as well.

19 We're just about to the point where we'll finish up jury
20 selection. We've been through all the questions. Nobody has
21 to worry about being asked anything else. The lawyers need
22 about ten minutes to talk with their clients and among
23 themselves, and then they'll come back out and we'll start
24 what are called the peremptory challenges. That's where each
25 side gets to start striking names so that we get the list down

1 to the number that we need for the actual trial.

2 So I'm going to allow the lawyers and the parties to
3 leave the courtroom. Plaintiffs, you're welcome to use this
4 room. You folks can use the conference room. We'll expect
5 you all to be back here promptly in ten minutes. Check your
6 watch now and be ready to come back.

7 The jury, I'm going to ask that you all just remain more
8 or less at ease. If you need to stand up and stretch and move
9 around, that's okay. If you need to go to the rest room, try
10 to go back and forth one at a time. You folks can go on. And
11 other than that, again I remind the jurors you can talk to
12 each other, but don't talk anything about the case or the jury
13 selection questions or answers or anything like that.

14 We'll otherwise wait for the ten minutes.

15 (Recess from 3:27 p.m. to 3:37 p.m.)

16 THE COURT: All right. The Court will come to
17 order.

18 We're now ready to proceed with our peremptory
19 challenges. My law clerk will come to the plaintiffs first to
20 start the exchange of strikes.

21 (Counsel exercised their strikes)

22 THE COURT: All right. Ladies and gentlemen, the
23 parties have now concluded their peremptory challenges, so I'm
24 going to ask my clerk to seat the jury.

25 THE CLERK: Ladies and gentlemen, if I call your

1 name, please step down from the jury box or from your seat in
2 the courtroom and just stand in the back for a few moments.

3 Ronald Sexton. Ashley Daniel. Robert Anastasio. Trudy
4 Kelly. Caitlin Kessler. Donna Carter. Stephen Joseph. Roy
5 See. Daniel Miller. Leslie Delapas. Mark Ball. Heather
6 Egnor. Karan McMillin. Patrick Debord. Aaron Hanna.
7 Phoenix Dyer. Derek Rainey. Ethel Groves. John Deahl. Lisa
8 Bowles. Kristopher Pyles. Lilly Relf. Debra Cart. Hope
9 Kelley. Dakota Moles. Michael Hupp.

10 If I didn't call your name, if you'll please come forward
11 and take a seat in the jury box.

12 You two may move down to these first two seats, please.
13 Let's go ahead and put five in the back and five in the front.

14 THE COURT: Four.

15 THE CLERK: I'm sorry. Four in the front.

16 THE COURT: Do the parties have any other matters
17 they want to bring to my attention before we administer the
18 oath to the jury and excuse the remaining jurors?

19 MR. COOKE: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, for
21 those of you standing in the courtroom now, with my sincere
22 thanks for your appearance here this morning, you're excused.

23 I have checked. The clerk's office advises me that your
24 term of service actually ends at the end of this month,
25 March 31st. At this point, I had only one other matter that

1 was likely to go to trial during that period, and it's now
2 been continued. So with our sincere thanks, you're excused.
3 I expect that you'll not be called upon for further duty to
4 this Court, but we appreciate your being here today.

5 Has the clerk's office asked any of you to check in or
6 anything before you left?

7 Then thank you. You're excused.

8 To you, ladies and gentlemen, my clerk is going to
9 administer the oath. And then I'm going to ask Juror Number
10 28, if you'd come down to the front. It's probably better for
11 you to be on the front row.

12 But my clerk is now going to administer the oath to you.

13 THE CLERK: Would each of you stand and raise your
14 right hand.

15 (The trial jurors were duly sworn)

16 THE CLERK: Thank you. You can have a seat.

17 THE COURT: All right, ladies and gentlemen. You've
18 now been selected as the jury. I promise you things are going
19 to go much more quickly now that we've gotten through this
20 process. The next step involves two matters.

21 First, I'm going to read to you some preliminary
22 instructions. The preliminary instructions are just to give
23 you a little bit of guidance about the matters you should
24 consider and look for during the trial. I'll attempt to
25 summarize the claims that the plaintiffs have brought, what

1 the elements are that they have to prove, that they have to
2 prove these by a preponderance of the evidence.

3 The defendant has one claim that it asserts that it has
4 the burden of proving. And then after I've done those
5 instructions, the parties will offer their opening statements.
6 That won't be evidence. That will just be opening statements.
7 And I'm relatively sure that's as far as we'll get today, but
8 I hope to complete those things today so that tomorrow we'll
9 start immediately with the evidence.

10 So with that, what I'd like to do is this: The parties
11 have no remaining objections or matters for me to consider
12 with respect to the preliminary instructions. Is that
13 correct?

14 MR. O'DELL: Correct, Your Honor.

15 THE COURT: All right. What I'd like to do is give
16 you these preliminary instructions, six or seven pages long.
17 It won't take more than five or six minutes. And then I'd
18 like to take a very brief recess to let the lawyers have a
19 chance to set up and organize so they can then present their
20 opening statements.

21 Ladies and gentlemen, now that you've been sworn, I will
22 give you these preliminary instructions to guide your
23 participation in this trial. You are the judges of the facts.
24 You must apply the facts as you find them to the law as I will
25 give it to you in these instructions and in later

1 instructions. You must decide this case based solely on the
2 facts as you find them and the law as I give it to you. You
3 must base your verdict solely upon the evidence presented in
4 this courtroom in this trial.

5 The evidence consists of the sworn testimony of the
6 witnesses, any exhibits introduced into evidence, any
7 stipulations, and the stipulations where both sides agree to a
8 certain fact -- and there are some stipulations here -- and
9 any matters of which I take judicial notice.

10 Now, the parties stipulate or agree -- if the parties
11 stipulate or agree that a fact is true, then you should
12 consider that fact to be true. In this case, the parties have
13 stipulated to the following facts: So you can accept these as
14 true.

15 Howard E. Nease, the plaintiff, incurred past medical
16 bills in the total amount of \$762,828.35. Those medical
17 expense charges were reasonable and necessary to treat
18 Mr. Nease's injuries and were related to the injuries
19 sustained by Mr. Nease as a result of the automobile crash
20 that occurred on November 20th, 2012. And that crash is the
21 subject of this claim.

22 Now, during the trial, I'm going to take judicial notice
23 of some fact. That's when something is beyond dispute and the
24 Court takes judicial notice of it so that the parties don't
25 have to bring on evidence to try to establish something that's

1 indisputable.

2 Now, the following are not evidence: My statements and
3 rulings, the attorneys' statements, arguments, questions, and
4 objections, and any evidence that I order stricken or tell you
5 to disregard. The lawyers have an obligation to their clients
6 to object if they think there's an improper question or an
7 improper answer. If I sustain an objection to a question, you
8 should disregard that question. If I sustain an objection to
9 an answer, you must disregard that answer. But if I overrule
10 or deny an objection, you should treat that question and the
11 answer like you would any others in the case.

12 You should consider the evidence in the same way that you
13 would consider evidence when making any important decision.
14 Feel free to use your common sense. Feel free to draw
15 reasonable conclusions based on your common experience.

16 During the trial, you should keep an open mind. Do not
17 form an opinion or express an opinion about the case until
18 you've heard all of the evidence and my instructions on the
19 law.

20 Now, during the course of the trial, you might hear the
21 lawyers refer to some evidence as "direct evidence" and some
22 evidence as "circumstantial evidence." Don't be concerned
23 about the difference. Give all evidence, whether it's direct
24 or circumstantial, the weight you believe that particular
25 evidence deserves.

1 Now, sometimes evidence is admitted for some limited or
2 special purpose. That means it can only be considered for
3 that purpose and not for some other purpose. Generally, I'm
4 going to try to instruct you when evidence is introduced for a
5 limited purpose on what that limited purpose is at the time
6 the evidence is first put before you. So I will try to
7 instruct you as to how you should limit consideration of some
8 types of evidence. And obviously when I do that, be careful
9 to only consider the evidence for that limited purpose.

10 Now, in this case, of course, Mr. and Mrs. Nease are both
11 plaintiffs. You must consider them separately to the extent
12 that they have different claims. If you find that the
13 defendant is liable to one plaintiff, then you must not
14 automatically reach the same verdict as to the other
15 plaintiff. I'll tell you what the elements of their claims
16 are. And all that means is you've got to decide each claim
17 separately.

18 Now, Ford Motor Company is a corporation. A corporation
19 can act only through the actions of its agents or employees.
20 In general, an agent or an employee of a corporation may bind
21 the corporation for whatever acts are done or words are said
22 by the employer agent while acting within the scope of
23 authority delegated to him or her by the corporation or while
24 performing his or her duties as an employee of the
25 corporation.

1 Now, this is a civil case, not a criminal case. In a
2 civil case, the plaintiff must prove every essential element
3 in connection with each cause of action by a preponderance of
4 the evidence, not beyond a reasonable doubt. That's the
5 standard in a criminal case, not in a civil case.

6 Now, I'll give you more detailed instructions about the
7 particular claims and factors you should consider in
8 determining those claims at the end of the case, but I want to
9 give you enough of a summary of what the plaintiff must prove
10 to help you follow the evidence and understand how it's coming
11 in in connection with each of the claims.

12 Now, all of these claims arise out of a single event that
13 happened on a particular day. First, Mr. Nease, the
14 plaintiff, alleges that the defendant, Ford Motor Company,
15 manufactured and sold a Ford Ranger which was defective in
16 that it was not reasonably safe and that the vehicle's defect
17 caused him injury and loss.

18 Mr. Nease alleges that his Ford Ranger contained a
19 defective speed control cable as part of the speed control
20 assembly causing him to lose control over the speed of his
21 vehicle. He alleges that this defect caused an automobile
22 crash in which he sustained injuries.

23 Of course, the defendant Ford denies that the Ford Ranger
24 contained any such defect or that it caused plaintiff's
25 injuries.

1 Now, to prove this claim -- this is called a strict
2 products liability claim. So to prove his case in connection
3 with this strict product liability claim, Mr. Nease must
4 convince you by a preponderance of the evidence, first, that
5 the defendant manufactured or sold a Ford Ranger; second, that
6 the Ford Ranger had a defect at the time it left Ford's
7 control; third, that Mr. Nease suffered an injury; and fourth,
8 that the defect proximately caused that injury.

9 Now, a defect, when we talk about a strict liability
10 theory, which is what this claim is, a defect is something
11 that causes the product not to be reasonably safe for its
12 intended use. The standard of reasonable safeness is
13 determined by what a reasonably prudent manufacturer's
14 standards should have been at the time the product was made.
15 The product should be judged by what a reasonably prudent
16 manufacturer would accomplish with respect to the safety of
17 the product, having in mind the general state of the art of
18 the manufacturing process as it relates to economic costs and
19 at the time -- and that this occurs at the time the product
20 was made.

21 Now, an intended use is any use a reasonably prudent
22 person might make of a product, having in mind its
23 characteristics, warnings, and labels.

24 Now, defects may generally fall into three broad
25 categories, and they overlap, so don't be concerned about the

1 definition. It's just to give you a basic understanding. But
2 there are design defects, structural defects, and use defects.

3 Now, a design or a structural defect may exist where the
4 physical condition of the product makes it unsafe when it's
5 used in a reasonably intended manner.

6 A use defect may exist when the manufacturer or the
7 seller has failed to adequately label, instruct, or warn users
8 about how to use the product.

9 Now, you also heard me say that the defect has to
10 proximately cause the injury. "Proximate cause" is a legal
11 term, and it basically means that something actually caused a
12 result. An injury is proximately caused by a defect when that
13 defect plays a substantial part in bringing about or actually
14 causing the injury or damage, and the injury or damage was
15 either a direct result or a reasonably probable consequence of
16 the defect.

17 So that's the first claim. And, again, you're going to
18 hear these instructions in a little more detail even at the
19 end of the case.

20 The second claim that Mr. Nease brings -- and it all
21 arises out of the same events and the same Ford Ranger -- is
22 that Ford was negligent in the way it designed, manufactured,
23 and distributed the Ford Ranger. The factual basis is very
24 similar.

25 Mr. Nease alleges that Ford negligently designed or

1 manufactured or distributed the Ford Ranger in a condition so
2 that it could not be safely operated. The plaintiff alleges
3 that the Ford Ranger contained a defective or not reasonably
4 safe speed control cable as part of its speed control
5 assembly. Plaintiff alleges that the defendant's negligence
6 caused an automobile crash in which he sustained injuries.

7 The defendant, of course, maintains, Ford, that it was
8 not negligent in any way and that it did not cause Mr. Nease's
9 injuries.

10 Now, to prove his claim of negligence, Mr. Nease must
11 convince you by a preponderance of the evidence, first, that
12 Ford owed a duty of care to Mr. Nease; second, that some acts
13 or omissions of the defendant breached or violated that duty
14 of care; third, that Mr. Nease suffered damages as a result;
15 and fourth, that the defendant's breach of that duty of care
16 was the proximate cause of those damages.

17 Now, the third and last claim that Mr. Nease brings,
18 again arising out of the same events essentially, is called a
19 breach of warranty claim. Here, Mr. Nease alleges that Ford
20 breached the implied warranty of merchantability relative to
21 the speed control system of the Ford Ranger.

22 Now, in every contract for the sale of a product where
23 the seller is a merchant -- that means somebody engaged in
24 selling this type of product, which Ford was for these
25 purposes -- there is an implied warranty that the product is

1 fit for the ordinary purpose for which the product is sold.
2 In the context of this case, Ford is a merchant with respect
3 to the sale of automobiles or trucks.

4 Mr. Nease alleges that Ford breached this implied
5 warranty of fitness because the Ranger that was manufactured
6 by Ford contained a defective speed control cable as part of
7 the speed control assembly.

8 Of course, the defendant denies this and argues that
9 there was no such defect in the Ford Ranger, that they
10 didn't -- that Ford did not violate any warranty.

11 Now, in connection with his breach of warranty claim,
12 Mr. Nease must convince you by a preponderance of the
13 evidence, first, that the Ford Ranger was not fit for the
14 ordinary purpose for which it was sold; and second, this lack
15 of fitness proximately caused Mr. Nease to suffer damages.

16 Now, as I told you, the defendant also has a claim here
17 where the defendant bears the burden of proving its claim by a
18 preponderance of the evidence. The defendant, Ford, alleges
19 that Mr. Nease himself was negligent and thus caused or
20 contributed to his own injuries by the way in which he
21 operated his vehicle.

22 Now, to prove its case in connection with what's called
23 comparative negligence, Ford must convince you by a
24 preponderance of the evidence that Mr. Nease was negligent in
25 the operation of his vehicle and that his negligence caused or

1 contributed to the collision that caused these injuries.

2 Now, I've also told that you Mrs. Nease is a plaintiff,
3 one of the claimants here. Her claim is a bit different.
4 What she claims is that Ford Motor Company, because of its
5 liability to Mr. Nease under one or more of the three claims
6 I've outlined, is -- that because Ford violated those duties,
7 it caused her to lose companionship and services of her
8 husband. We call this a loss of consortium under the law.

9 And what this means is that, as a spouse, she's claiming
10 that because of the injuries to Mr. Nease, she suffered a
11 loss. Here, she alleges that Ford negligently caused the
12 injuries to her husband and that as a result of those
13 injuries, she has been deprived of the society, companionship,
14 and consortium of her husband.

15 Of course, the defendant denies that it was negligent or
16 caused any harm to Mr. Nease or his injuries and thus would
17 not be liable to her for anything.

18 Now, to prove her case in connection with a loss of
19 consortium, Mrs. Nease must convince you by a preponderance of
20 the evidence, first, that Ford is liable to Mr. Nease for
21 negligence; second, that she lost the services or
22 companionship of her husband or his services or companionship
23 have been impaired; and last, that defendant's negligence
24 caused that loss or impairment of those services.

25 So, again, you'll get more explanation, more detail, at

1 the end of the case, but those are the three claims by Mr.
2 Nease, the loss of consortium claim by Mrs. Nease, and the
3 defense of comparative negligence that Ford asserts against
4 Mr. Nease.

5 Now, I want to give you some brief instructions about
6 your conduct as jurors during this trial. First, do not
7 discuss this case with anyone or permit anyone to discuss this
8 case with you during the trial. If anyone tries to talk to
9 you about the case or around you about the case, bring it to
10 my attention promptly.

11 I know almost everybody has cell phones, many people have
12 different types of Internet devices, and folks engage in
13 social networking like Facebook and so forth. So when I ask
14 you not to discuss the case, that means don't post anything,
15 don't read anything on a Twitter or a Facebook account or
16 anything like that. You should restrain yourself from
17 anything like that during the course of this trial until it's
18 concluded.

19 Also, although I don't expect there to be news
20 coverage -- I don't know necessarily when a reporter is going
21 to walk in -- but don't read any news stories or articles
22 about this case or listen to any coverage that might be on the
23 radio or TV. Just avoid anything like that.

24 Next, as you've heard me repeatedly mention, you have to
25 decide this case based on the evidence you hear in the

1 courtroom together and my instructions. Do not try to do any
2 research or investigation about any of the things that come up
3 in this case on your own. That is simply prohibited. You
4 have to listen to the evidence and decide this case together
5 based on what occurs in this courtroom.

6 Don't try to make up your mind about a verdict until you
7 have heard all of the evidence and my instructions about the
8 law that you're to apply. Keep an open mind until then. And
9 I want to stress that I know it's difficult when you're
10 jurors, especially in a trial that's going to last a number of
11 days, it's virtually impossible for you to be in a break and
12 not say something about the case. So I want to stress that
13 the purpose of that last instruction is to make sure that you
14 keep an open mind and none of you start expressing conclusions
15 or opinions about the evidence or the witnesses or whether you
16 believe them or you don't believe them or those things. You
17 really need to hear everything before you start trying to
18 evaluate that.

19 Now, this case has a number of technical aspects. You're
20 going to hear from a lot of experts who are going to testify
21 about a lot of technical matters pertaining to the automobile
22 industry and, in particular, automobile parts. You've already
23 heard me tell you that this case arises from a claim that part
24 of the speed control assembly, which is just what it sounds
25 like, is allegedly defective. So it's not going to be easy to

1 listen to all this and pay attention, but I want you to do
2 your best to do that. I'm going to ask that you not try to
3 take notes.

4 I have two concerns about notes. First, if you're not,
5 you know, somebody who's regularly taking notes as part of
6 your work or something at home, it's difficult to take notes
7 in a trial and keep up with it. Secondly, sometimes people
8 are -- tend to rely upon what somebody's notes say rather than
9 what they heard or understood the evidence to be, and that
10 would cause undue reliance upon somebody's notes or something.
11 Instead, even though there are technical things about this
12 case, these are really good lawyers on both sides. I think
13 they'll do a good job of explaining all these things. And
14 hopefully then together you can discuss in your deliberations
15 what all this means. So avoid trying to take any notes.

16 Also, you know we have a court reporter, but we will not
17 have any sort of a transcript of witness testimony for you to
18 use in your deliberations. The only transcript that we could
19 permit anyone to use would be the official transcript, and
20 that takes weeks to prepare. My court reporter is taking all
21 this down and also tape recording it. She's got to go over it
22 in order to prepare a transcript to make sure it's absolutely
23 accurate, and there's simply no way we can do that in a
24 timeframe that allows you all to turn to a transcript if you
25 all are arguing about what somebody said. You're just going

1 to have to depend upon your collective memories and
2 understandings of the testimony. So please don't ask for a
3 transcript.

4 Also, there will be many times during the trial when
5 we'll take a break or I'll have to do something out of your
6 hearing. I'll ask you to go to the jury room. If you haven't
7 been in there, it's here. There are two doors. Through this
8 first door, immediately behind it, is the women's rest room.
9 Through the second door, you'll see the conference table. The
10 men's rest room is around the corner.

11 Whenever I excuse you back to the jury room, please try
12 to stay in the conference room and shut both doors. I don't
13 want to be conducting something about this trial that you all
14 shouldn't be hearing and thereby influence you improperly. So
15 make sure you shut both doors and keep them shut while we're
16 in the trial.

17 Next, then, we're going to have the parties offer their
18 opening statements. An opening statement is an outline by the
19 lawyers to explain how they think the evidence is going to
20 come in at the trial.

21 Their opening statements are not evidence. They have to
22 prove these things. So they are not supposed to be claiming
23 that it's evidence or making argument about the case.

24 After opening statements, the plaintiffs have the burden
25 of proof. They'll present their evidence first. Plaintiff

1 will call a witness. Plaintiffs' lawyer will ask the first
2 set of questions. The opposing side can then cross-examine
3 that witness. Sometimes it goes back and forth for a recross
4 and a redirect. The process is the same when the defendant
5 calls a witness. The defense lawyer will ask questions first.
6 Plaintiffs' lawyers can cross-examine them.

7 After the plaintiff has put on all of their evidence, the
8 defendant may put on whatever evidence it has. After all of
9 the evidence is in, then I will instruct you again on the law,
10 and the lawyers can then make closing arguments where they
11 summarize and interpret the evidence and advocate for a
12 verdict in their favor, and then and only then may you
13 deliberate to reach a verdict.

14 So as I've told you, I'd like to take just a brief
15 recess. The lawyers tell me they're not going to take
16 terribly long for opening statements. So let's give them a
17 few minutes to get ready.

18 You may retire in the jury room.

19 Can we be ready in about five minutes? Okay. We stand
20 in a brief recess.

21 You may retire to the jury room.

22 Could I see counsel up here for just a sidebar?

23 (Jury Out)

24 (Sidebar conference off the record with counsel)

25 (Recess from 4:11 p.m. to 4:21 p.m.)

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I N D E X

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I, Teresa M. Ruffner, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Teresa M. Ruffner

June 19, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware corporation,

Huntington, West Virginia
March 24, 2015

Defendant.

TRANSCRIPT OF JURY TRIAL - DAY 1
BEFORE THE HONORABLE ROBERT C. CHAMBERS,
UNITED STATES DISTRICT JUDGE, AND A JURY

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

JA3299

1 THE COURT: All right. Let's bring the jury out.

2 (Jury In)

3 THE COURT: All right. First, I want to thank you
4 for sitting in the same seat you were in today because -- or
5 are you?

6 JUROR #33: No.

7 THE COURT: My mistake. Terry always does a chart
8 with all the jurors in their seats. The way you all were
9 sitting down, it looked to me like you were moving to a chair
10 because you thought you were supposed to be there.

11 THE CLERK: Oh, no, they're really messed up.

12 THE COURT: I'm sorry. We could have dealt with
13 that tomorrow. Thank you.

14 We'll worry about it more tomorrow. In the morning when
15 you come in, we'll get our little chart out and make sure that
16 we've got it right. We want you to be comfortable.

17 Now, the lawyers are ready to do opening statements. My
18 understanding is that counsel agree that each side is going to
19 use either exhibits or demonstrative aids in their opening
20 statement, and each side disclosed and exchanged each, and
21 there's no objection. Is that right?

22 MR. BIBB: That is correct.

23 MR. JAVINS: Correct, Your Honor.

24 THE COURT: All right. Go ahead, Mr. Javins, for
25 the plaintiffs.

1 MR. JAVINS: Thank you, Your Honor.

2 Counsel, members of the jury, good afternoon.

3 RESPONSE: Good afternoon.

4 MR. JAVINS: I want to start this opening with a
5 real simple rule, and that rule goes like this: Carmakers
6 must make gas pedals that don't stick to prevent runaway cars
7 and trucks to protect the safety of us all. If the gas pedal
8 becomes stuck and, as a result, someone is hurt, the carmaker
9 is responsible for the harm.

10 In 1987 Ford Motor Company designs a cruise control for
11 their vehicles, and that cruise control uses a cable to open
12 the throttle in lieu of the gas pedal. Safety engineers at
13 Ford performed safety evaluations of this cable, and that
14 evaluation is called a failure modes effects analysis, and
15 you're going to hear about it a lot this week.

16 The purpose of the failure modes effects analysis is to
17 identify how this thing, any part -- but we're talking about
18 this part in this case -- how it can fail. The purpose is to
19 identify mechanisms of failure. And Ford calls these failure
20 modes.

21 For this particular cable, originally when this design
22 first came about, Ford identifies that, as regards to the
23 actuator cable, Ford calls this a speed control cable. Most
24 people call it a cruise control cable, but Ford called it a
25 speed control. And I don't want to get lost on that.

1 The actuator cable can become jammed or sticking because
2 dirt and contaminants will cause the cable to bind and stick.
3 The result of that binding is the throttle, the thing that
4 lets air into the engine, the throttle will not return to idle
5 position. It remains stuck open. That's where you have a
6 runaway vehicle, an unintended acceleration.

7 So when dirt and debris and contaminants get in this
8 device that can bind it up, this can cause a throttle to stick
9 open. And when the cable cannot move, when this cable can't
10 move, the throttle can't move and the gas pedal can't move.
11 It's all stuck.

12 Now, as part of the safety analysis I was telling you
13 about, Ford rates the severity of this failure I just
14 described to you. For this particular failure, Ford rates the
15 severity 10 on a scale of 1 to 10.

16 Now, what does 10 mean? It means that the failure mode
17 affects safe vehicle operation, it means that the failure mode
18 can occur, it is hazardous, and it can occur without warning.
19 It's the highest severity rating Ford has.

20 And Ford has other rules. In their handbook, their
21 handbook says if you're doing the safety study, the failure
22 modes effects analysis, and you encounter a failure mode -- a
23 severity, rather, of 9 or 10, you should change the design
24 because the only way to affect the severity of a failure mode
25 is to change the design.

1 And so when Ford encountered back in 1987 this failure
2 mode I just described to you where this part can get stuck in
3 here -- and we'll talk about it in a moment -- did Ford change
4 the design? No, Ford does not change the design.

5 Update to 1997. Ford updates the cruise control. They
6 go from using vacuum tubes to electronics, but the actuator
7 cable is largely the same, and the terminology changes. Ford
8 does another safety analysis, a failure modes effects
9 analysis. And the safety engineers at Ford do this analysis,
10 and this time they say that the cruise control, that this
11 part, doesn't disengage per driver command.

12 Okay. And when you hear from James Engle tomorrow,
13 it's -- I'm going to read it with my assistant, Jennifer
14 Holzapfel, because he's not here. What we'll talk about,
15 that's essentially the same as the throttle does not return to
16 idle position. If it doesn't disengage and the throttle is
17 open, the throttle remains open, the gas pedal remains down.

18 And why can the throttle remain open? Why does it not
19 disengage? Because of binding of mechanical components.

20 And what was the severity rating in 1997? It was 10,
21 meaning it's the highest severity. It can fail without
22 warning. So what does Ford do about that? Ford does not
23 change the design.

24 Now, November 20, 2012, a Ford truck is going the speed
25 limit, about 45, 50 miles an hour on Route 60 that's known as

1 MacCorkle Avenue, in St. Albans, West Virginia, toward
2 Charleston. The gas pedal becomes stuck. The driver taps the
3 gas pedal, hoping to unstick it. He taps it again. The truck
4 speeds up. He looks down to make sure he's hitting the gas.
5 Then he hits the brakes. He looks down again. He's trying to
6 hit the brakes. He's getting no response.

7 He's looking down to see if there's something under the
8 pedal. And at this point, I think witnesses will say his
9 driving is erratic. I think Mr. Nease will tell -- I think
10 you'll hear the driving is erratic. The Ford truck is gaining
11 speed. There's cars up ahead. This truck is approaching an
12 intersection. It's a fairly heavily traveled road.

13 And rather than approach the intersection, the driver
14 makes a decision and turns right and goes off the highway,
15 through the grass that you see here, through that grassy lot,
16 down a slope, and across the Domino's parking lot to avoid
17 traffic.

18 He's going through the grass. He's not slowing down.
19 The truck is not slowing down. The truck approaches an 8-inch
20 concrete berm. At this point, the truck is going fast. It is
21 not slowing down. That's a hard hit. The front end of the
22 truck goes airborne. It's going too fast to stop, and
23 applying the brakes isn't working. The throttle is open;
24 strikes another 8-inch berm, goes through a mulch bed toward
25 the parking lot in the distance that you can see in the video

1 screen in front of you. The blue building or the blue roof is
2 Mousie's parking lot in St. Albans, heads towards Mousie's.

3 The driver of this truck has to thread the needle to go
4 through one of the car wash bays at Mousie's; and in doing so,
5 he strikes one of the bay walls with the right side of his
6 truck. This shoves the driver a little toward the middle of
7 the vehicle. He's thrown toward the middle of the vehicle
8 after he hits this wall. The engine continues to race. The
9 truck crashes into a brick wall.

10 The engine continues to race. The tires are spinning.
11 There's an eyewitness at the car wash. He sees this happen at
12 the last second and feels lucky to be alive because the truck
13 missed him. He walks over to the truck ripped into the brick
14 wall. He smells burned rubber. He sees smoke from the tires.
15 The rear end of the truck, because the tires are spinning, is
16 still fishtailing. It's going. The tires are spinning.

17 The witness walks up to the driver's side window and
18 makes eye contact with the driver. At this point, the engine
19 is so loud, the eyewitness can't even try to talk to him. So
20 he communicates with hand signals, cut the engine.

21 (Indicating) The driver looks back and mouths, "I can't."

22 The wheels are continuing to spin. Eventually the driver
23 does get out and eventually the engine does stop after the
24 driver is out of the vehicle.

25 The witness calls 911. The police from St. Albans Police

1 Department show up. Officers arrive and observe the blood on
2 the gentleman's face. He's holding his abdomen the seatbelt
3 hurt, but he's alert. And the first thing that driver tells
4 the police is, "My gas pedal stuck."

5 Officers look into the cab, and they see a gas pedal down
6 to the floor. And their report reports that. You're going to
7 hear from Officer Dent. Yes, the gas pedal was to the floor.

8 The driver suffered six broken ribs, internal injuries,
9 injuries to his lungs that led to pneumonia, respiratory
10 failure, infection, multiple surgeries, hospitalization of 80
11 days, 47 of which were spent in the Intensive Care Unit,
12 multiple permanent injuries to his leg and abdomen.

13 The driver of that vehicle was Howard Nease.

14 So why are we suing Ford Motor Company? First, because
15 Ford designed and made a gas pedal and all the other
16 components that could get stuck. How do we know that Ford
17 designed a gas pedal that could stick? Their 1987 studies
18 confirm it. How else do we know? Their 1997 studies confirm
19 it.

20 And you're going to hear from a gentleman, an engineer
21 with extensive experience in cruise controls and automotive
22 components. His name is Sam Sero. He's going to tell you
23 that the design of this cruise control cable allowed
24 contaminants to continue to enter and cause binding. And when
25 it binds, it binds without warning, and that's what happened

1 here. Simply stated, a gas pedal shouldn't stick; and if it
2 does, it's defective.

3 The second reason we're suing Ford is that when they did
4 learn that the gas pedal could stick in their studies, they
5 didn't change the design even though their own FMEA handbook
6 says if a failure mode rates a severity of 9 or 10, you must
7 design again; you must redesign it.

8 So how does -- how does a speed control cable foul up the
9 entire Ford Ranger pickup truck and how did it cause the gas
10 pedal to get stuck? Allow me to show you.

11 This is an animation or a photograph of a computer image
12 of Mr. Nease's 2001 Ford Ranger pickup truck. And we're
13 moving into the inside. We're looking through the hood, and
14 we see a few components.

15 Now, the first thing you see in yellow is the throttle
16 itself. That's the thing that has a throttle valve. And that
17 allows air to enter the engine. When the throttle valve is
18 open, the motor revs up; it runs. And when the throttle valve
19 closes, it slows down.

20 The next -- the next thing you see is the accelerator
21 cable. That's the linkage between the gas pedal and the
22 throttle. When the driver steps on the gas pedal, it opens
23 the throttle through that linkage. And when the driver lets
24 his foot off the gas pedal, that linkage closes the throttle.

25 The thing you see highlighted now is the speed control

1 cable. Now, it's used separate and apart. It connects to a
2 separate motor that sets the throttle at some desired opening
3 depending on what speed you want to go without having your
4 foot on the gas pedal.

5 The thing is, every time -- every time the accelerator
6 pedal goes forward and backward, which is many, the speed
7 control cable goes forward and backward too. And every time
8 it does that, there's an opportunity for debris to enter this
9 mechanical device. (Indicating)

10 Next. And so just to be clear, the yellow image you see
11 there is the accelerator cable, and that's going to the pedal.

12 Next, please.

13 And that's the speed control cable going to the servo.

14 Now can we go in?

15 And that's the wire going to -- that engages the servo
16 which turns the speed control on.

17 Can we go on now?

18 All right. So here's how these components work together.
19 The yellow cable you see there is the accelerator cable.
20 That's the cable that opens and closes the throttle every time
21 the driver places his or her foot on the gas pedal. And
22 you'll notice at the end of that pedal, there's a wipe. And
23 that wipe is used to clean that cable off, to make sure no
24 contaminants move further on where there's a cable sheath.

25 The cable beside it is the speed control cable or the

1 cruise control. There's a cable inside; and then on the
2 outside of it, there's what's called a guide tube. That's
3 this smaller yellow tube. And every time the accelerator is
4 pressed, that guide tube moves back into the cap tube. Again,
5 every time the driver pushes the accelerator pedal or the gas
6 pedal, this device moves. And that's an opportunity for
7 contaminants to get inside the cap tube and bind it up.

8 And you'll notice there's no guard. There's a gap, in
9 fact, at the end of the cap tube. There's a sizeable gap,
10 large enough to allow debris to enter into the space between
11 the cap tube and the guide tube. And that's where binding can
12 occur, just like the failure modes effects analysis says.

13 Next image.

14 And so this is how the system works together. You'll
15 notice that the driver's foot is on the pedal. The driver is
16 pressing the gas pedal. That pulls the accelerator cable back
17 and opens and allows air into the throttle. When that
18 happens, that guide tube I told you about, well, that's going
19 into the cap tube along beside. The speed control isn't being
20 used. It's not being used at all. But this collection point
21 is moving back and forth, back and forth continuously every
22 time the gas pedal is pressed.

23 When the driver removes the foot from the gas pedal, the
24 throttle closes and the guide tube goes back out, only to wait
25 for the accelerator pedal to be pressed again. It goes back

1 in.

2 Next.

3 So this is what the guide tube looks like going into the
4 cap tube when it goes through these cycles I'm describing to
5 you. That's generally with the guide tube stretched out as if
6 the throttle is closed. And then as the throttle is
7 depressed, when the driver is pressing the gas pedal, it moves
8 back, and it goes in further. So with that, again, every time
9 it cycles, that's an opportunity for binding to occur, okay?

10 That's what we're talking about, and that's how a little
11 speed control cable can cause a gas pedal, can cause a
12 throttle to become stuck in the open position. It doesn't
13 even have to be used.

14 So we're suing Ford Motor Company for violating a pretty
15 fundamental rule. Ford violated its own safety rules, and
16 Mr. Sero will tell you that contaminants getting into this
17 mechanical device can cause it to stick and bind, just like
18 the failure modes effects analysis says. And when that
19 happened, Mr. Nease's gas pedal stuck and it caused his truck
20 to run nearly wide open and he crashed into the brick wall.
21 And that's what harmed Mr. Nease.

22 Back to the -- so how could Ford have prevented this --
23 I'm sorry, Rich, back to the tube -- from sticking?

24 We talked about the gap, and there's nothing guarding
25 that gap. There's nothing to keep binding elements out of the

1 cap tube and the guide tube. There's nothing. And so any
2 number of contaminants, metallic flakes, sand, grease, grime,
3 and it can harden over time. All it has to be is harder than
4 plastic and bigger than four-one-hundredths of an inch and it
5 can cause that to bind.

6 So what could Ford have done? Well, you really just need
7 to look at the accelerator cable. Look at the accelerator
8 cable in the lower, the one -- you see the guard I was telling
9 you about. It's right there. You place something comparable
10 to that on the cap tube, and that eliminates the hazard. That
11 would have been a redesign that Ford could have employed when
12 it encountered the 10 severity mode.

13 Ford did not do that, as you can see. And that's why
14 we're here. But before we came here today, before coming to
15 trial, we had to determine several things; for example,
16 whether Mr. Nease was simply confused, whether he was
17 unhealthy or was just an unsafe driver, and you know that
18 might explain why he drove off the road. Confusion could
19 explain that.

20 But confusion or health, that doesn't explain the gas
21 pedal stuck to the floor. Confusion and health doesn't
22 explain the fishtail that was observed by the eyewitness where
23 the tires were spinning. And confusion and bad health doesn't
24 explain the burnout. And we spoke to Mr. Nease about any
25 concerns of confusion, and he felt good that day. He

1 remembers every detail. And Mr. Nease's doctor, Dr. Moreland,
2 family doctor for 20 years, will tell you that Mr. Nease had
3 just beaten cancer, and he'd just had a back surgery after
4 three other unsuccessful back surgeries, and he was finally,
5 finally on the mend, feeling good. That's why he bought this
6 truck, to do chores.

7 Mr. Nease was on medications. We worried about -- we
8 wondered if that may have played a part, except all the
9 medications that Mr. Nease took that day he'd been taking for
10 a long time without side effects, without confusion, without
11 drowsiness, and all at the direction of his doctor. In fact,
12 Mr. Nease's doctor, Mark Moreland, his doctor for many years,
13 will tell you that the medications that were prescribed to
14 Mr. Nease didn't make him an unsafe driver.

15 Moreover, Mr. Nease went to CAMC immediately after this
16 wreck. There will be no records from CAMC which suggest that
17 over the entire 80 days he was there, there's no records that
18 suggest that the medications Mr. Nease was on affected his
19 driving that day. So we ruled that out. In fact, I don't
20 think anyone is going to come in this court and competently
21 tell you or suggest to you that Mr. Nease was affected by
22 medications on the day of his crash.

23 Now, we also needed to know if Mr. Nease fell asleep.
24 It's a possibility, because there is one medical record that
25 you may hear Ford discuss that's going to question whether he

1 fell asleep or not. And so we looked into that, except
2 Mr. Nease remembers every detail of the crash. He told the
3 police officer that his accelerator stuck, okay? And heart
4 attack and stroke and things like that have been ruled out at
5 CAMC.

6 When he goes into the emergency room, the emergency room
7 doctor asked what happened, and Mr. Nease says, "My gas pedal
8 stuck." And he was hurt badly in the crash. And because of
9 the pain, the longer he stayed around, by the time he was
10 getting in the ambulance, I think there may have been some
11 confusion. He was in great pain by that point.

12 And so there's some suggestion that maybe he was unclear,
13 but maybe -- maybe the questions presented to him were
14 unclear, because he remembers everything. There's no
15 confusion. Mr. Nease intended to drive his truck off the road
16 to avoid a bigger crash. There's no confusion. That was --
17 that was a very deliberate act.

18 We also had to determine whether Mr. Nease simply had his
19 foot on the wrong pedal. We've heard about that. I suspect
20 Ford is going to make some kind of allegation like that. So
21 we talked to Mr. Nease about that, and he says he was fully
22 aware of which pedal he was pressing. He looked down. He
23 looked down at the accelerator. First, he tapped it once or
24 twice to try to unstick it, which seems to me like a logical
25 thing to do, and he looks down to see if there's any

1 obstruction, something in the way causing the problem, and
2 then he's looking to make sure his foot is on the brake
3 because at this point he's trying to apply the brake and he's
4 pumping on the brake. But it's not working because the
5 throttle is open. It's not working effectively anyway. It's
6 not slowing him down. And perhaps this explains why there may
7 be a witness who will describe Mr. Nease's driving as erratic.
8 I suspect Mr. Nease will tell you that by the time he
9 encountered this and realized he was in a perilous situation,
10 yeah, he was driving erratically because he had a decision to
11 make. And he decided to go off the road to secure the safety
12 of others and run into a brick wall instead.

13 And we talked to the eyewitnesses who said that the tires
14 continued to spin, the gas pedal was stuck to the floor,
15 everyone checked the truck. The gas pedal was stuck to the
16 floor after Mr. Nease got out of the truck. That's not
17 consistent with someone simply pressing the wrong pedal. If
18 you're simply pressing the wrong pedal and everything is
19 working correctly, the gas pedal doesn't stay stuck to the
20 floor after the driver gets out.

21 And, of course, that's consistent with Ford's own
22 documents which say that binding can cause this to stick or
23 could cause the throttle to stick in the open position.

24 You know, back to that foot thing, did he hit the
25 wrong -- did Mr. Nease hit the wrong pedal? There may be a

1 suggestion that if you look at the underside of the dashboard,
2 there may be marks on it. And I think we might hear someone
3 on behalf of Ford say, "Well, I see a mark closer to the
4 accelerator pedal instead of the brake, and that tells -- that
5 suggests to us that perhaps he had his foot on the brake."
6 Don't forget everything I just told you about the pedal being
7 stuck after the event.

8 But also don't forget that Mr. Kemplin, the eyewitness,
9 said that the truck -- he saw the underside of the truck
10 because he hit this concrete berm so hard, the front end of
11 the truck became airborne. And by this point, Mr. Nease is
12 flying around in the vehicle when the crash is inevitable.
13 It's inevitable he was going to crash at this point.

14 And I don't know that anyone could estimate where your
15 feet might be at that point after you've hit several 8-inch
16 concrete berms. And so to suggest that Mr. Nease's knee
17 imprint isn't made where you'd like to see it under an optimum
18 situation just doesn't add up. So we considered that, and it
19 doesn't add up.

20 We also had to determine if there was evidence of some
21 other mechanical failure that might explain why the throttle
22 remained open; was something else holding that throttle open.
23 Well, if something else was, that might explain the fishtail
24 and the burnout. So we looked at the throttle. Ford did too.
25 We looked at it together.

1 Now, this vehicle, the accelerator pedal, the gas pedal
2 stayed down as soon as this crash was over, but then it went
3 off to a salvage yard. It may have gone to a couple of
4 salvage yards. And, finally, we got it back. We got the
5 truck back to secure it so we could do an investigation. And
6 when the investigation -- we finally uncovered the throttle.
7 Well, in fact, before that, Mr. Sero will tell you that the
8 gas pedal had raised back up. The truck had been moved
9 around; and whatever was binding this, perhaps it loosened up.
10 The truck has been loaded and unloaded on several trucks. The
11 weather has changed, okay?

12 And Mr. Sero says it's normal to see the gas pedal return
13 back and this binding finally give up. And so when we finally
14 looked at the throttle, it was returned back to the closed
15 position with the exception of one piece of plastic, okay?
16 And that piece of plastic is a piece of plastic from the
17 throttle body, the part of the throttle.

18 And so when this throttle finally closed, it came to rest
19 on that piece of plastic. And you're going to hear Mr. Sero
20 and others explain that what you see there is a throttle at
21 generously a 5-percent opening. And what you're going to hear
22 is that's not what the throttle looked like at the time of
23 this crash.

24 I think Ford might want to suggest to you that that's why
25 the tires continue to spin, except that's not an open

1 throttle. That's pretty close to a closed throttle. That's
2 the kind of throttle we see in an idle position, and you're
3 going to hear about that throughout this trial.

4 So while Ford might want to suggest that that explains
5 why the tires continue to spin, that's not what a throttle
6 looks like when you're doing a burnout. When people do a
7 burnout, the throttle is more like wide open. That's what the
8 throttle looked like after it finally released and came to
9 rest on a piece of plastic.

10 We also had to consider why the brakes didn't overcome
11 the open throttle. I think you're going to hear evidence from
12 Ford that the brakes should be able to overcome the open
13 throttle. Well, if that were true, we would expect to see
14 that in the failure modes effects analysis when they rate this
15 thing a 10. There's no mention of that in the failure modes
16 effects analysis.

17 And if the brakes could overcome an open throttle, then
18 surely this wouldn't rate a severity of 10, a stuck throttle.
19 If the brakes could overcome it, I would think the severity
20 would be something much lower.

21 The truth is, Mr. Sero will tell you that when the
22 throttle is open, that depletes all the air in the manifold.
23 And the way the brakes work is that typically people remove
24 their feet from the throttle before they apply the brakes.
25 The manifold provides air that goes to the brake chamber and

1 provides air assist. So long as the throttle is open, the
2 brakes don't have that assist. And so when you step on them,
3 you're not getting any feedback, okay? They're not braking as
4 effectively. They simply don't brake as effectively.

5 And we also had to consider the multitude of tests that
6 Ford did on this cable. You may hear some people on behalf of
7 Ford discussing the multitude of tests that were done, like a
8 life cycle test, a salt mist test, a chemical test, Arizona
9 dust test, and all these tests that this was subjected to,
10 except that didn't change the severity rating. This still
11 rated a severity of 10.

12 It needed to be redesigned. A simple wipe or boot at the
13 end of this cap opening, cap tube opening, would be a good
14 first step. You can test something all you like, but that
15 doesn't fix the design and that doesn't change the design.
16 And you're going to hear from Mr. Sero, who's going to tell
17 you that all that testing, he's going to tell you what I just
18 said basically. It doesn't make that design any better. It
19 doesn't change the design. It just means you've tested for
20 some things, and that's it. It certainly doesn't -- that's
21 not a new design.

22 And then, finally, we had to determine if stuck
23 accelerator pedals can happen in the real world. Is Mr. Nease
24 the only person who has had a stuck pedal? You're going to
25 hear from Jonathan Sprunger. He's a representative from Ford.

1 Sadly, we have to read his deposition in too. He's in
2 Dearborn, Michigan. He's not going to be here, but we're
3 going to read that for you, and he's going to talk about all
4 the telephone calls from Ford customers calling into the Ford
5 hotline saying, "On my 2001 Ford Ranger, my gas pedal is
6 sticking" or "I've got an open throttle. I've got a stuck
7 accelerator, stuck throttle." You're going to hear multiple
8 reports of that. It suggests to me that Mr. Nease's event is
9 not an isolated event. This is something that really happens.
10 It's not merely hypothetical.

11 So how does what we just described relate to Mr. Nease?
12 Well, it's all about harms and losses. To figure that out,
13 you've got -- to do your job, you've got to figure out the
14 harms and losses suffered by Mr. Nease; nothing else. How
15 much will it take to fix the harms and losses that can be
16 fixed, help the harms and losses that cannot be completely
17 fixed, and make up for the harms and losses that can't be
18 fixed or helped?

19 I'll explain the mechanism of injury. Due to the stuck
20 gas pedal, Howard's Ford truck crashed head-on into a brick
21 wall at a fast rate of speed, according to eyewitnesses.
22 There was a very hard impact. With the seatbelt on and the
23 air bag deployed, Mr. Nease suffered six broken ribs on the
24 left side of his body.

25 He walked out of the truck. I think initially he hoped

1 he might shake this off, but it didn't work out that way. You
2 see, when many ribs are broken, lung damage occurs, and lung
3 damage causes respiratory stress. You can't get enough
4 oxygen. Not being able to breathe requires a ventilator to
5 help you breathe. And being confined to a hospital bed, being
6 sedated and not being able to eat, and being hooked to a
7 ventilator, this renders the patient in critical care. This
8 leads to many other problems.

9 At this point when you're hooked up to all these things
10 in a bed, the patient suffers pneumonia, has to have feeding
11 tubes, infections, blood clots, bed sores, surgeries to remove
12 infections, kidney failure due to bacteria in the bloodstream,
13 damaged nerves from being in bed so long. That's how this
14 wreck can affect someone.

15 Immediately after the crash, Howard was actually able to
16 talk, and he told the police officer that he crashed because
17 the gas pedal got stuck, like I told you earlier. He was
18 bleeding from the face a little bit. He had some pain in his
19 chest and abdomen, but he thought he was going to be okay.

20 Shortly after that, he became somewhat confused because
21 the pain became greater. He was taken to CAMC by ambulance.
22 And because of his confused state, two doctors at CAMC thought
23 maybe Howard suffered a heart attack or a stroke.

24 That was ruled out. He suffered no heart attack, no
25 stroke. What he did have was six broken ribs.

1 Just a moment, please.

2 Can you see that?

3 After being admitted to CAMC with the broken ribs, the
4 lung damage that caused Howard to suffer permanent respiratory
5 distress, he had to be intubated and hooked to a ventilator to
6 help him breathe. After that, he was quickly moved to the
7 ICU. Howard spent 47 days in the Intensive Care Unit, and the
8 injuries just dominoed from there.

9 During that 47 days, he had to undergo many surgical
10 procedures. For starters, Howard needed a tracheostomy. And
11 that's a hole in the neck so the ventilator could be moved
12 from his mouth straight to his lungs. He needed to have a
13 feeding tube surgically implanted on December 11, 2012.

14 The tube was found to be in the incorrect location after
15 the first attempt, though. So on December 13, 2012, surgeons
16 had to perform another surgery to open up his belly and
17 replace the feeding tube.

18 The feeding tube on that occasion leaked and caused
19 infection throughout the inside of his stomach. So that
20 leaking feeding tube required Howard to have his -- be
21 surgically opened again on December 17, to have surgery to
22 remove all the infection that leaked into his belly.

23 And while they were at it, the gallbladder was found to
24 have become infected because of all the complications, and the
25 gallbladder was removed.

1 The infection and the pneumonia caused Howard's kidneys
2 to shut down. He had to have dialysis, and he continued to
3 have dialysis for three months. This is Howard, and this is
4 how he looked while he was in the Intensive Care Unit.

5 On Christmas Eve, the staff at CAMC and actually her
6 children, Nancy Nease's children -- that's Howard's wife --
7 they told her that she needed to go home to get some well-
8 deserved rest because she had been sitting by Howard's side
9 the entire time. And so she went home.

10 No sooner than she got home, she received a telephone
11 call. It was the hospital. And they informed Miss Nease that
12 her husband had coded and he had to be revived. That
13 terrified Mrs. Nease. And she really hadn't wanted to leave
14 his side since. The one time she does, things turn for the
15 worse.

16 So she rushed back to the hospital, afraid to leave his
17 side, so she could tend to his bed sores and the infected I.V.
18 lines and the other complications. He suffered from something
19 that's called *C. diff* diarrhea. I didn't even know what that
20 was, but I've learned that you can only get that in a
21 hospital. And it's the worst kind of diarrhea you can have.
22 And he suffered from that even long after he got out of the
23 hospital. The complications just continued to cascade.

24 So what about the permanent injuries? I mean, Howard was
25 able to live through all this, after all, which is pretty good

1 proof, all things considered, he's a strong man. He was left
2 with three permanent injuries that have forever changed his
3 life. All the surgery and the infection in his belly caused
4 Howard to suffer from permanent pain in his stomach. It
5 ranges anywhere from a 4 to a 10, but it's constant. And when
6 he eats, it's more like -- the more likely scenario that when
7 he tries to eat, the pain goes to a 10 out of 10. He'll tell
8 you that 10 out of 10 doesn't happen every time, but it
9 happens enough that he really doesn't look forward to eating.
10 Most of the time, he's miserable. And here's what the fear of
11 eating does:

12 The fear of eating and the other pain isolates Howard
13 from his family. Most families, when they get together, we
14 get together over a meal. That's what families do. Howard
15 doesn't look forward to that because it's a source of misery
16 for him, and so he finds himself not being as agreeable as
17 maybe he would otherwise.

18 Howard's family and his doctor of over 20 years will tell
19 you that the pain is excruciating. When it happens, Howard
20 leaves his family, he curls up, he goes into a full sweat, and
21 oftentimes he goes to his room and he comes to tears.

22 Nancy sees Howard like that. But that doesn't make the
23 pain any better. And so what's he left with? The only way he
24 can deal with the pain, he's left with taking narcotic pain
25 medication every single day to deal with the pain. Nobody

1 wants to take narcotic pain medication if they don't have to.
2 That's his only recourse.

3 Howard lost so much weight, at one point he was about
4 60 pounds. I think that earlier photograph probably just
5 about demonstrates that. He was just lying in bed. And
6 because the nerves going to his right foot got damaged, Howard
7 can't raise his right foot. It's extremely sensitive. He has
8 to wear a brace on the foot, and this keeps him from tripping.
9 He also uses a cane for balance.

10 Because of nerve damage to the foot, he can't drive. He
11 has to be taken everywhere that he needs to go by his wife or
12 by someone else who has the time to take him.

13 He can't walk on hills. His mobility and his
14 independence have been destroyed. Howard's family doctor and
15 his family will tell you that the Howard Nease you see here
16 today is not the same Howard Nease they knew before the gas
17 pedal got stuck.

18 So what about before? After all is said and done, you're
19 here to see the difference between Howard before the wreck and
20 Howard now. This will help you determine the level of harms
21 and losses that he's suffered because of this event. So you
22 know what Howard is like now. What was he like before?

23 Well, he looked like this two months earlier, right
24 before his wreck.

25 THE COURT: I'll give you just a few more minutes.

1 MR. JAVINS: Thank you, Judge.

2 This was September 18, 2012. He was eating and smiling.
3 This was just a few weeks after he'd overcome esophageal
4 cancer. They were able to surgically remove it and he was on
5 the mend. He was happy. He was finally eating. He was able
6 to beat that.

7 And before, admittedly Howard had back troubles. He had
8 several back surgeries. But in 2012, he had gone to Johns
9 Hopkins in Baltimore, and I think this was his fourth surgery
10 and this was a redo surgery to correct the ones that didn't
11 really take. It took. And so he's finally better now. No
12 esophageal cancer. The back is finally better. That's why he
13 bought the truck one week earlier in the first place, because
14 he had projects to do and he wanted to get to them because he
15 felt great.

16 So what can the jury do about all this? Well, there's
17 three things you can do. You can award a verdict to help fix,
18 help and make up for. First, we're here to determine how much
19 money. That's all a civil court can do. How much money will
20 it take to fix everything that can be fixed? For example,
21 verdict money for Howard's medical care and his costs.

22 Ford has stipulated that the medical bills in this case,
23 the medical bills, past medical bills alone, are \$768,828.35.
24 Over a half of those bills were incurred at CAMC. That's just
25 for the doctors, the surgeons, and the therapists who have

1 performed procedures up to this point. That's it.

2 Second, we're here for you to decide how much it will
3 take to help the harms and losses that can be helped but not
4 completely fixed. And by that, I'm talking about a minimum
5 life care plan, okay? The minimum level of care that will
6 make Howard comfortable and safe, okay?

7 There's things that he needs, pain management, okay,
8 because of the stomach pain, a driver evaluation perhaps so he
9 can see if maybe he can drive a vehicle with hand controls,
10 counseling because he needs it, okay? Because of the kidney
11 failure, other doctor visits to help with the kidney failure,
12 all the complications that he currently deals with, that's
13 what -- that's what the second help money is for; how can we
14 help Howard. You can't fix it. How can we help that? All
15 the things he needs.

16 And, finally, we're here for you to decide how much it
17 will take to match the level of the worst harms. For example,
18 Howard's inability -- I'm almost done, Judge -- Howard's
19 inability to walk normally or the fact that Howard -- because
20 there's some medical care we can do for that. He doesn't walk
21 normal. And the fact that he's afraid to eat and when he
22 does, he regrets it and he loses time, precious time with his
23 family because that's what families do, and he's irritable;
24 birthday dinners, Christmas gatherings. They're not the same
25 now because those things are gatherings normally around food.

1 Howard doesn't ride his motorcycle anymore. All the
2 things that made him happy have forever been changed. Howard
3 has lost his independence. He's lost his mobility. And we'll
4 show you what can not be fixed so you can determine how much
5 it takes to match.

6 But for the rest of Howard's life, he and Nancy will live
7 every moment with what happened. This is not a broken leg
8 that gets better. This is the harm that goes on harming. And
9 by the end of this case, you'll see the evidence, the facts,
10 and the truth, and you'll have to come back and ask for a
11 verdict consistent with -- we're going to ask you for a
12 verdict consistent with the harm that this stuck gas pedal
13 caused. That's what we're asking for, a verdict consistent
14 with the harm caused by this stuck gas pedal caused by this
15 part. (Indicating)

16 The medical bills in this case, as I said, past medical
17 bills are 768,000-plus dollars. The minimum life care plan,
18 just to help him going forward to give him some things that
19 might make the pain better, is \$249,000. Together, that's
20 over a million dollars. And that's just to pay people for
21 basic services. Most of that is to pay the doctors back for
22 services they've already rendered. Those dollars go to other
23 people. But that's only part of your verdict.

24 The more important part is what the stuck gas pedal did
25 to the rest of Howard's life. And that is overwhelmingly

1 significant. And so in kind, because of this overwhelmingly
2 significant event caused by the gas pedal, we are asking for
3 an overwhelmingly significant verdict.

4 Thank you.

5 THE COURT: All right. Mr. Javins, if you would
6 take your exhibits down and let Mr. Bibb set up. My court
7 reporter is changing her tape.

8 Whenever you're ready, Mr. Bibb.

9 MR. BIBB: Thank you, Your Honor. Ladies and
10 gentlemen of the jury, may it please the Court. It's late in
11 the afternoon. I'll try to be brief.

12 Ladies and gentlemen, I'm Randy Bibb, and along with Andy
13 Cooke and Ryan Clark, we're here to represent the men and
14 women of Ford Motor Company who manufactured, nearly 16 years
15 ago, a motor vehicle that Mr. Nease was driving when he was
16 involved in a single-vehicle wreck in November of 2012, more
17 than two and a half years ago now.

18 We're going to talk about what the evidence is going to
19 show in this case. And the evidence that you will see in this
20 case will show that Mr. Howard Nease did not receive his
21 injuries because of any defect that existed in the 2001 Ford
22 Ranger when it was manufactured and sold by Ford 11 years
23 earlier.

24 No, he was injured because, the evidence is going to be,
25 he made a mistake. Mr. Nease mistakenly stepped on the gas

1 pedal rather than the brake pedal. He did this even though he
2 is an experienced driver. No doubt about it. But drivers are
3 human beings, and human beings from time to time are known to
4 make mistakes.

5 No one likes it when someone is injured in a car wreck,
6 and certainly no one at Ford ever wants to see someone injured
7 in a wreck involving a Ford vehicle. And we're not disputing
8 that Mr. Nease was injured. We just saw a long presentation
9 about his injuries that occurred as a result of a wreck. Ford
10 Motor Company stipulates that he was injured in this wreck.

11 As this judge read to you, we stipulated the amount of
12 medical bills Mr. Nease incurred. But we're also going to
13 present some evidence about his medical condition before the
14 wreck and at the time of the wreck that is important for you
15 to consider in trying to determine what happened on
16 November 20th, 2012.

17 And, again, we all feel sorry for Mr. and Mrs. Nease.
18 You know, if there was any issue of whether this case was
19 about sympathy, there wouldn't be a need for a lawsuit or a
20 case. Everybody feels sympathy for the Neases.

21 Now, why we are here today and why Ford Motor Company is
22 here is because the plaintiffs' attorneys have chosen to blame
23 Ford and the 2001 Ranger pickup truck for the wreck and
24 Mr. Nease's injuries.

25 Now, as part of this case, Ford is going to prove three

1 things about what happened on November the 20th, 2012. First,
2 the Ranger speed control cable did not get stuck at the time
3 of the crash. It was not stuck before the crash. It was not
4 stuck after the crash. And there is no evidence that it was
5 stuck at the time of the crash.

6 Two. The physical evidence, all of the physical evidence
7 is consistent with Mr. Nease making the pedal mistake and
8 stepping on the accelerator rather than the brake. There's
9 physical evidence on the truck. There's physical evidence at
10 the scene that proves this.

11 Third, if Mr. Nease had applied the brakes, the Ranger
12 would have stopped long before it hit the brick wall.

13 Thank you, Mr. Doyle.

14 This is the photo of the truck before it was wrecked.
15 Let me begin by telling you a little bit about the history of
16 this Ranger. It's a 2001 model. By the time of this wreck in
17 November of 2012, it was more than 11 years old. It had been
18 driven more than 116,000 miles. It had two prior owners, both
19 of whom had maintained the truck very well, and neither of
20 those owners had ever experienced an occasion where the
21 accelerator stuck or the brakes failed to stop the vehicle, as
22 Mr. Nease's lawyers claim.

23 Mr. Nease found this truck over the Internet. That's why
24 we have pictures of the truck before the wreck. They were
25 advertised on the Internet. And his daughter drove him all

1 the way to Findlay, Ohio, up near Toledo, where he found this
2 truck over the Internet.

3 The truck was clean. It drove well. And Mr. Nease
4 bought it on the spot. This was November 10, 2012, ten days
5 before the wreck. It was the first Ranger that Mr. Nease had
6 ever owned.

7 This is the route that Mr. Nease agrees he drove by
8 himself from Findlay back to his home in Poca. It's more than
9 240 miles. He took interstate. He took surface roads. He
10 went through stop signs. He went through traffic lights. And
11 during that drive, he had no problems with the truck, no
12 problems with the accelerator, no problems with the brakes.

13 In fact, over the ten days that he owned this truck from
14 the time he bought it to the time of the wreck, he put about
15 450 miles on the truck. But he never took it off-road. He
16 never drove it in any kind of dusty conditions. And most
17 importantly, he never had a problem with the accelerator or
18 the brakes. Thus, for more than 11 years and a hundred
19 thousand miles, no one ever had any problems.

20 Now, in a few minutes I'm going to talk about what
21 plaintiffs' theory is against Ford and why that doesn't fly.
22 But right now I want to take you back and talk to you a little
23 bit more about what happened on the day of the wreck.

24 All right. We go back to Tuesday, November the 20th of
25 2012. It's two days before Thanksgiving. It's Thanksgiving

1 week. The weather on that day in St. Albans was sunny and
2 mild. It was about 50 degrees or so that day.

3 That morning, Mr. Nease scheduled a meeting with his
4 financial advisor whose office was in St. Albans.

5 Go to the next slide.

6 What he does, then, his truck has been parked overnight
7 in his driveway. He gets up. He has no problems starting the
8 truck. And then he drove the truck about 7 miles from his
9 home in Poca, using this route that you see on the screen, to
10 his financial advisor's office, which is located on Route 60
11 or MacCorkle Avenue there in St. Albans.

12 Mr. Nease, to make this route, had to make numerous
13 starts and stops at traffic lights and stop signs and turns on
14 the route. And every time he drove this from his home to his
15 financial advisor's office, the truck started and accelerated
16 normally and braked and stopped normally, just like it had
17 done for 116,000 miles in 11 years.

18 Mr. Nease will tell you that the accelerator pedal wasn't
19 sticky and the brakes stopped and slowed the truck every time
20 he used them.

21 Now, when he arrived at the financial advisor's office,
22 he learned that either he had forgotten something by mistake
23 at home or he needed to take something and have his wife sign
24 it. It's a little unclear exactly what happened there, but
25 Mr. Nease was forced to turn around and drive back to his

1 house. And he followed the same route and he went through all
2 the same stops and he went through all the same lights, and he
3 accelerated and braked and had no problems with the truck.
4 The accelerator wasn't sticky and the brakes weren't not
5 stopping the truck.

6 After he got what he needed, Mr. Nease then headed back
7 to the financial advisor's office following the same route for
8 the third time that morning. And, again, he had no problems
9 with the truck at all. The accelerator pedal wasn't sticking
10 and the brakes always slowed and stopped the truck.

11 All right. So now we're going to go to the point where
12 he crosses the bridge on St. Albans and he's now got to turn
13 right -- excuse me -- turn left to get on Route 60, goes over
14 the river here, and now he's proceeding down Route 60 within a
15 mile or so of his financial advisor's office.

16 Now, during his deposition before trial, I asked
17 Mr. Nease to tell me where the truck seemed to begin to
18 accelerate. And he drew two lines on this map that you see
19 here. And the two lines that say -- have the word
20 "Accelerate" over them, that's where Mr. Nease says he
21 believes his truck began to accelerate on him, somewhere
22 between a church and a car dealership there in St. Albans.

23 I then said, "After you noticed it, what did do you?" He
24 said he tried to tap and then he also said he stomped on the
25 accelerator pedal, but the car, not surprisingly, sped up some

1 more.

2 So then I asked him to tell me where he applied the
3 brakes, and he put -- he drew the line that says the word
4 "Brake" over it. In fact, he told me he stood on the brakes
5 at that point as hard as he could, but the truck did not slow
6 down. He even tried to pump the brake pedal, but that did not
7 work.

8 If you could pan back out, Mr. Doyle, for just a second.

9 If you look way over on the right-hand side is the word
10 "Mousie's." That's where the car wash is. You can see the
11 blue roof. That's where Mr. Nease hit -- there's a brown
12 building just to the right of the blue roof, and that's the
13 building he ran into.

14 Now, we have a diagram that is a surveyor's diagram that
15 shows the path that Mr. Nease took. He'll tell you, and his
16 lawyer told you earlier, that at some point near a used car
17 lot with a gravel driveway, Mr. Nease deliberately turned the
18 wheel to the right and ran off of Highway 60. He ran over
19 those curbs, he ran through the Domino's pizza parking lot,
20 jumping two curbs there, running through a mulched flowerbed.
21 He then jumped a third curb that separates Domino's from
22 Mousie's Car Wash and then went through one of the car wash
23 bays and hit head-on into a brick wall. And this is what his
24 truck looked like after that.

25 He hit the wall doing about 35 miles an hour. Now, the

1 testimony is that he was doing about 50 miles an hour on the
2 highway. So in this distance, he did slow down to about
3 30 miles an hour by the time he hit the brick wall.

4 If we could go back to the reconstruction diagram.

5 There are two witnesses to this incident. There is a
6 Mr. William Daily. Mr. Daily was driving up on Route 60.
7 Initially he was behind Mr. Nease. They were both in the slow
8 lane -- I'll call it that -- and he noticed Mr. Nease driving
9 much slower than the speed limit and weaving in his lane of
10 travel. This concerned Mr. Daily, and he will tell you that
11 he was concerned that Mr. Nease was either preoccupied by
12 something or it appeared he may be impaired.

13 In any event, he was driving erratically. So Mr. Daily
14 got in the passing lane and passed him to get ahead of
15 Mr. Nease. Mr. Daily will tell you that during this period of
16 erratic driving that he saw Mr. Nease doing, he never saw
17 brake lights come on on the vehicle.

18 After Mr. Daily got ahead of Mr. Nease, he then saw in
19 his rear view mirror Mr. Nease coming up quickly from behind
20 him. He's still in the passing lane. He sees Mr. Nease come
21 up in the slow lane and then veer off the road and across the
22 Domino's parking lot and ultimately where he runs into the
23 brick wall.

24 The second witness is Mr. Kemplin. And you can see his
25 name at the bottom. That little rectangle icon is a vacuum

1 machine like they have at the car wash there. And he was
2 actually vacuuming out his car that Tuesday morning when all
3 of a sudden he heard Mr. Nease enter the Domino's pizza lot,
4 heard the sound of his car coming over the sound of his vacuum
5 cleaner. He watched Mr. Nease cross the lot, hit the curbs,
6 go through one of the bays and hit the brick wall.

7 The truck came so close to Mr. Kemplin that he felt the
8 breeze of it as it blew by him. Now, even though he was only
9 a few feet from the truck, Mr. Kemplin does not recall one way
10 or the other, frankly, seeing any brake lights on Mr. Nease's
11 vehicle as it passed him, but he also did not hear the sound
12 of squealing tires like you would if you had the brakes
13 applied.

14 After the truck hit the wall, the testimony will be that
15 the engine did continue to run for a short period of time and
16 the tire -- one of the rear wheels spun until the engine died.
17 Mr. Kemplin came over and helped open the door so that
18 Mr. Nease could get out.

19 Mr. Nease was very fortunate in this crash. He hit a
20 brick wall head-on at 35 miles an hour. He's wearing his
21 seatbelt. The air bags deploy. He was, unbelievably, able to
22 walk away from this accident with just some broken ribs and a
23 sore abdomen.

24 He talked to the police officers. He told them that he
25 thought his accelerator stuck. Ultimately, he was taken to

1 the hospital for treatment, and you have already heard a long
2 description of the lengthy hospitalization. So I'm not going
3 to go through that. But, ladies and gentlemen, that's what
4 happened on Tuesday, November 20th. We're here because
5 Mr. Nease says he crashed because he thought the accelerator
6 stuck.

7 Now, I want to talk about what the evidence, what the
8 physical evidence shows, and it simply doesn't support that
9 story. Let's review that.

10 First, there is physical evidence on the truck itself
11 that demonstrates that when he hit the brick wall, Mr. Nease's
12 right foot was on the gas pedal and not on the brake pedal as
13 he insists. When he hit the brick wall, Mr. Nease's body,
14 even though it was restrained by the belt, went forward and
15 his knees hit what's called the knee bolster. It's a trim
16 panel below the instrument panel and it's designed to absorb
17 energy from somebody's lower extremities in a crash.

18 If we could see that.

19 This is a photograph of the knee bolster in Mr. Nease's
20 truck. The red boxes surround the two knee marks that were
21 left from this impact on that knee bolster. You can also see
22 the knee bolster is bent and deformed. The one on the left
23 side of your screen is the left knee, and the right side is
24 the right knee. And as Mr. Nease's body went into it, his
25 knees spread slightly, and you can see the transfer moving

1 outward from the impact points there.

2 Those are two distinct marks that came only from this
3 crash. And he hit that knee bolster so hard that you can
4 actually even see the imprint of the fabric from his clothing
5 into the knee bolster.

6 Now, neither of those is where his right knee would be if
7 his right foot -- and Mr. Nease will tell you he used only his
8 right foot for both the gas and the brake. Neither of them is
9 where his right foot would be if his right foot had been on
10 the brake. How do we know this?

11 We took someone the same size and weight of Mr. Nease at
12 the time, put them in a similar vehicle, put seatbelts on
13 them, cinched the belts up and forced that person to try to
14 move into the instrument panel.

15 Could we see the next slide?

16 When you take a look, here's the right knee mark. You
17 can see that it is directly above the accelerator pedal. And
18 if someone is pressing down fully on the accelerator pedal and
19 they've got the same size as Mr. Nease, their knee is going to
20 be almost exactly where his knee is here.

21 On the other hand, if they use their right foot to press
22 on the brake pedal, the knee is moved over towards the center
23 of the vehicle. There's no mark there. There's no damage to
24 the instrument panel there to indicate that the foot was on
25 the brake.

1 This evidence was made on November the 20th, 2012, when
2 Mr. Nease's truck hit the brick wall. His knee was on the --
3 his knee and his right foot was on the gas.

4 Now, second, let's talk about the physical evidence at
5 the scene. There is no physical evidence at the scene of any
6 braking from the point he left Route 60 to the point he hit
7 the brick wall. We have several photographs that you'll see
8 during the case that were taken shortly after the crash, and
9 none of the photographs show any skid marks from braking or
10 grass torn up through running through the grass when the
11 wheels weren't rolling. There are simply no tire marks caused
12 by braking, especially on either the asphalt or concrete
13 parking lots there at Domino's and Mousie's.

14 In addition, we have the observations of the two
15 eyewitnesses. Neither eyewitness recalls seeing brake lights
16 come on or hearing sounds of squealing tires as if the vehicle
17 had been braking.

18 Now, the vehicle, not surprisingly, because it's been in
19 litigation, has been inspected by several engineers on
20 multiple occasions. Even though the claim is that the brakes
21 failed to stop the vehicle, there is nothing wrong with the
22 braking system. The brake discs and drums are in fine shape.
23 The hydraulic lines are all intact. And even the brake lights
24 work. We know that if the brake had been applied, the lights
25 would come on. So there is no evidence on this vehicle to

1 indicate any reason the vehicle would not have stopped.

2 Now, you also heard Mr. Javins mention that the police
3 found the accelerator on the floor or down to the floor and
4 that it appeared to them that the throttle was wide open.
5 Well, that is correct. That is what they thought the day of
6 the crash.

7 Unfortunately, other than taking this picture from
8 standing outside the vehicle, the police did nothing to
9 measure the position of the accelerator pedal, and they didn't
10 have a couple of key pieces of information that day that the
11 engineers found months later.

12 First, the floor pan is significantly deformed.
13 Everything that was in front of the passenger compartment got
14 moved back when this crashed happened. If you take a look at
15 the police photo and then there's a photo taken on March the
16 20th, 2014, another one taken on May 7th, 2014, and then a
17 photo of an identical Ranger pickup truck, and you can see the
18 folds right behind the brake pedal and how that differs from
19 the exemplar.

20 The exemplar is the way the floor pan was before the
21 truck hit the wall. The others show that the floor pan was
22 deformed. They also show that the pedal, the accelerator
23 pedal hadn't been moved from the time of the crash. And
24 you'll also notice that the accelerator pedal has been twisted
25 over.

1 If you look at the lower right-hand photo and then look
2 at the one next to it in the lower left, you can see that
3 rather than being at a six o'clock position, it's at about six
4 or seven o'clock. The whole floor pan was twisted because of
5 the crash.

6 The second thing the police did not know at that time was
7 that there was a piece of the throttle body -- and Mr. Javins
8 pointed that out -- a piece of the throttle body housing that
9 had broken when the car or the truck hit the brick wall. It
10 shattered, and a piece of it got trapped below the throttle
11 plate. And this is a mock-up using actually components. If
12 you went to a Ford dealer and said, "I need to replace the
13 throttle on my 2001 Ford Ranger," these are the parts that
14 they'd sell you.

15 And this plate, when you step on the gas -- perhaps you
16 can see it -- it opens. And when this crash occurred, the
17 upper radiator support was pressed into this and broke the
18 throttle position sensor. And if you've ever had to replace
19 one of these, you'll know how expensive that is to replace.
20 But it also broke this housing, and a piece of that housing
21 got caught, like my pen, when the throttle plate closed on it.

22 Now, Mr. Javins suggested that that means the throttle
23 was just barely past idle. Actually, at idle, the throttle
24 was fully closed on this vehicle. There's a bypass to
25 maintain idle air on this vehicle.

1 This would not only allow the engine to run at a speed
2 above idle, but it would also cause the pedal to be pulled
3 toward the floor because whenever this throttle is open at
4 all, the pedal is pulled towards the floor and be held back
5 down towards the floor.

6 Unfortunately, the police did not realize that because
7 they didn't do any mechanical examination of the vehicle on
8 the day of the crash. Thus, the pedal appears in those
9 photographs and appeared to the police to be touching or close
10 to the floor because the floor pan is actually bent back
11 towards the pedal and the pedal was twisted and the throttle
12 body was held open.

13 Now, I told you I was also going to talk to you a little
14 bit about their theory against Ford Motor Company and why it
15 doesn't hold water.

16 First off, the plaintiffs have the burden to prove to you
17 that the Ranger was defective when it was manufactured and
18 sold by Ford Motor Company in 2001, not at the time of the
19 crash.

20 Now, their theory is, as Mr. Javins suggested, that over
21 time, some dirt accumulated on the speed control cable --
22 that's this cable (Indicating) -- and it got in between the
23 guide tube, which is this small gray tube here, and the casing
24 cap, the large black tube. It's sort of the outer diameter
25 and inner diameter here.

1 The distance between those, as Mr. Javins correctly
2 pointed out, is about four-one-hundredths of an inch. It's a
3 very small gap. And the theory is going to be that this dirt
4 somehow caused these pieces to stick together and to hold the
5 throttle open.

6 Moreover, it has to be a sticking in one direction
7 because the claim is that it stuck, and then every time
8 Mr. Nease pressed on the brake, it continued to stick in one
9 direction. In other words, the cable not only had to stick,
10 it had to stick and then ratchet to continue to open.

11 Now, the evidence in this case is going to show that
12 Mr. Nease's lawyers are wrong about that theory.

13 Let's see a picture, if we could.

14 Again, this is after the wreck. These pieces are
15 positioned like they would be at the time of the -- before the
16 crash. This is the way it would be under the hood in your
17 vehicle before it was wrecked.

18 And when the engineers came and looked at this and the
19 first time when they removed that piece of plastic out from
20 underneath here, guess what? The guide tube moved smoothly
21 and without binding.

22 So after the crash, the very first time anybody was able
23 to move the accelerator pedal and free the throttle, it was
24 not bound. And we know from the testimony that Mr. Nease is
25 going to give you and we know from the history of this vehicle

1 that nobody had ever had a problem with this cable binding
2 before the crash. And we know that it was found after the
3 crash not in a bound condition.

4 Now, Mr. Nease's expert, Mr. Sero they talked about, he
5 says that he used a boroscope and he found some contaminant
6 inside the cable sleeve on the guide tube and inside the
7 casing cap that he claims showed that the cable may have
8 stuck.

9 Could we see the next slide?

10 These are some images of the actual casing cap and guide
11 tube from Mr. Nease's truck. These are scanning electron
12 microscopy images that we asked to have done of this. And, in
13 fact, after 11 years and 116,000 miles, not surprisingly,
14 there's some dust on the inside of this truck. And -- but
15 this dust is not big clumps. It's tiny particulate matter.
16 It is literally dust. It is so small that most of the build-
17 up in that guide tube -- this is a gray piece right here --
18 that stuff is less than five-one-hundredths of an inch thick.
19 It is thinner than a human hair.

20 Mr. Sero will probably also tell you that he saw some
21 scratches on the inside of the casing cap. That's the black
22 piece that the guide tube goes in. Likewise, these scratches,
23 if you examine several guide tubes, you will find the
24 scratches on Mr. Nease's guide tube are just present in all of
25 them. They are either tooling marks -- and I don't know how

1 many of you are involved with manufacturing, but when you
2 manufacture things, the molds have some tiny scratches from
3 how the metal was machined to make the mold. There are
4 tooling marks on the inside of these casing caps. And you'll
5 hear from a material polymers expert about how those occurred.
6 And then you will also see some marks on used guide tubes
7 because we went out and bought guide tubes and casing caps
8 from vehicles that had over a hundred thousand miles, had
9 never had an incident of alleged throttle sticking or
10 unintended acceleration, and guess what?

11 You find the same sorts of marks there just because these
12 parts have been moving against each other for a hundred
13 thousand miles. They tend to polish each other and make small
14 scratches there.

15 Now, third, and this is very important, one thing
16 Mr. Javins -- he did a very good job describing this system.
17 The one thing he didn't mention was this component there that
18 you see on the screen. It's called a throttle return spring.
19 And there are actually two springs and they are siamesed
20 together. And together they apply a force of about 7 pounds
21 on Mr. Nease's vehicle and about 7 pounds on this exemplar to
22 force the throttle closed.

23 There is a federal standard. It's called FMVSS, or
24 Federal Motor Vehicle Safety Standard, 1124 that requires when
25 you release the gas pedal, that your throttle has to close

1 within one second. This system will close within a fraction
2 of a second. And it's equivalent to having a 7-pound weight
3 always pulling these two cables closed. It would be like
4 putting a 7-pound bowling ball at the end of the cable to pull
5 it closed. So this dust has got to overcome a 7-pound force
6 pulling the throttle closed.

7 The fourth thing is that the whole speed control system
8 is designed to prevent dust from even getting into it. The
9 photo that Mr. Javins showed you where we sort of panned back
10 into the engine compartment, that was of a car after the
11 wreck.

12 This is actually a photo of Mr. Nease's vehicle before he
13 purchased it. This was online at Snyder Auto Mart, and you
14 can see the configuration is considerably different. The red
15 bar that kind of runs across the lower right corner is the
16 front radiator support. You see the snorkel for the air
17 intake to this throttle body that runs there, but you'll also
18 notice there's an engine cover that covers this whole area.
19 You can't see the throttle body or these cables because of
20 that black engine cover. That engine cover is there to try to
21 keep stuff from getting into these cables.

22 The cables are also angled downward so that if stuff got
23 in them, gravity is going to help pull it out. If there was
24 water that got in there, water is going to run out of these
25 things. And that's a design that was present in Mr. Nease's

1 vehicle ten days before the wreck. It was in Mr. Nease's
2 vehicle 11 years before he bought it.

3 Finally, during the development of this vehicle -- and
4 Mr. Javins talked about failure mode effects analysis. Those
5 are brainstorming sessions to come up with ideas about what
6 could possibly go wrong. In order to prevent those
7 possibilities from going wrong, Ford has a whole panoply of
8 tests, both laboratory tests and vehicle tests, that have to
9 be run on the components and the vehicle before it's accepted
10 into production.

11 These are a list of just some of the tests that only
12 apply to this cruise control, this speed control cable, and
13 we'll talk about those during trial, but I want to point out
14 just two tests because of time. It's late afternoon.

15 One test is called the Arizona dust test that they use
16 where they bombard this cable with a special sized dust that's
17 rated by the Society of Automotive Engineers as grade A
18 Arizona dust. They run it at temperatures from 250 degrees
19 Fahrenheit to 40 degrees below zero Fahrenheit under
20 85 percent humidity conditions. And this system must operate
21 continuously at 30 cycles a minute for over a hundred thousand
22 cycles.

23 And another test, because we know there are various
24 chemicals under the hood of a car, they literally paint or
25 brush chemicals onto this cable; engine oil, transmission

1 fluid, brake fluid, coolant, engine soap, calcium chloride
2 like you get sprayed during the wintertime from slush and
3 snow. And they literally make this for 96 hours at 115
4 degrees. And at the end of that time, those two pieces must
5 move without binding.

6 Now, finally, I expect you'll hear evidence during this
7 case from human factors experts about the evidence that people
8 really do make mistakes, that they step on the gas when they
9 meant to step on the brake, or they step on the gas and the
10 brake at the same time; and they've been found to be the
11 primary cause of unintended acceleration incidents.

12 This isn't something that I've drummed up just for this
13 courtroom or drummed up by Ford, but it's been a conclusion
14 that's been reached repeatedly by auto safety experts and
15 researchers and government safety agencies and have been
16 reported in peer-reviewed scientific journals and government
17 reports for more than a quarter of a century. That's the
18 evidence that you'll see in this case.

19 Now, before I conclude, I want to talk to you a bit about
20 the evidence you're not going to see. And that's why we have
21 the blank screen. What you're not going to see is any
22 physical evidence that supports Mr. Nease's version of the
23 events, that he applied the brakes as hard as he could. There
24 aren't any brake marks. No one recalls seeing any brake
25 lights, and no one heard any brakes squeal.

1 And most importantly, you won't see any physical evidence
2 supporting the plaintiffs' theory of some sort of
3 one-direction, unidirectional binding of the speed control
4 cable; that is, it only stuck when the pedal was released, but
5 not when it was depressed, played any role in this case, even
6 though the plaintiffs have the burden to prove to you that
7 that defect existed 11 years ago.

8 Plaintiffs' paid expert, Mr. Sero, has done no testing
9 for the speed control cable from a 2001 Ranger. He didn't
10 find Mr. Nease's cable to be stuck after the crash when he
11 examined it, and he hasn't found any speed control cable stuck
12 after a crash.

13 He will not come in here and show you that this one-way
14 sticking of a speed control cable can cause real cars on real
15 roads to speed up, override the brake, and have crashes,
16 because he's never been able to do that.

17 And more particularly, he won't be able to show a
18 demonstration as to how this occurred to cause Mr. Nease's
19 wreck. But even if the problem with this vehicle was indeed a
20 stuck speed control cable, as is suggested, if Mr. Nease had
21 done any of the things he's testified to, then he would've
22 brought the vehicle to a stop long before he hit the brick
23 wall.

24 We know that even if the throttle was wide open, the
25 brakes would stop the vehicle. Mr. Nease claims he stood on

1 the brake pedal. And you'll see testing and demonstrations
2 that show that the application of the brakes always overcomes
3 the vehicle's throttle and slows the vehicle, every single
4 time. And the reason for that is, that in terms of
5 horsepower, a car has more braking power than acceleration
6 power. That's why it takes much less time for you to stop a
7 car from 60 miles an hour than to accelerate a car from zero
8 to 60 miles an hour.

9 Plaintiffs' lawyer told you that Mr. Nease pumped the
10 brakes and that somehow depleted the vacuum for the power
11 brake assist and that's why he couldn't stop. Of course,
12 again, Mr. Sero hasn't run any test on the Ranger to
13 demonstrate this allegation. And even if Mr. Nease had done
14 that, the physical evidence is there was no braking at the
15 scene and that the brakes will stop and slow the vehicle even
16 without power assist and even against an open throttle. Ford
17 has tested and we'll show you demonstrations to prove that.

18 Finally, the plaintiffs have got to do one more thing
19 that they cannot show you, and that is they have to have the
20 brakes and the speed control simultaneously fail and at the
21 same time simultaneously fix themselves after the wreck,
22 because we found the cable free and the brakes in good working
23 order following the crash.

24 Safety researchers have examined this same issue again
25 and again and have concluded that pedal errors do occur and

1 there's no question about it. That's what the evidence is
2 going to be on this point.

3 Now, lastly, I've got to address one issue because you
4 may hear from some depositions of some well-intentioned folks
5 or other people talking about that they had an occurrence
6 where the car accelerated. And no doubt about that, they're
7 going to believe that that's correct. But even if they
8 believe that, the evidence, again the physical evidence, is
9 going to be that the brakes will stop the vehicle and that
10 errors in pedal application do occur.

11 So that's why we're here, ladies and gentlemen.

12 If we could see the Ranger again.

13 You're going to find out -- and you've already got a
14 pretty good suspicion about this, that the Neases are a pretty
15 nice family. Mrs. Nease is a lovely lady. I've had the
16 pleasure to meet them on several occasions. Mr. Nease is a
17 very nice gentleman. He got in a very bad accident. He was
18 lucky that he's alive. He had a bad hospital course. But
19 we're not here to be in some sort of crusade against Mr. and
20 Mrs. Nease. You know, Ford Motor Company is here because we
21 believe Ford has the right to come into this courtroom and
22 explain to you why Ford's vehicle did not cause this accident
23 or Mr. Nease's injuries.

24 So despite any sympathy you may feel for the Neases, I
25 will probably be the one here at the end of this case to come

1 back and stand in front of you and state that based on the
2 evidence which you will see in this case, that the only result
3 is for you to return a verdict in favor of Ford Motor Company.
4 You know, we may never know exactly what caused Mr. Nease to
5 run into that brick wall on Route 60, but by the end of this
6 case, I expect you will know that it was not due to a problem
7 with the speed control cable in this 2001 Ranger or a defect
8 in that cable that existed some 11 years before this crash.

9 We're all sorry we have to meet here. We're sorry that
10 Mr. Nease was injured, but his injuries were not caused by
11 this Ford Ranger. And so at the close of all the evidence, we
12 will come back and ask you to return a verdict in favor of
13 Ford Motor Company.

14 Thank you very much, Your Honor.

15 THE COURT: All right. Thank you, Mr. Bibb.

16 Ladies and gentlemen, you've now heard the opening
17 statements. We're going to adjourn for the day. Before we
18 do, I want to bring two matters to your attention.

19 First -- and you've heard me say this already, but please
20 do not discuss the case with anyone or start trying to
21 deliberate on your own or together with anyone or without
22 anyone. You've only heard opening statements. You need to
23 hear all the evidence and the instructions before you start to
24 think through what this case is about and how it should be
25 resolved.

1 Secondly, I want to give you an outline of the schedule
2 that we'll try to follow. We'll try to start each day at
3 9:00. I don't have my list of all of your addresses
4 available.

5 Does anyone have more than a one-hour drive to get here?
6 How long is your drive, sir?

7 JUROR #22: Almost two hours.

8 THE COURT: Almost two hours. Wow.

9 JUROR #22: Almost 60 miles one way.

10 THE COURT: Okay. Well, how difficult is it for you
11 to be here at 9:00?

12 JUROR #22: That will be all right.

13 THE COURT: You can handle that?

14 JUROR #22: Yeah.

15 THE COURT: All right. Good. So we'll start at
16 9:00 each day. We take a mid-morning break. I try to do it
17 when it won't interrupt a witness' testimony, but generally
18 around 10:30 or so we'll take a break. We'll take a lunch
19 break, again around noon. I'll try to time it so it doesn't
20 disrupt the examination of a witness. Generally speaking,
21 we'll take about an hour and 15 minutes for lunch to give you
22 plenty of time to go out and get something and come back.

23 You will always be able to leave any belongings in the
24 jury room. This whole courtroom will be kept secure, and no
25 one will be allowed in there when you're not here. In the

1 afternoon, we'll take a mid-afternoon break, again around 2:30
2 to 3:00 depending on the examination of the witnesses. And
3 then I'll try to adjourn at five or a little after each day.

4 I'm sorry that we went on this long. Usually I make sure
5 we're out of here by 5:00 on the first day because I know you
6 show up without even knowing you're going to be here and
7 selected, but I really appreciate that you've stuck with this
8 until this late today, and we'll try to end pretty close to
9 5:00 each day and not infringe upon your time beyond that.

10 With that, we will adjourn until 9:00 a.m. tomorrow
11 morning. And I'll see the lawyers briefly after the jury has
12 departed to take up a couple of matters.

13 (Jury Out)

14 THE COURT: All right. You folks can be seated.

15 All right. First, I understand that the parties agree
16 that you're going to provide a day's notice to opposing
17 counsel about the witnesses you expect to call. So let's
18 start with plaintiffs.

19 Are you ready to designate or identify the witnesses you
20 expect to call tomorrow?

21 MR. JAVINS: Yes, Your Honor.

22 THE COURT: All right. So I expect you to do that.
23 I don't need to hear it, but I want you to tell the defense.
24 But in particular, how many of those witnesses will be
25 presented by transcript of deposition or trial testimony?

1 MR. JAVINS: Too many. The first three.

2 THE COURT: And who are they?

3 MR. JAVINS: Engle, Adams --

4 MR. CLARK: Which Adams transcript?

5 MR. HEISKELL: Both.

6 THE COURT: All right. So you've got Engle. That's
7 one transcript. You've got Adams, and that's two transcripts.

8 MR. HEISKELL: Your Honor, it's Perkins after Engle.

9 THE COURT: All right.

10 MR. HEISKELL: Then Charles Adams, the first segment
11 is read, and then there's a short video segment relating to
12 their testing.

13 THE COURT: Okay. All right. So it will be Engle,
14 Perkins, and two of Adams.

15 MR. HEISKELL: Yes, Your Honor.

16 THE COURT: And how long do you expect those to
17 take?

18 MR. KATZ: I can't answer on the video yet because I
19 was awaiting the rulings with respect to the designations,
20 counter designations, and objections. I'll work that out this
21 evening. So I'm not quite sure how many minutes. Originally
22 I think the original designations were maybe 35 minutes on one
23 and similar --

24 THE COURT: On Adams?

25 MR. KATZ: Yes, Your Honor. But I just don't --

1 THE COURT: I understand. I was just trying to get
2 a general idea. So Perkins is pretty short.

3 MR. HEISKELL: Yes, Your Honor.

4 THE COURT: Engle seemed pretty long.

5 MR. JAVINS: Hour.

6 THE COURT: All right. And then Adams is going to
7 be roughly an hour. And then what?

8 MR. JAVINS: Kemplin.

9 THE COURT: Live witness?

10 MR. JAVINS: Live witness. Officer Dent, live
11 witness.

12 THE COURT: All right. I know we talked some about
13 Engle this morning, and I ruled on one of those objections.
14 I've read through Engle, and, honestly, there wasn't much that
15 I was going to exclude. But since I ruled on your objection,
16 did that provide some clarity about --

17 MR. CLARK: I think that, plus the agreement
18 Mr. Javins and I made provided all the clarity we needed on
19 Engle.

20 THE COURT: Okay.

21 MR. CLARK: We had Perkins --

22 THE COURT: Okay.

23 MR. CLARK: -- from our discussion this morning.

24 Mr. Adams' video from *Huber* -- Mr. Adams' video from
25 *Huber*, I need to look at. I'll get with Mr. Katz about that.

1 And Mr. Adams' testimony from *Olson* we needed to talk about.

2 I don't think it will take more than ten minutes.

3 THE COURT: Okay. All right. So we should be ready
4 to go. And with regard to Engles, it says -- first, do you
5 have a marked-up transcript that you're going --

6 MR. JAVINS: We have two, Your Honor; one for the
7 witness and one for me.

8 THE COURT: Okay. You're going to read that, and
9 then one of those copies will be admitted as the record of the
10 testimony.

11 MR. JAVINS: Correct.

12 THE COURT: All right. All right. That sounds
13 great. I'll look at the Adams matters this evening and
14 hopefully --

15 MR. CLARK: I think, Your Honor, we're going to need
16 to talk to you about the one from the *Olson* case. I'm not
17 certain yet about the one from the *Huber* case. That will
18 depend on my discussion with Mr. Heiskell.

19 THE COURT: Okay. And that's as to Adams, then?

20 MR. CLARK: Yes, sir.

21 THE COURT: All right. Well, those weren't real
22 long. I'll look at both of those.

23 MR. CLARK: No.

24 THE COURT: If you all work out an agreed
25 designation, that makes it real easy. If you don't, we'll try

1 to deal with it probably at the first break.

2 All right. Is there anything else we need to address?

3 MR. COOKE: It sounds like that's not quite a full
4 day, but Mr. O'Dell advises that Mr. Nease will be available.

5 MR. O'DELL: If we get -- yeah.

6 THE COURT: Well, it sounds like it might take all
7 morning to get those three sets of depositions, but I wouldn't
8 think that it would take much longer than that. I can't
9 imagine two police officers are going to take very long. So
10 be prepared with whomever is next. You've indicated it's
11 likely to be Mr. Nease.

12 MR. O'DELL: Right.

13 THE COURT: Okay. Good enough. See you all
14 tomorrow morning. Be here around 8:30 just in case there's
15 anything we need to address.

16 (Proceedings adjourned at 6:01 p.m.)

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I N D E X

	<u>Page</u>
Opening Statement by Mr. Javins	303
Opening Statement by Mr. Bibb	330

I, Teresa M. Ruffner, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Teresa M. Ruffner

June 19, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware corporation,

Huntington, West Virginia
March 16, 2015

Defendant.

TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE THE HONORABLE ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

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produced by computer-aided transcription.

JA3361

1 Monday, March 16, 2015, at 1:30 p.m. in open court

2 THE COURT: All right. I assume we've got everybody
3 here ready to start.

4 MR. COOKE: Yes, Your Honor.

5 THE COURT: Okay. So obviously there are a lot of
6 pending motions. I tried to rule on as many as I could last
7 week. I confess that some of the rulings were very short, to
8 the point. I honestly just didn't have time between finishing
9 up a trial that took longer than it should have and then the
10 volume of motions and so forth here, but I wanted to get
11 rulings out on as many things as I could.

12 That still leaves us with a lot of ground to cover, and
13 we'll try to get through as much of that today, hopefully all
14 of it, if it's possible.

15 I'll also have to confess to you that the law clerk who
16 has been assigned to this, a long-time law clerk who has been
17 working hard on this for the past several weeks, ended up
18 having to leave suddenly this morning due to a family
19 emergency.

20 So I'm going to tell you now that puts me a little bit
21 behind because I was depending upon her to do some additional
22 research and review, which she's done, but I didn't have a
23 chance to talk with her before she left. So there are some
24 things here that I haven't spent enough time on myself to
25 fully grasp, but I just forewarn you.

1 So I don't know of any simple way to go through this with
2 this number, so my inclination is to just take up the
3 remaining motions by the docket list that I have, which starts
4 with the first still-pending motion filed, and that is -- and
5 some of these may merit more argument than others. So please
6 let's try to be succinct, especially on those that don't
7 involve much in the way of a complicated explanation.

8 The first is the plaintiffs' motion for partial summary
9 judgment based upon the failure of the defendants to respond
10 to discovery.

11 And if you don't mind, folks, please use the microphones.
12 It's difficult -- the acoustics aren't good here. You can use
13 the ones at your desk, wherever you're comfortable. The
14 acoustics aren't very good, and my court reporter has to
15 listen through the system. So make sure you talk through the
16 microphones.

17 MR. JAVINS: Understood. Is that better?

18 THE COURT: That's fine.

19 MR. JAVINS: Thank you. Your Honor, the basis of
20 the motion is it's a limited summary judgment on the issue of
21 an alternative design. And at the core of this, Your Honor,
22 is the cruise control cable, which you've heard us discussing
23 throughout this case. It looks something like this. This is
24 an exemplar.

25 And the analysis begins with Mr. Sero. I don't know if

1 Ford's analysis begins this way, but there is an initial
2 design document. You've seen reference to failure modes
3 effects analysis --

4 THE COURT: Right.

5 MR. JAVINS: -- initial design. And in all three of
6 those initial design documents, Your Honor, the '87 iteration,
7 the '92 iteration -- I'm sorry -- the '87, '97, and 2004
8 iteration, there's a common theme. That common theme is the
9 throttle can be stuck in the open position.

10 THE COURT: You started off by using as a -- for
11 demonstrative purposes, the cruise control cable?

12 MR. JAVINS: Yes, Your Honor. This connects to the
13 throttle. This part of the cruise control cable connects to
14 the actual throttle, which allows air to come into the engine.

15 THE COURT: All right. So this is not what's hooked
16 to the gas pedal.

17 MR. JAVINS: It's not. That's called the
18 accelerator cap --

19 THE COURT: Right.

20 MR. JAVINS: -- or cable. Both connect to the
21 throttle.

22 All right. This cruise control cable has a lost motion
23 device. It can become stuck. How do we know?

24 When we looked at Ford's documents, their failure modes
25 effects analysis, or their early studies, there's a common

1 theme. In the '87 iteration, it says mechanically this cable
2 can become stuck due to -- it can become bound or stuck due to
3 materials, gunk; and that results in a throttle -- now, in '87
4 they said, it returned -- failed to return to idle position.
5 In the '97 and the 2004 iterations, it says it fails to
6 respond to driver command.

7 But Ford's own corporate designee, James Engle, says that
8 means the same thing because, across the board, when it
9 doesn't -- when the throttle sticks, that rates a severity of
10 10, okay?

11 That's a problem. When this thing gets gunked up, and it
12 can stick, it can cause a throttle to stick open. And when
13 the throttle sticks open and the person removes their foot
14 from the accelerator pedal, the throttle stays open and the
15 pedal stays in the lower position, and you have an unintended
16 acceleration event.

17 Ford's documents demonstrate this. I'm happy to approach
18 and show you what I'm talking about. But I'll tell you for
19 the record, every time, be it in '87, '97, or '04, when you
20 look at the hazard, Ford says this rates a 10, okay? It's due
21 to binding. Mechanical binding can cause this throttle to
22 stick.

23 And when it says, off to the right, what corrective
24 action -- because you've seen reference to this. Any failure
25 mode that rates a 9 or a 10 on severity, Ford's own failure

1 modes effects analysis handbook prepared by the Office of
2 Automotive Safety, their own standards handbook says anything
3 that rates a 9 or 10 must be considered for redesign because
4 it's dangerous. It's a severity of 9 or 10.

5 And so out to the right, it simply says -- it simply says
6 that this hazard is remote. Let me quote, Your Honor. Excuse
7 me.

8 "Because of the low occurrence in detection ratings, the
9 team has determined that no further actions are required."

10 Now, that sounds to me like there's no alternative design
11 that's been considered. And I simply asked Ford just confirm
12 that for me because their corporate representative, I think he
13 vacillated. I issued requests for admissions.

14 And so if Ford is going to stipulate that they have not
15 considered an alternative design, I suppose we're done. But I
16 was asking for a ruling on that just to, well --

17 THE COURT: As I recall, you said that you asked
18 that specific -- made that specific statement as a request for
19 admission.

20 MR. JAVINS: Correct.

21 THE COURT: And then had contingent interrogatories
22 and motion for -- or request for discovery production for any
23 other answer.

24 MR. JAVINS: And I believe I know the answer to the
25 question. I believe the answer is nothing, but --

1 THE COURT: What was the answer?

2 MR. JAVINS: Objection; this, that, and the other.
3 And so I just want -- I think -- I think the document speaks
4 for itself, and that issue is there's no alternative design
5 because it's not in the design documents. I haven't gotten a
6 straight answer. And so we're asking for some clarification.

7 Perhaps Mr. Cooke is prepared to sit here and stipulate
8 that, Yeah, you're right, there's no design -- alternative
9 design because we just think it's so remote, that we didn't
10 make it -- we didn't provide a safer design.

11 If he's willing to say that, I suppose we're done. But
12 that's the long and short of it.

13 THE COURT: Okay.

14 MR. CLARK: Good afternoon, Your Honor. I'm Ryan
15 Clark from Nashville, Tennessee. I don't believe I've
16 appeared in this court before --

17 THE COURT: Well, welcome.

18 MR. CLARK: -- and I appreciate the Court giving me
19 the opportunity to do so.

20 Mr. O'Dell -- that's not Mr. O'Dell, is it?

21 THE COURT: That's Mr. Javins.

22 MR. CLARK: Poor start, Your Honor. Mr. Javins is
23 correct that the document speaks for itself, and the document
24 speaks for itself and says Ford did consider alternative
25 designs.

1 If you look at the 2004 failure modes and effects
2 analysis, for instance, on page 38, there's a recommended
3 action -- this is related to cable kinking -- implement a
4 larger core wire actuation cable to improve resistance to
5 kinking.

6 THE COURT: Slow down a little bit when you're
7 reading.

8 MR. CLARK: Yes, sir. And that was completed on
9 October 1st, 1997, four years before the manufacture of
10 Mr. Nease's Ford Ranger.

11 But the reason that we're having disagreement I think on
12 this, Your Honor, is the text for the request for admission
13 themselves, Exhibit 10 to the plaintiffs' motion, the pattern
14 of them sort of repeats itself, and I've selected a set that
15 starts -- it's page 11 of 50 on the ECF, starts request number
16 26, and that request asks Ford to admit that the FMEA as
17 produced by Ford identifies a certain failure mode; and in
18 this case, it does not disengage with brake pedal import. And
19 Ford admitted that request, unqualified admission.

20 The next request for admission concerns a potential
21 failure mode or potential cause of that failure mode. That
22 cause is: Admit that cable pinched in conduit. Insufficient
23 overlap between cable conduit and strand cover will permit the
24 two ends to butt.

25 They asked Ford to admit that that was a potential cause

1 or mechanism failure identified by Ford. Again, unqualified
2 admission.

3 Next request, number 28: Admit that actuator issues
4 binding the mechanical components is a potential cause or
5 failure identified by Ford.

6 Again, unqualified admission.

7 And the crux of the problem I think is with the requests
8 that are like number 30. Number 30 is: Admit that Ford did
9 not consider any alternative design options associated with
10 the potential failure mode and the cause and/or mechanism of
11 failure identified as a request for admission number 26.

12 Now, Your Honor, I've read that request for admission
13 several times. I know the other Ford lawyers have. And I
14 still can't make sense out of it. There's at least one
15 typographical error in it. And the really confusing thing
16 about it, frankly, Your Honor, is that the potential design
17 problems or the potential causes are not in request for
18 admission 26. They're in request number 27 and 28.

19 Now, I think that's what plaintiffs meant to write, but
20 the rules don't require Ford to speculate about what the
21 plaintiffs meant. They don't require Ford to do the
22 plaintiffs' work for them.

23 And so Ford's response to that was to object to it and
24 say that it was compound, which is an objection that this
25 Court has stated is a proper admission in the *Erie Insurance*

1 case that I think both parties cited; in fact, plaintiff cited
2 I think in their motion and in their reply. It was cited in
3 all three briefs. That's a proper objection.

4 THE COURT: Has the defendant provided to the
5 plaintiff alternative design option information?

6 MR. CLARK: It's in the FMEA.

7 THE COURT: I'm sorry?

8 MR. CLARK: It's in the FMEA, Your Honor. Mr. Engle
9 testified specifically -- that's Ford's corporate
10 representative -- on the FMEA about consideration of those
11 alternative designs.

12 THE COURT: So to the extent that Ford asserts that
13 it did consider alternative design options associated with the
14 particular failure mode that plaintiff has cited and argued,
15 you believe that that is a complete answer and responsive
16 production of discovery material, whatever -- reports or
17 whatever it's in.

18 MR. CLARK: To be clear, Your Honor, I don't think
19 that there was specific questioning of Mr. Engle about the
20 particular failure mode that I picked out. These requests for
21 admission kind of go in a pattern. And that's a pattern
22 that's the same for all of the potential failure modes.

23 And I think the request that's really the issue is that
24 final one that's compound that Ford did object to every single
25 time. But the important thing to remember, Your Honor, is

1 that beyond these requests for admission, Mr. Javins had the
2 entire day with Ford's corporate representative, asked him
3 lots of questions, asked him specific questions about Ford's
4 consideration of alternative designs. And as far as I can
5 recall, he answered every one of them.

6 THE COURT: So you're telling me that based upon
7 what you've produced and what was covered in that deposition,
8 Ford's evidence that it intends to offer at trial as to
9 alternative design to this particular failure mode has been
10 discovered.

11 MR. CLARK: I think everything that's out there has
12 been discovered, yes, sir.

13 THE COURT: Well, if that's the case, then,
14 Mr. Javins, I mean, I'm not sure how I -- what conclusion, if
15 any, I could reach as to whether their answer would be yes or
16 no to the question; but if they've produced the evidence that
17 they intend to rely upon as to alternative design, then I
18 think I'm satisfied.

19 What do you say?

20 MR. JAVINS: I think I am too. I don't know what
21 that means in terms of a ruling. And, specifically, Your
22 Honor, I've got FMEA documents. Mr. Cooke and I can look at
23 them. We've got three findings, '87, '97, and 2004, where if
24 the cable does not disengage or it remains open -- the
25 throttle remains open and it does not disengage, that's a 10.

1 It's related to binding and sticking of the cable. And then
2 out from that, every time it says, Because of a low
3 occurrence, we're not going to consider anything.

4 If that's Ford's answer, I just want to make sure there's
5 no -- nothing hanging out there. That's all.

6 MR. CLARK: If you could give me a page that he's
7 reading from and which FMEA, that might be a little easier to
8 answer the question.

9 THE COURT: All right. Why don't you do that.

10 MR. JAVINS: Can I approach the witness -- or
11 counsel?

12 THE COURT: Yeah.

13 MR. CLARK: I'll meet you halfway.

14 MR. JAVINS: I'm happy to come here because I
15 have -- and I'm happy to approach the bench too, Your Honor.

16 THE COURT: Well, if we need to. Let's see what --

17 MR. JAVINS: I have an '87 iteration. Cable. The
18 problem is the cable jammed or sticking. The effect, throttle
19 will not return to idle position. Rating, 10. Recommended
20 actions, none.

21 Now, if this counsel will simply agree that says what it
22 says and Ford had no alternative design they considered but
23 didn't articulate in this document, I'm totally cool with
24 that.

25 MR. CLARK: Your Honor, no, we can't agree to that.

1 You know, the testimony -- let me step back, Your Honor.

2 THE COURT: All right.

3 MR. CLARK: Two pieces of testimony, Your Honor:
4 The first one is that the 1987 FMEA does not apply to this
5 vehicle. That was Mr. Engle's testimony. And Mr. Engle was
6 also asked a set of questions pretty similar to the argument
7 Mr. Javins is making about where the evidence of alternative
8 designs would be.

9 And Mr. Engle's testimony was, quote, I don't know where
10 to go because I think, as I stated earlier, that any -- I
11 mean, how we keep track or how we record is the final sign-off
12 part. Anything else that's considered early in the design
13 phase, we don't keep records of that.

14 That's the testimony from Ford's corporate representative
15 on --

16 THE COURT: Well, so that sounds like you're saying
17 that your representative said, If we did an alternative
18 design, I don't know where it would be, I haven't found it,
19 and we don't keep records of that.

20 Is that --

21 MR. CLARK: That's fair, with the caveat that
22 there's also testimony from a lot of those depositions that
23 Mr. Heiskell took in the *Huber* case that some of that
24 information would appear in the design drawings, and I don't
25 think any Ford corporate representative has been asked about

1 what the design drawings for the 2001 Ford Ranger show as far
2 as alternative designs for that cable. I don't think --

3 THE COURT: Do you expect to adduce evidence at
4 trial of the 2001 Ford Ranger alternative designs as to the
5 relevant parts here?

6 MR. CLARK: As to this particular -- as to this
7 particular failure mode?

8 THE COURT: Yes.

9 MR. CLARK: I don't know how I can answer that
10 question, Your Honor. I'm sorry for that, but, you know,
11 design of an automobile and the components of an automobile is
12 an iterative process.

13 THE COURT: Okay.

14 MR. CLARK: And there were design changes. We know
15 that there were design changes from the drawing.

16 THE COURT: My question is, what evidence do you
17 expect to adduce at trial that you think would fall within
18 that category?

19 My main goal here is to try to avoid any surprise. I
20 appreciate that you could take the position that you did, that
21 the question, the request for admission, was objectionable
22 and it doesn't seem that the plaintiff aggressively pursued
23 that.

24 Having said that, I still think that the plaintiffs have
25 done enough here to seek in discovery a reasonable response as

1 to the alternative design evidence that the defendant intends
2 to offer at trial.

3 MR. CLARK: And the evidence is that the documents
4 are what they are. Until --

5 THE COURT: And what documents are we talking about
6 now?

7 MR. CLARK: We're talking about the panoply of
8 Ford's production. And to the extent that -- to the extent
9 that those documents do not show consideration of an
10 alternative design, certainly I'm not going to concede that
11 there wasn't such consideration, but I do have to say that the
12 documents are what they are and they show what they show.

13 THE COURT: Well, Mr. Javins has referred to three
14 documents, which I assume are relevant to each of the three
15 years of the iteration of design, and he's pointed out that
16 over in whatever column an alternative design is either -- or
17 other response to the problem is identified, that it says,
18 essentially, none.

19 So we know where those documents are and what they say.

20 MR. CLARK: Sure.

21 THE COURT: It's unacceptable just to say, Well, you
22 know, we've produced a bunch of documents, and somewhere in
23 there is further evidence of our alternative design,
24 especially if it's going to contradict or make ambiguous these
25 documents.

1 So don't just tell me, Yeah, we've got all these
2 documents; and the whole panoply of documents that we have
3 produced, we've talked about alternative design.

4 You know or should know by now what your evidence is.

5 MR. CLARK: Absolutely, Your Honor.

6 THE COURT: And evidence of an alternative design,
7 if you intend to offer it, needs to be identified and
8 disclosed to the plaintiffs. And so I'm asking you to tell us
9 where it is and -- what it is and where it is.

10 MR. COOKE: Your Honor, if I may.

11 THE COURT: Sure.

12 MR. COOKE: The design drawings -- so the FMEA is a
13 document that may not apply particularly to every speed
14 control cable that's being used in every motor vehicle out
15 there.

16 THE COURT: Sure.

17 MR. COOKE: With respect to the 2001 Ranger --

18 THE COURT: Right.

19 MR. COOKE: -- we have produced specific documents.
20 They are design drawings. And on those design drawings, if
21 there was a change, there's something called a change block --
22 I think counsel all know about it -- and it will go through if
23 there was a change during the process as applicable to this
24 vehicle.

25 We -- I'm not certain, but we may have actually produced

1 more than just the 2001, so -- the relevant documents.

2 We don't have -- we don't intend to introduce evidence of
3 an alternative design as is being raised in this context
4 because we do have extensive expert analysis of the design
5 that was used in this case. And so there will be testimony on
6 that and evidence on that. But I think the design drawings is
7 where you can look, in addition to the FMEA.

8 THE COURT: Do you have those, Mr. Javins?

9 MR. JAVINS: The '97 iteration and the 2004 in
10 response to that same failure mode, binding, mechanical
11 binding, says, "Because of the low occurrence in detection
12 ratings, the team has determined that no further actions are
13 required."

14 I would think that there -- I think I understand
15 Mr. Cooke. If there were other actions on the design
16 drawings, there should be a reference out to the right that
17 says, See design drawings such-and-such.

18 THE COURT: No, I think that's not --

19 MR. COOKE: That's not --

20 MR. CLARK: No.

21 MR. COOKE: The FMEA is before you even start
22 putting the cars together. You know, so actually putting cars
23 together and you actually start making parts, then you can
24 have -- may have design changes during that process.

25 THE COURT: All right. And so whatever the drawings

1 reflect as to changes in the design would constitute the
2 alternative designs considered by Ford.

3 MR. CLARK: Yes. And I think part of the problem,
4 Your Honor, is that, like Mr. Cooke said, the drawings and the
5 FMEA do not occur at the same period of time.

6 THE COURT: Right. I understand.

7 MR. CLARK: And so the extent that there are items
8 that appear in those change blocks, it's not generally the
9 case that that change block will say, We are referring to page
10 number 4 of the 1987 FMEA, the failure mode identified
11 therein.

12 THE COURT: Sure.

13 MR. CLARK: And I would imagine that -- at least
14 it's possible that the plaintiffs and Ford might have a
15 different idea of why those design changes were made and what
16 effects they have.

17 THE COURT: All right. Mr. Javins?

18 MR. JAVINS: If I may. Just in regard to
19 Mr. Cooke's statement, I don't know that we necessarily
20 disagree, but according to his witness, the FMEA is an
21 evolving process. And, in fact, Mr. Cooke cited, or whomever
22 wrote in the response, that, Yeah, we've done some changes,
23 and there's a 2003 iteration.

24 You may recall within their pleadings, or in their
25 responsive pleadings, saying, We made changes to other issues,

1 and those were incorporated in 2003, and that is reflected in
2 the FMEA.

3 There's no such thing for -- for my discrete and separate
4 failure mode. That's the point. It does appear to be
5 something that's updated. This is a 2004 failure mode that
6 they say it's applicable to the '01 Ranger. All I'm saying is
7 there's an absence of anything that says, Hey, we did
8 something later, like the 2003 reference that Mr. Cooke made
9 in his response. That's all.

10 MR. COOKE: Your Honor, I want to make sure this is
11 clear on the record. I don't think Mr. Javins and I disagree
12 about this.

13 He's using three different FMEAs.

14 THE COURT: Right.

15 MR. COOKE: Only one is applicable to --

16 THE COURT: I understand you've got arguments about
17 whether the others apply.

18 MR. COOKE: I think there's no dispute about --

19 THE COURT: Well, okay.

20 MR. JAVINS: And I'm talking about this finding
21 there's nothing to the right that says there's any alternative
22 design. That's all.

23 MR. COOKE: I don't know -- which document?

24 MR. JAVINS: This is the '04.

25 MR. COOKE: Okay. So that doesn't apply to this --

1 MR. JAVINS: In fact, it does apply.

2 THE COURT: Well, we can't hear this.

3 MR. COOKE: I'm sorry. We can clarify that wherever
4 we need to. But the gentleman who's asked about these
5 documents referred to the 1997 FMEA, not the 2004.

6 MR. JAVINS: Your Honor, the '97 FMEA and the
7 '01/'04 FMEA both have a finding which says what I just read
8 to the Court: Because of low occurrence, we're not going to
9 do anything.

10 Now, my only question to Ford was, did you consider
11 something and reject it, or did you not consider it? Because
12 there's nothing that reflects any alternative design.

13 THE COURT: What Mr. Clark said, in summarizing the
14 witness who was asked about that, that Ford didn't have --
15 didn't expect to keep nor does it have any records about that.

16 MR. CLARK: That's right, Your Honor.

17 THE COURT: All right. I'm going to deny
18 plaintiffs' motion.

19 You know, I'm not nearly as familiar with all these
20 documents and matters, the discovery questions, as you all
21 are, but I can tell you now that if we -- if I start to see
22 documents popping up that would contradict some other document
23 that -- but this new document hasn't been disclosed, you're
24 going to have trouble getting it past me.

25 As a general proposition, this whole process is designed

1 to make sure that each side does its work, investigates its
2 case, prepares it, and then exchanges all the relevant
3 information and documents so that there's no surprise.

4 And so it seems to me you've got these potential failure
5 mode documents, that if they're relevant to the 2001 Ford
6 Ranger, you can use them, and they purport to say no action
7 was intended as a result of the finding. And they've said
8 that there might be design changes reflected in the drawings,
9 but they've provided those to you. You've seen them. And you
10 all can fight about whether they purport to contradict that
11 answer or not.

12 MR. JAVINS: Thank you, Your Honor. Thank you.

13 THE COURT: All right. So I'm going to deny
14 plaintiffs' 87.

15 Next is Document 89. That's Mr. Nease's -- or the
16 Neases' motion for partial summary judgment based upon
17 collateral estoppel.

18 Okay. Mr. Heiskell?

19 MR. HEISKELL: May it please the Court.

20 THE COURT: Sorry for having to make you use
21 microphones. We've tried to repair the acoustics and improve
22 them, but nothing seems to work much.

23 MR. HEISKELL: I think I can project this okay. If
24 there's any question, just raise your hand.

25 Your Honor, thank you.

1 THE COURT: First, I can help you to speed this
2 along a little bit. I'm familiar with the fact that in the
3 *Huber* case and in the other case -- I can't remember the name
4 of it.

5 MR. HEISKELL: *Olson*, Your Honor.

6 THE COURT: *Olson*. That in both those cases, a
7 couple of things: One, you had -- Mr. Sero was the expert for
8 the plaintiffs in those cases.

9 Number two, as I understand it, Mr. Sero completed an
10 investigation and an evaluation post-accident, obviously,
11 where he purports to find evidence that the accelerator cable
12 passing through the plastic sheath became obstructed by some
13 foreign material typical of what one might expect to find
14 around and inside an engine and from underneath the car, and
15 that he testified that -- made findings and then testified
16 consistent with those findings that this Ford product was --
17 these Ford products were defective because they had that same
18 design flaw that he's argued here.

19 Obviously, they were different vehicles. So it seems to
20 me both sides agree that one critical factor, perhaps a
21 threshold matter, is the extent to which the parts were the
22 same literally or substantially identical to the one at issue
23 here.

24 So that's -- what do you say to that? They've noted that
25 in Mr. Sero's findings and in deposition, I guess, he's

1 acknowledged the fact that while this configuration of the
2 cable running through a plastic sheath as part of the
3 acceleration system is common, that there are different sizes
4 of the sheath and/or maybe the cable and different
5 configurations and different placement within an engine. So
6 keep that in mind.

7 To me, that's -- all those things are critical questions
8 with regard to whether you can establish enough similarity
9 that you get past that hurdle.

10 MR. HEISKELL: Yes, Your Honor. And I start with
11 the failure mode effects analysis, which, according to the
12 testimony of Ford's own employees, applied to each of these
13 specific cables, number one, so that they -- and, Your Honor,
14 a historical note within Ford: That failure mode appears on
15 the 1987 failure mode effects analysis because they had had
16 previous experience with cables through which -- or sheaths
17 through which a cable pass, and they had this problem of
18 foreign contaminants getting in and jamming the cable.

19 So when they designed the Next Generation speed control
20 system, they had this experience, and they were going to use
21 the same type cables. So they said, We can't design it out,
22 so it's got to be a failure mode, potential failure mode.

23 And Adams and Perkins have both testified that it applied
24 to these subsequent iterations, because Perkins testified
25 in -- Joel Perkins, a Ford employee who had been with the

1 company for 30 years, was deposed in the *Huber* case, and he
2 testified that as far as he knew -- and he had been in charge
3 of the Next Generation speed control system back in 1991, '92.
4 And he testified that as far as he knew, there had been no
5 iterations from that time until he was being deposed in 2002,
6 which was after production of the Nease vehicle.

7 So we stand here today, and in three cases that I've had,
8 Ford has never been able to show any distinguishing features
9 among the Huber cable, the Olson cable. The Huber cable
10 killed one person, injured another, the Olson cable killed a
11 person, and the Nease cable injured Mr. Nease. And Ford
12 cannot point out any substantially -- substantial difference
13 among those cables.

14 Mr. Sero, the state of his expert testimony is that they
15 are substantially similar, if not identical.

16 THE COURT: And he testified he made exactly the
17 same physical findings.

18 MR. HEISKELL: Well, not -- he has said there are no
19 substantial differences among those cables. He said that in
20 his affidavit in this case.

21 THE COURT: Okay.

22 MR. HEISKELL: And it's the same principle, Your
23 Honor.

24 THE COURT: Did he make the same findings as to the
25 cause of the cable failure?

1 MR. HEISKELL: Yes. In each case, Your Honor,
2 beginning with the *Huber* case in 2002. That case, I think,
3 was filed maybe 2001. I think I tried it in 2003. He went in
4 and looked at the cable.

5 That complaint, by the way, embraced some other possible
6 causes. That was the first case that I'm aware of where we
7 actually were able to focus on this cable. There were some
8 other causes that we suspected might be the cause of
9 Mrs. Huber's accident, which included electronic impulses to
10 actuate the cable. We got it down to the foreign substances
11 collecting in that sheath.

12 Mr. Sero went in with his borescope, looked inside the
13 cable, saw evidence of the contaminants large enough to create
14 gouges which he identified inside the sheath and said this is
15 what the Ford engineers were talking about; it has
16 materialized. This is what happened. This is what stuck the
17 cable. Now, that's *Huber*.

18 A couple of years later, Mr. Olson is driving his 1998
19 Ford Explorer in Minot, North Dakota, on a driveway leading
20 away from a country club. He accelerates out, can't get
21 return of the pedal, keeps accelerating, has to make a bend,
22 can't make it, hits a tree.

23 We go in. Mr. Sero investigates. Same thing. Same
24 cable. Same cable design. Virtually the same cable in every
25 respect. Mr. Sero goes in with the borescope, looks at it,

1 and it really wasn't until I think the *Huber* case, or it may
2 have been the *Olson* case, that Ford ever confirmed what was
3 inside those sheaths. Their engineers testified that they
4 would look at the outside of the cable.

5 Finally, Ford began using its own borescope to look, to
6 see what was in there. Mr. Sero found the same thing. And he
7 found physical evidence of the gouging that indicated serious
8 enough grabbing of particles, holding -- binding the sheath,
9 just like Ford's engineers said could happen in 1987, and it
10 held the throttle open.

11 Now we come to Mr. Nease, and all the physical evidence
12 points to the very same thing. Mr. Sero goes in, looks in at
13 the cable, and finds, of course, the contaminants that you
14 find underneath the hood of a car. And he finds the
15 particles. He finds evidence of gouging. He considers
16 Mr. Nease's testimony. And he concludes that that cable
17 stuck.

18 And so the purpose of this motion, Your Honor, is kind of
19 been there, done that; why re-litigate this defect when there
20 are so many parallels and identicalities and substantial
21 similarities? It would shorten this trial by at least a day,
22 maybe two days. We're still stuck with proximate cause. But
23 in terms of this defect that Ford knew was going to be in this
24 cable from 1987 forward, we think that it would behoove all of
25 us to have a collateral estoppel on Ford's ability to defend

1 the cable.

2 THE COURT: You've seen their response. And this is
3 one of those which, quite honestly, I just haven't had time to
4 sit down and really thoroughly research. But essentially they
5 raise, among other arguments, that under the applicable state
6 law where those actions were tried or where this one was
7 tried, that collateral estoppel *res judicata* wouldn't apply
8 because you don't have the identity of the parties. Certainly
9 Ford is a party, but obviously the plaintiffs have no
10 relation.

11 So how do you get past that?

12 MR. HEISKELL: Well, first of all, we can throw out
13 *Olson* and we still have a basis for collateral estoppel under
14 West Virginia law. The issue was presented. All the
15 witnesses were deposed. It was fairly tried in Monongalia
16 County, West Virginia, in front of Judge Russell Clawges. The
17 jury came down with a verdict finding the system defective,
18 and those issues were all in front of the Court.

19 Ford had a chance fully and fairly to defend itself. It
20 was roughly a two-week trial.

21 In terms of the identity of the parties, I don't know
22 that they have to be identical parties. They are similarly
23 situated as Ford customers of Ford light trucks and vehicles
24 that have this system in it. The system was designed and
25 placed in Mrs. Huber's 1998 Lincoln Town Car. It was put in

1 Mr. Olson's Explorer. And it was put in Mr. Nease's 2001
2 Ranger. And those latter two, Your Honor, are Ford light
3 trucks that are built on the same platform.

4 THE COURT: Well, I'm going to first confess that
5 I've read this part of the outstanding motions about a week
6 ago, and I haven't really -- as I say, I didn't sit down and
7 read through all the cases, but Ford cited both North Dakota
8 and West Virginia case law essentially for the proposition,
9 among other objections to your motion, that you've got to be
10 the same parties.

11 And, you know, when I look at your response, there's very
12 limited, if any, real discussion of the case law. It's a, you
13 know, short cite to, I think, you know --

14 MR. HEISKELL: We cited *State v. Miller*.

15 THE COURT: And some North Dakota case, without much
16 elaboration, where it just lists, you know, kind of the
17 factors. And, frankly, I didn't think that it added a lot to
18 the sort of legal analysis necessary to determine whether
19 collateral estoppel could apply or not.

20 MR. HEISKELL: Well, I apologize to the Court for
21 that if I didn't brief that thoroughly enough, but it --
22 clearly, if they -- if there are identical parties, if that is
23 the requirement -- and I haven't seen that that is the
24 requirement in West Virginia.

25 But from the standpoint of the principles of collateral

1 estoppel, which are judicial efficiency, when you have a
2 product that's been deemed defective in two prior civil
3 actions under similar circumstances, it just makes sense that
4 you can get estoppel on that limited issue.

5 THE COURT: Okay. Let me ask a couple of things.
6 One, as I understand it, you also argue in some of the other
7 motions either asserted or defended by the plaintiffs that
8 irrespective of whether or not there's collateral estoppel as
9 to the verdicts in *Huber* or *Olson*, that Mr. Sero should still
10 be able to testify as to his findings in those cases. Is that
11 right?

12 MR. HEISKELL: As to his findings as to how the --

13 THE COURT: Right.

14 MR. HEISKELL: -- how the failure mode then has
15 the --

16 THE COURT: Exactly.

17 MR. HEISKELL: -- effect of seizing the cable, yes,
18 Your Honor.

19 THE COURT: All right. I'm curious about this more
20 than anything. It's probably not terribly difficult to
21 resolve, but if I agree with you that it's plausible that
22 there's collateral estoppel, how do you establish to the Court
23 the similarity or identical nature of the case?

24 I mean, you know, how do I determine that? I can -- you
25 can -- was there a finding by the Court? Was there an opinion

1 by the Court where findings were made?

2 How do we know what the evidence was? How do we know
3 what the jury relied upon in reaching its verdict?

4 MR. HEISKELL: Well, Sero filed a report in each of
5 those cases which is almost identical to his report in this
6 case.

7 THE COURT: Uh-huh.

8 MR. HEISKELL: That those issues were contested on
9 the defect end, proximate cause. In each of those cases, the
10 jury heard the same evidence on a defective product, and they
11 rendered a verdict that that product was defective and found
12 liability on the part of Ford Motor Company.

13 So in my understanding, that is a verdict that was
14 reduced to a judgment as a matter of record in each of those
15 two cases.

16 THE COURT: All right. All right. Thank you.

17 MR. HEISKELL: Thank you, Your Honor.

18 MR. CLARK: Your Honor, I think the Court's initial
19 inclination that we need to treat these two cases, *Olson* and
20 *Huber*, separately is correct. And one of those reasons is
21 exactly what you talked about with Mr. Heiskell, which is that
22 under *Semtek*, the foreign state's collateral estoppel law
23 governs.

24 Now, North Dakota law absolutely requires complete
25 mutuality of the parties. Everybody has cited this *Hofsommer*

1 case, H-o-f-s-o-m-m-e-r. And *Hofsommer* sets out the elements
2 of collateral estoppel.

3 It also says that back in *Armstrong* in 1975, the Supreme
4 Court of North Dakota said you have to have complete mutuality
5 of parties. We understand that in the ensuing 30 years, a lot
6 of states have changed that, but we, the Supreme Court of
7 North Dakota, never have, and we're not going to do it today.

8 And it is absolutely unequivocally true that mutuality,
9 complete mutuality of the parties is required for the
10 offensive application of collateral estoppel in North Dakota.

11 To be clear, Ford does not argue that West Virginia law
12 requires complete mutuality of the parties. But as far as
13 we're concerned, that ought to be the end of the discussion,
14 *Olson*.

15 Now, like Mr. Heiskell said, we have three different
16 vehicles involved in these three cases; a 2001 Ranger in this
17 case, and a 1998 Explorer in *Olson*, and a 1990 -- Mr. Heiskell
18 is going to have to help me -- a Lincoln Town Car, a 1998
19 Lincoln Town Car in *Huber*. The record tells us that.

20 What the record doesn't tell us really is a couple of
21 things, and one is which of the cables -- which of the
22 different designs of the cables were installed in each of
23 those vehicles.

24 Mr. Sero said in his report in this case that the speed
25 control cable has employed three different lost motion devices

1 at different times. He's testified in the past, I think in
2 this case, that in one of those designs, he's never seen the
3 sort of sticking or binding that he claims is present here.

4 Now, if you look at the exemplar that Mr. Javins had
5 earlier, I think what you'll see is that this part closer to
6 the -- this part closer to the end is on the outside in that
7 cable, and the part down here is on the inside. And this one,
8 which is a Ranger cable, the part closer to the end -- you're
9 going to hear this referred to by a lot of witnesses as the
10 casing cap -- is inside of the black part that's down toward
11 the body of the cable.

12 Now, does that make a difference? I don't know. You'd
13 have to ask Mr. Sero. But Mr. Sero, at least until after this
14 motion was fully briefed and the plaintiffs were responding to
15 motions *in limine*, hadn't said anything about that. And the
16 only thing that he said about it is his affidavit in their
17 response to the motion *in limine* and other incidents, and he
18 didn't really say anything there.

19 Now, the other important thing is that the defect is
20 actually different in all these cases. Back when he gave his
21 deposition in *Olson*, Mr. Sero testified that the most likely
22 cause of the binding in that case was the plastic end of the
23 strand cover thrashed by getting the pieces of the strand
24 cover entering and binding the speed control cable.

25 So what happens is the two plastic pieces butt up against

1 each other, and the -- I think the thicker piece, but I can't
2 recall -- one of them starts splintering, and then the
3 splinters catch the cable. There's no allegation of that in
4 this case. Ford actually conducted a recall of some vehicles
5 for that issue. The 2001 Ranger was not in that recall
6 population.

7 So with regard to *Olson*, you have to have mutuality under
8 North Dakota law. We don't have that here. You have to have
9 the same cable. No evidence in the record that we have that
10 here. And, in fact, I think the evidence will show that we do
11 not have that here. And you have to have the same defect.
12 And the evidence in the record on that, at least until
13 Mr. Sero was writing his affidavit for this case, is that the
14 defect is not the same here. So that's *Olson*.

15 Now, if you -- if you go to *Huber*, I think the Court was
16 very perceptive to ask about the verdict form because the
17 verdict form that plaintiffs filed is Exhibit 5 to their
18 motion, and it doesn't say anything about liability. It says,
19 State the amount of damages sustained by Joan Huber. And the
20 jury filled in some numbers and totaled it. The next page is
21 punitive damages, and the jury checked the plaintiffs were not
22 entitled to it.

23 That is all that's in this record about the jury's
24 findings in *Huber*. The testimony from Ford employees in *Huber*
25 is pretty much uniform that there are different cables for

1 different vehicles. Joel Perkins, who Mr. Heiskell referred
2 to, testified, quote, Whatever attachment that was used to
3 package the speed control system into that vehicle or
4 actuation cables to go to the throttle or electrical
5 terminations to that unit were specific to specific vehicles.

6 Later in that deposition, Mr. Perkins was asked whether
7 he had the working knowledge to tell counsel and tell the jury
8 which cables were and were not substantially similar, and he
9 said no.

10 Mr. Heiskell talked about Chuck Adams' testimony.
11 Mr. Adams testified that you have to look at the design
12 drawings to see differences between the cables.

13 And so the evidence that is in the record -- and
14 understanding of the record comprises a lot of testimony that
15 was given a long time ago -- at a minimum creates a genuine
16 issue of material fact on the similarity of the cables between
17 *Huber* and this case, meaning that the motion has got to be
18 denied.

19 THE COURT: All right. Brief reply?

20 MR. HEISKELL: Brief, brief reply, Your Honor.

21 Mr. Perkins at pages 15 and 16 of his deposition in 2002
22 said the system was unchanged as far as he knows, that those
23 cables all have the same failure mode -- potential failure
24 mode effects analysis. The potential failure mode cable is
25 jammed or sticking applies to all those cables.

1 They changed some part numbers, Your Honor, and some of
2 these things that they did in 2000, 2004 were a direct
3 response, I believe, to the *Huber* -- the fact that they got
4 hit with a verdict in *Huber*. But they didn't change the
5 design.

6 Mr. Perkins said as far as he knows, there were no
7 changes in the designs from '93 to 2002 when he was deposed.
8 And, again, Ford has yet to show us a difference between the
9 *Huber* cable, the *Olson* cable, and the *Nease* cable. And I
10 don't think it will happen in this case.

11 THE COURT: All right. I'm going to take this under
12 advisement. I'm inclined to say that I'm probably going to
13 deny the plaintiffs' motion insofar as the North Dakota case.
14 I agree, it looked to me like the North Dakota law required
15 mutuality of the parties, and it would have to be plaintiffs
16 that were in the same privity. But I'm going to withhold a
17 ruling on the West Virginia cause of action.

18 I do think it's necessary first to determine the extent
19 to which there is similarity or not in the products and
20 whether that's contested or not, okay?

21 Let's keep moving on, then. The next would be Ford's
22 motion -- it's Document 94. And it's titled To Preclude
23 Plaintiffs from Introducing Misleading Evidence Concerning the
24 Potential Failure Mode Analysis.

25 MR. CLARK: Well, I think I'm three for three on

1 talking to you on these motions, Your Honor, in the order in
2 which they were filed.

3 We've talked a lot about the FMEA. And what I want to
4 do, in the interest of brevity, is reduce this motion to
5 really two issues.

6 And the first is an issue that's come up twice already
7 today, both in Mr. Javins' argument and Mr. Heiskell's
8 argument, and it's this idea that the FMEA proves that cables
9 can become stuck in the real world.

10 All of this, all of the testimony, all of the documentary
11 evidence is that the FMEA identifies potential failures and
12 that engineers then think about those potential failures.
13 Maybe they make design changes; maybe they don't. We've
14 beaten that to death. But the FMEA is a conceptual document,
15 not a real-world document.

16 Now, certainly Ford doesn't seek to have the plaintiffs
17 precluded from saying that the FMEA identifies potential
18 failures and other evidence shows that they happen in the real
19 word, but the FMEA itself does not establish that sticking or
20 any other failure in this cable occurs in the real world.

21 THE COURT: You know, I'm confused by that. I mean,
22 what does it mean to say that the potential failure mode
23 identifies a potential risk but not in the real world?

24 I mean, I don't see anything in the document itself to
25 suggest that it's something other than the real world, that

1 it's a theoretical possibility.

2 MR. CLARK: Correct.

3 THE COURT: But how does that mean that it's not in
4 the real world?

5 MR. CLARK: It doesn't mean that it has occurred in
6 the real world. It means --

7 THE COURT: It doesn't mean that it has. It doesn't
8 mean that it will.

9 MR. CLARK: Correct.

10 THE COURT: Well, that's, you know, part of Ford's
11 proof and argument. What is it about plaintiffs'
12 characterization of the potential failure mode that you object
13 to?

14 I mean, you agree that the plaintiffs should be able to
15 offer the testimony that this was identified in the potential
16 failure mode. And, you know, their evidence is -- attempts to
17 prove that it actually did happen in this and perhaps other
18 cases.

19 I don't understand what it is you would have the Court
20 limit about the plaintiffs' evidence or argument.

21 MR. CLARK: It's very narrow, and it is this precise
22 statement, and perhaps nothing more than this, that the FMEA
23 itself establishes that the failure does occur in the real
24 world.

25 There might be other evidence that establishes that. The

1 FMEA does not establish that.

2 THE COURT: All right. What says the plaintiff?

3 MR. JAVINS: Your Honor, first of all, you just
4 about heard the sum total of the evidence I intend to elicit
5 from Ford employees about the FMEA, for starters, just so we
6 know what we're talking about.

7 The FMEA demonstrated that the cable can bind, result in
8 a throttle being stuck open. That rates a severity of 10.
9 And because of low occurrence rates, we're not going to do
10 anything about that.

11 Now, the FMEA is a tool used by Ford -- we cited this in
12 our brief papers -- intended to evaluate the hazards as -- as
13 a means to identify failure modes and correct them. If this
14 were merely hypothetical, there would be no need to rate the
15 severity of a failure mode. If this were merely hypothetical,
16 there would be no need to rate the occurrence of the failure
17 mode. If this were merely hypothetical, there would be no
18 need to rate the detection, Your Honor.

19 This is a tool utilized by Ford engineers to identify
20 hazards and then, when it rates a 9 or 10, take corrective
21 actions and consider alternative designs. That's the sum
22 total of what I intend to say about that through Ford's
23 employees. Thank you.

24 THE COURT: All right. Mr. Clark, do you have any
25 reply to that?

1 MR. CLARK: Only this, Your Honor: And I'm a little
2 mystified on Mr. Javins' point that if the failure mode
3 doesn't occur, then there's no need to rate the severity. The
4 whole point of the exercise is that it's hypothetical. You
5 rate what the severity would be if it occurred.

6 THE COURT: Right.

7 MR. CLARK: And if that number is a certain thing,
8 there are certain consequences. He's right about that.

9 THE COURT: Well, I'm going to deny the defendant's
10 motion.

11 First, it seems to me that I haven't heard anything that
12 the plaintiffs have discussed in this response or today that
13 suggests that they're using this for any improper or
14 misleading purpose. Yes, it seems everyone agrees that this
15 was more or less a brainstorming effort by the engineers at an
16 early design phase to try to determine what could go wrong,
17 what has the potential for failing. It's hypothetical, but
18 it's real world.

19 I don't understand the defendant's argument that somehow
20 because this is sort of a brainstorming design session that it
21 isn't predicting that there is a possibility, in this case
22 characterized as remote and rare, that this design could
23 result in a defect. And I think plaintiffs are entitled to
24 use that. I don't see anything misleading. So I'm --

25 MR. CLARK: There's a second issue that's

1 distinct --

2 THE COURT: Okay.

3 MR. CLARK: -- if we can talk about it.

4 THE COURT: What's that?

5 MR. CLARK: And that's the argument that Ford
6 identified problems or potential failure modes in the FMEA
7 and, quote/unquote, did nothing in response to them.

8 THE COURT: Well, we've heard the discussion already
9 about this. Plaintiffs have at least one document which
10 indicates that the potential failure mode analysis did not
11 result in any specific action and, instead, discounted the
12 need for it.

13 You've represented that you have design information and
14 drawings that show iterations in the product. I'm assuming
15 you've got witnesses who are going to be testifying about this
16 and say that -- which have been disclosed and identified and
17 are going to say this was not really a real possibility and it
18 really doesn't happen and it didn't happen here.

19 So I don't think this precludes that at all.

20 MR. CLARK: I think the problem, Your Honor -- and
21 maybe I can distill it for you a little bit and not take a lot
22 of time --

23 THE COURT: Okay. Good. Sure.

24 MR. CLARK: -- is the idea that globally as to all
25 of the potential failure modes identified, Ford did nothing.

1 If there are specific ones where the FMEA does not show a
2 corrective action, that's not really what we're concerned
3 about.

4 THE COURT: Well --

5 MR. CLARK: I'm not sure we disagree.

6 THE COURT: -- first, do you expect to try to offer
7 evidence of any other potential failure mode analysis about
8 anything other than the sticking cable relevant to this case?

9 MR. JAVINS: You've heard the sum total of our
10 failure mode analysis argument, Your Honor.

11 THE COURT: All right. So it's going to be
12 restricted to the failure mode analysis for an accelerator
13 cable passing through a plastic sheath.

14 MR. CLARK: Then that takes care of our concern,
15 Your Honor.

16 THE COURT: Okay. All right.

17 Next by the list I have is 95, Document 95, Ford's motion
18 to exclude evidence of Ford's experts' compensation in other
19 matters.

20 As I understand it, you've got, like, engineer experts
21 who work for a company who have provided consulting and I
22 assume expert testimony services for Ford over a long period
23 of time?

24 MR. COOKE: Yes, sir, Your Honor. And I think the
25 motion speaks -- it speaks generally, but I think the example

1 given was a company called Carr Engineering, C-a-r-r,
2 Engineering --

3 THE COURT: Right.

4 MR. COOKE: -- and they do all manner of consulting,
5 much in litigation, some not, some in product development and
6 testing, those sorts of things.

7 Your Honor, this motion is -- I hope that it's clear.
8 Ford simply -- there's no objection to compensation in this
9 case by employees of that company. We have no objection to
10 that. I think it's -- I can't remember if it was asked, but
11 we think that's proper, "What's your hourly rate," under Rule
12 26. "What were you paid in this case" --

13 THE COURT: Okay.

14 MR. COOKE: -- is entirely appropriate.

15 The motion seeks to ask a question of an employee of a
16 company like Carr Engineering how much has Carr Engineering
17 been paid over the past -- I think ten years was the example
18 that was used. And that, Your Honor, is not within the Rule
19 26 framework, and there's case law in this district that says
20 that that's inappropriate even from a discovery standpoint,
21 that that's overkill and that's not necessary to show bias
22 because the amount paid by hourly rate in compensation in this
23 case will show bias.

24 The other -- the other compensation could be for -- it
25 may not be for a litigated matter. It would be misleading.

1 It requires explanations that the witness doesn't have because
2 he's an employee and not an owner of the company. Carr
3 Engineering, for example, is owned by one person.

4 So -- and then the case that we cited, Your Honor, the
5 *Beckner v. Bayer Cropsciences* case, says that this is an
6 overbroad request, that it is not even discoverable. It
7 exceeds what's necessary to show bias. And the plaintiffs in
8 this case make no showing as to why the Rule 26 paradigm is
9 not appropriate to show bias or not sufficient to show bias.
10 And there is substantial risk of confusion, waste of time, and
11 distraction if we have to try to explain these other issues.

12 THE COURT: All right. For the plaintiff?

13 MR. HEISKELL: Thank you, Your Honor. In the *Huber*
14 case, the same company, Carr Engineering, supplied Mr. Carr to
15 do what Mr. Stopschinski has been supplied to do in this case
16 from the same company.

17 THE COURT: Carr?

18 MR. HEISKELL: Carr Engineering, that's right, Your
19 Honor.

20 And in the *Huber* case, Mr. Carr came in and said that all
21 Mrs. Huber had to do to save the life of her daughter and keep
22 herself from being injured was apply merely 25 pounds of brake
23 pedal force on her brake pedal in the Lincoln Town Car.

24 This is what Mr. Stopschinski is doing in this case,
25 trying to say that Mr. Nease should have been able to apply

1 enough brake pedal pressure to stop it.

2 THE COURT: Okay.

3 MR. HEISKELL: Both are from the same company.

4 Mr. Stopschinski worked with Mr. Carr on the *Huber* testing and
5 demonstration videos. And when Mr. Carr came to testify in
6 Monongalia County, I was permitted to inquire how much his
7 company had been paid by Ford Motor Company to defend it in
8 litigation matters within the last ten years.

9 And there was a question and answer. It's a matter of
10 record. And the question is:

11 All right. And Carr Engineering is your company,
12 correct?

13 Answer: Sure. Yes.

14 Question: You're the sole shareholder, correct?

15 I am.

16 Question: And how much and over what period of time has
17 Ford paid you as of what they're saying in that letter?

18 Answer: All right. This would be a period beginning
19 January 1 of 1992, and the total would be \$32,239,072.64.

20 Now, that was testimony given about nine years ago, and
21 Mr. Carr and Mr. Stopschinski have continued to work for Ford
22 and its lawyers to help put out the fires in cases like this.

23 I think it's perfectly appropriate. I think there's
24 ample case law that says, on the matter of bias, if a witness
25 is in this courtroom on that stand, Your Honor, we're entitled

1 to find out just how beholden they are to the defendant in the
2 case. This is an automaker.

3 We're not asking what Toyota paid Mr. Stopschinski to
4 defend its products last year, which he did. And we're
5 asking, "This company you work for, how much has it been paid
6 by Ford in the last ten years?" That's bias, Your Honor.

7 THE COURT: All right. I'll give you the last word.

8 MR. COOKE: Thank you, Your Honor.

9 Your Honor, the plaintiffs have not referred to any case
10 law that would say this is appropriate under Rule 26 or under
11 403. I think that what's even more prejudicial about what's
12 being sought here is that Mr. Stopschinski doesn't know the
13 answer to the question. And so to ask a witness on the stand
14 a misleading question that you know he doesn't have the
15 answer, you know he has no foundation, is completely improper.

16 And I don't know what Mr. Carr said at the *Huber* trial,
17 but just by way of example, Carr Engineering spent -- worked
18 24 hours around the clock back in the early 2000 testing
19 replacement tires to replace Firestone tires because they
20 didn't want -- Ford did not want to have vehicles on the road
21 with a tire that had been recalled, and they couldn't just
22 throw anything out there. They had to do round-the-clock
23 testing, and they spent a lot of money doing that during the
24 time period that Mr. Heiskell is discussing.

25 THE COURT: All right. I'm going to grant the

1 motion, at least in part. Certainly I have no problem with
2 plaintiffs inquiring of the witness how much he or his firm is
3 charging and receiving in this case.

4 Second, I have no problem with counsel generally
5 inquiring about the long-term nature of Carr's relationship as
6 a firm providing engineering -- or I really want to focus --
7 providing expert testimony type evaluations, the nature of
8 them, the type of evaluations they've done, whether it's, you
9 know, some other part or aspect of the car or things like
10 that.

11 But I really do believe that it's improper in this case
12 to inquire about the total amount that Carr Engineering may
13 have received in payments for whatever work done by Ford over
14 a long period of time. I think that that would be, frankly,
15 more prejudicial than probative.

16 So I'm going to preclude you from eliciting that from the
17 testimony; but you can certainly, without spending too long on
18 it -- it becomes redundant after a while -- can certainly ask
19 about all the different types of expertise that Carr has
20 provided and the long-term relationship.

21 That's evidence that the jury could consider
22 demonstrating that Carr has some bias in favor of Ford and
23 some interest in continuing to work for Ford. And I think
24 that's fair game. But you can't ask them about the total
25 compensation for all work.

1 Mr. Cooke?

2 MR. COOKE: Your Honor, just one point of
3 clarification. We may get to this in some other motions down
4 the road, but I just wanted to raise it because I've seen this
5 happen in these types of cases. And the best way to phrase it
6 is the difficulty in showing substantial similarity of other
7 incidents is a high burden.

8 So one of the tactics that a lawyer may use is to try to
9 introduce other incident evidence through the back door by
10 asking about a specific matter on an expert witness's
11 testimony list and then try to lead the jury to believe that
12 that's just like this case.

13 And so the reason I raise this now is I understand Your
14 Honor's ruling, but I want to make sure that we be mindful of
15 that, depending on how we address this.

16 THE COURT: Well, I'm not sure how we address it.
17 One of the big topics we have left for discussion here is
18 whether or not evidence of other incidents, complaints,
19 etcetera, comes in, how it comes in.

20 So perhaps we should just defer that until we get into
21 that subject with the others.

22 MR. COOKE: Thank you.

23 THE COURT: So with respect to Ford's motion,
24 Document 95, I'm going to grant consistent with my oral
25 statements regarding the limits of what plaintiff may or may

1 not do.

2 Next, 96, Ford's motion to preclude evidence or argument
3 concerning unrelated defects in vehicles.

4 MR. COOKE: Thank you, Your Honor.

5 The plaintiffs' theory in the Nease case is that the
6 speed control cable stuck and became stuck in one direction
7 because the testimony of the plaintiff and the plaintiffs'
8 expert is that he pressed on the accelerator and it became
9 more and more stuck. It wasn't that it was -- and that it
10 wouldn't return.

11 And so there have been questions throughout the case in
12 depositions about electronic defects, which I think the
13 plaintiffs agree they're not going to get into that, but the
14 response in the motion or their response was a little bit
15 wishy-washy as to how they might talk about electronic
16 matters.

17 They shouldn't be able to just introduce evidence of a
18 binding that is just one -- that is a bind and won't move at
19 all because that's not -- that's not the issue that they have
20 raised in this case. Binding of other materials such as a
21 kinking in the cable should be excluded. That's not the issue
22 in this case, and other vehicles, binding in other vehicles
23 that they don't -- that don't have the same sort of packaging
24 of the speed control cable as in Mr. Nease's case.

25 So under 401, 402, the other -- these other types of

1 defects would be irrelevant. Under -- it's a similar OI,
2 404(b) bad character type of evidence, that if they don't show
3 that it's similar, they shouldn't be able to talk about it.

4 THE COURT: My recollection is one of the things
5 that they mentioned that they think they should be able to
6 show is the effectiveness of the brakes on stopping the car,
7 whether it's a car accelerating because the cable is stuck or
8 whether it's a car that's accelerating allegedly because of an
9 electromagnetic or mechanical interference or something like
10 that.

11 So what's your position with respect to that?

12 MR. COOKE: So I think we're all in agreement, that
13 it's not a defect theory on braking, but there is testimony I
14 think from Mr. Sero about how -- about effectiveness of
15 braking.

16 THE COURT: Yeah. Well, let's be clear about that.
17 Does the plaintiff claim that there's a defective design with
18 regard to the brakes?

19 MR. JAVINS: Well, we alleged that in our complaint.
20 We haven't developed that, in all candor, Your Honor.

21 THE COURT: Okay.

22 MR. JAVINS: Really, the brakes are -- and I think
23 Andy, Mr. Cooke -- we go a ways back.

24 THE COURT: We do, too.

25 MR. JAVINS: So that really hasn't been developed.

1 THE COURT: Okay.

2 MR. JAVINS: I agree, I think, with everything he
3 said, but for the sake of clarity, this -- first of all, the
4 idea of unidirectional binding is a word that Mr. Bibb used I
5 think for the first time in Mr. Sero's deposition. I'm not
6 sure I know what that means, but it's a binding case, okay?

7 THE COURT: Right. Cable being bound.

8 MR. JAVINS: Excuse me?

9 THE COURT: The cable being bound.

10 MR. JAVINS: Correct. And resulted in the throttle
11 being stuck in the open position.

12 THE COURT: Right.

13 MR. JAVINS: There's no -- we have no intention of
14 offering defects of electronics, anything like that.

15 THE COURT: Okay.

16 MR. JAVINS: To the extent that the brakes are
17 implicated, it really is to rebut for the affirmative defense,
18 which I believe is -- I don't think I'm speaking out of
19 turn -- that the brakes will always overcome an open throttle.
20 And I don't know that we disagree with that.

21 Our point is -- and I think you read some of this
22 earlier -- it does impact the ability of the vehicle to stop.
23 It takes a 100-foot stopping distance and perhaps makes it
24 longer. And I think even Ford's own people concede that
25 because you have this vacuum boost, and the air -- that the

1 brakes don't have the air from the intake manifold because
2 it's all been depleted by the open throttle.

3 Mr. Sero addresses that I think competently. Indeed,
4 Ford's own witnesses address that to some degree. So that's
5 the sum total.

6 I will say this, though, Your Honor, in terms of other
7 defects allegations: The Court is aware we do have a number
8 of calls in to the call center of people complaining of a
9 stuck throttle. Now, Ford can't tell us that they can rule
10 that out one way or the other, but I think it goes to notice
11 by Ford that others -- and I'm talking about a 2001 Ranger
12 pickup truck.

13 We have a stack of documents and a series of inquiries of
14 a Mr. Sprunger, Ford's corporate representative, talking
15 about, Yes, we have received a number of calls where customers
16 have complained about a stuck throttle.

17 Likewise, Ford's other corporate representative will say,
18 Dealers have also called about a stuck throttle, and we --
19 that's unknown to us. We don't -- that's not a known entity
20 to us, even though our -- this is a side commentary and more
21 of an argument. Even though our failure modes effects
22 analysis identified a bound cable, we don't know what that
23 means when we talk to our dealers.

24 And so that is other incidents that we intend to
25 introduce at trial, and I want to give the Court fair warning

1 of that.

2 THE COURT: Well, let's back up a bit, then.

3 So, first, the only defect being alleged in this case is
4 the alleged design defect whereby the control -- the speed
5 control cable can be physically jammed by foreign material
6 entering the plastic sheath through which the cable passes.

7 MR. JAVINS: Correct.

8 THE COURT: So, so that's clear. Then with respect
9 to the brakes, as I understand it, plaintiff isn't claiming
10 there's anything wrong with the brakes. You're asserting
11 evidence about the brakes, first, to show that the defective
12 design with respect to the cable isn't remedied by the ability
13 of the brakes to bring the car to a stop.

14 MR. JAVINS: And technically it's an affirmative
15 rebuttal to the affirmative defense, but yes. Yes.

16 THE COURT: And it's that as well. To the extent
17 that plaintiffs are defending against any comparative fault
18 based upon not using the brakes, you want to demonstrate that
19 using the brakes in the manner the plaintiff claimed possibly
20 couldn't be effective anyway.

21 MR. JAVINS: That is correct.

22 THE COURT: So we're clear on those things. So if
23 that's the case, then, I don't see anything else that the
24 plaintiff is claiming, at least for the purposes of your
25 motion Document Number 96, that --

1 MR. COOKE: I think Your Honor is right. If Ford
2 makes -- no question was raised about electromagnetic
3 interference --

4 THE COURT: Right.

5 MR. COOKE: -- and the brakes, there's no reason to
6 say electro -- there's no electronic defect. There's no
7 reason for that to even -- that's not what they need for their
8 brake -- their testimony about the brakes.

9 That's what -- that's what this motion is designed to --

10 THE COURT: Okay. So did you intend to try to offer
11 evidence that sometimes the throttle sticks open because of
12 electromagnetic interference and --

13 MR. JAVINS: No, Your Honor.

14 THE COURT: Okay. So we don't have to worry about
15 it.

16 MR. COOKE: I think -- I think we understand.

17 THE COURT: And based upon that, I'm going to grant
18 the defendant's motion.

19 MR. JAVINS: Excuse me?

20 THE COURT: I'm granting the defendant's motion.
21 You can't offer evidence concerning unrelated defects.

22 MR. JAVINS: I would argue that they didn't really
23 plead -- fair enough. Okay. I wrote down in anticipation you
24 were denying it, but I understand --

25 THE COURT: Yeah. You've represented you're not

1 going to try to offer the specific evidence about the brakes
2 that we talked about, so -- okay.

3 MR. JAVINS: Right.

4 THE COURT: Next is plaintiffs' motion -- it's
5 Document 106 -- to preclude the defendant from asserting
6 comparative fault as a defense to the plaintiffs' breach of
7 warranty claims.

8 MR. JAVINS: The paper speaks for itself, Your
9 Honor. A warranty claim is in principle a contract. The
10 comparative conduct of the parties or the comparative
11 negligent conduct of the parties is not part of the analysis.
12 It's not something for the jury consideration.

13 A simple question is -- it's much like strict liability.
14 It pertains to the product. In this case, was the product
15 either of merchantable quality or was it fit for highway
16 usage. And so the comparative conduct of Mr. Nease is of no
17 moment for that analysis.

18 THE COURT: All right. Mr. Cooke?

19 MR. COOKE: Thank you, Your Honor.

20 Well, in this case, we do have a negligence claim, a
21 strict liability claim, and a breach of warranty claim. I'm
22 not sure how, mechanically, how we separate any of this
23 evidence out.

24 THE COURT: Well, we're going to have to -- first, I
25 don't know if we can separate the evidence. You are entitled

1 to offer evidence of comparative fault as a defense, so to
2 speak, against a negligence claim.

3 Do you contend that negligence on the part of plaintiff
4 is a relevant factor for the jury in determining liability as
5 to any of the other claims?

6 MR. COOKE: As to the strict liability claim? Yes.
7 As to the breach of warranty claim? Yes, because the case law
8 that the plaintiffs rely upon comes out of Virginia. Virginia
9 is a contributory state. If there's 1 percent, barred. We
10 use a different paradigm in West Virginia. We use modified
11 comparative negligence. I know Your Honor knows all of this.

12 And so that's why in the *Star Furniture* case, which was a
13 breach of warranty case, it doesn't go as far as the
14 plaintiffs are asking this Court to go here. So I think the
15 law is not applicable, Your Honor, in addition to the
16 complexities --

17 THE COURT: All right. Well, I think most of this
18 is going to have to be dealt with in closing final
19 instructions, but I'll hold this in abeyance until I've had a
20 chance to look at it further.

21 Next is Document 107, plaintiffs' motion for judicial
22 notice of previous actions and jury findings. I assume that's
23 just connected to the *Olson* and *Huber* cases.

24 MR. HEISKELL: Very much so, Your Honor, and it's
25 pretty much embodied within the argument we had in relation to

1 collateral estoppel.

2 THE COURT: All right. I'll hold it in abeyance as
3 well.

4 Next is plaintiffs' motion to limit the testimony of
5 expert Lisa Gwin.

6 MR. O'DELL: Yes, Your Honor.

7 THE COURT: As I understand it, she testified or
8 purported to testify really with two different expertise. One
9 is sort of a biomechanical assessment that contemplates that
10 she would offer opinions about how Mr. Nease's feet and legs
11 were positioned in the vehicle at the time of collision as
12 creating an inference as to whether or not he had his feet on
13 the brakes, which he contends, or whether his feet must have
14 been somewhere else.

15 And the only part of this you're objecting to, as I
16 understand it, is this demonstration or simulation that she
17 did with another person playing the role of Mr. Nease?

18 MR. O'DELL: Your Honor, obviously complaining about
19 a couple of things with her.

20 THE COURT: Okay.

21 MR. O'DELL: And I'll stick to this one first
22 because that's the one you raised. In this one, we're saying
23 that -- we're not saying you can't use, you know, dummies or
24 other people as --

25 THE COURT: Right.

1 MR. O'DELL: But what we're saying is that there's
2 no similarity here. There's absolutely no similarity. She
3 didn't do measurements for seated height, leg length. The
4 surrogate had no shoes.

5 THE COURT: She measured some of those things after
6 the fact.

7 MR. O'DELL: She tried to, but, you know, she
8 can't -- she really can't compare it to Mr. Nease, which they
9 could have done if they wanted to. They could have asked for
10 those types of information.

11 The other thing is, in this case, you know, all she's
12 doing is having this guy scoot up, you know, against his own
13 force.

14 In this case, this guy leaves the road, hits three curbs,
15 you know, that she admits one is at least 8 inches, does a
16 Dukes of Hazzard. The witness says you can see the bottom of
17 his car. He lands. He's bouncing all over the place. He
18 hits a stall of the car wash.

19 THE COURT: Right.

20 MR. O'DELL: And which they admit he does an abrupt
21 15-degree counterclockwise turn. I mean, so he's getting
22 jerked to the -- which is going to take him to the right,
23 which is what they're basically claiming, to try to put his
24 foot on the gas pedal. And it's just because of all those
25 things that she says she didn't consider -- she didn't

1 consider any of those things.

2 And she admits that he would be moving left to right -- I
3 think I'm right on that -- which moves him in the direction
4 they want him to be in in terms of trying to put his foot on
5 the gas pedal. It's just so not similar that it's not even
6 fair.

7 THE COURT: Well, I remember Petersen's -- I saw a
8 video. I haven't seen -- I don't know if it was submitted or
9 not. Doesn't matter.

10 So describe for me, then, in a little more detail what
11 you understand the video part of this to be. It's just
12 somebody seated in a car, and then does she have them move
13 about in the car into different positions and then try to
14 determine how they are aligned with their body with the dash?

15 MR. O'DELL: Puts his foot on the gas and tries to
16 get him to move forward against the restraining system.

17 THE COURT: Just to scoot -- he just starts scooting
18 forward?

19 MR. O'DELL: Right --

20 THE COURT: Yeah.

21 MR. O'DELL: -- as far as he can. He's fighting
22 against it as hard as he can and puts his knee on there, which
23 is not the same as being -- striking the stall, getting the
24 counterclockwise turn, and then almost immediately striking a
25 wall at -- I think they said 45 miles an hour or so.

1 I mean, the pressure and the forces at that are going to
2 be so much different from what she's trying to test in there
3 that it's not even --

4 THE COURT: I assume you have -- or maybe you don't.
5 Do you quarrel, then, with her opinion about what part of his
6 body left the imprints on the dash? I think it's called a
7 knee bolster or something, what she called it. I've never
8 heard that.

9 MR. O'DELL: I mean, I don't think there's -- I
10 mean, probably not. I mean, I don't know what left the mark,
11 but I mean we're not arguing, you know, with that I don't
12 guess. It's just her extrapolating based on all these
13 dissimilarities to what actually happened that somehow this
14 puts his foot on the gas. It's not --

15 THE COURT: Well, so are you objecting just to her
16 use of this video demonstration, or are you objecting to that
17 and any opinion that she offered that purports to rely upon
18 something like that?

19 MR. O'DELL: Yeah, we're objecting to her opinion
20 that purports to rely on that, and her whole opinion relies
21 upon that. I mean, that's her -- that's the sum and substance
22 of her opinion, is she's relying on this other person to scoot
23 forward and say, Look here, his knee lines right up. That
24 means his foot is on the gas.

25 I mean, it's not -- there's no way -- I mean, if they

1 wanted to run a crash test and put people in, a similar size,
2 measure Mr. Nease and do some real testing, they could
3 probably do that. That's not what they'd done in this case.

4 THE COURT: All right. Let's hear from the
5 defendant.

6 MR. BIBB: Your Honor, I'm Randy Bibb of the
7 Nashville bar. This is my first appearance in front of Your
8 Honor.

9 THE COURT: Welcome.

10 MR. BIBB: First of all, let me explain to you --
11 because I don't think Mr. O'Dell understands how a surrogate
12 study is done. These are done very commonly in all sorts of
13 crashworthiness cases where there's a claim of occupant
14 contact with interior components of the vehicle.

15 This was a frontal collision, so the person who -- the
16 surrogate is selected to be of approximately the same height.
17 In this case, the surrogate was 5'6". Mr. Nease is previously
18 described as either 5'6" or 5'7". The surrogate weighed
19 158 pounds. Mr. Nease has testified that he weighed anywhere
20 from 150 to 154 pounds at the time of the crash.

21 You have a very close match. In fact, she, in that
22 affidavit or the declaration that was submitted, went through
23 all that.

24 The person is then placed in the seat. They adjust the
25 seat so that it fits them to be able to reach the controls.

1 The seatbelt is then cinched.

2 THE COURT: Was there -- when the seat is adjusted,
3 is it adjusted at the comfort of the human subject, or does
4 she have it adjusted where the seat was for Mr. Nease?

5 MR. BIBB: The seat in this case was set as it was
6 found in the Nease vehicle, and we understood it had not been
7 altered.

8 THE COURT: All right.

9 MR. BIBB: The surrogate found that position to be a
10 comfortable position to sit in as well. The seatbelt is then
11 cinched. In other words, they try to pull all the slack out
12 of it and it is locked as if the seatbelt retractor had locked
13 in a frontal collision. And then the person is asked to
14 stress as hard as they can against that until they reach
15 contact with whatever parts of the car they contact. In this
16 case, it would be with his knees.

17 And there is no videotape taken, prepared. In other
18 words, these are still images indicating -- marking the point
19 where his knee had contacts, and it's taped and marked there.
20 And then those contact parts are compared to the contact
21 positions -- the surrogate doesn't know what was done in
22 Mr. Nease's case. He has never seen those photographs.
23 There's no effort to try to recreate the contacts of
24 Mr. Nease.

25 The primary comparison here is to find out, one, would

1 someone placing their foot on the brake pedal have knee
2 contact in the location where we see the contacts in
3 Mr. Nease's vehicle. And the answer to that was no.

4 The contact marks are very close to the contact marks
5 found for the right foot being on the accelerator pedal, with
6 the accelerator pedal depressed, and the left foot over on
7 either the foot rest or to the right of the brake --

8 THE COURT: On either side of the steering column.

9 MR. BIBB: On the side of the steering column,
10 correct.

11 In addition, we went -- she compared -- because this
12 crash occurred at approximately 35 miles an hour into a brick
13 wall, almost at twelve o'clock, almost straight ahead.

14 The federal government runs a whole bunch of tests.
15 They're called the New Car Assessment Program, or NCAP tests.
16 They run frontal barrier tests at 35 miles an hour into a
17 fixed barrier, a concrete wall.

18 In those tests, they use a 50th percentile dummy, who is
19 slightly bigger than Mr. Nease, about 5'9" and weighs about
20 175 pounds. And they photograph the position of that dummy
21 against both pre- and post-crash, something Mr. O'Dell just
22 suggested we could have done if we wanted to. Well, she
23 compared, and it's in her report where you look at the knee
24 contacts on those dummies and they're very similar to the knee
25 contacts you see in Mr. Nease's crash.

1 And in those cases, the dummy's right foot is always
2 placed on the accelerator pedal and the left foot is placed on
3 the floor to the left of the brake pedal. They have a
4 pre-crash setup where you can actually see how the dummy is
5 positioned prior to the crash.

6 So, first of all, surrogate testing like what Dr. Gwin
7 did in this case is very commonplace. It's recognized and
8 accepted in the peer-reviewed scientific literature. She
9 attached some copies of that literature to her declaration.
10 And that information is well-recognized in the field.

11 Would you like me to go on to the other points or --

12 THE COURT: No, stop with that one and we'll --

13 MR. O'DELL: Your Honor, if I could just -- first of
14 all, she admits when it hits the wall, it's going
15 counterclockwise. It doesn't go directly into the wall, which
16 makes it different than those studies that Mr. Bibb is talking
17 about.

18 There's also, all she did when she went back is, there's
19 still no measurements of really what Mr. -- some people have
20 longer legs, torsos. We've got this counterclockwise spin.
21 All she does is looks at some averages in some books, you
22 know. And we can't forget in this case that she's totally
23 forgotten the fact that this man has gone over three curbs, is
24 bouncing, is getting tossed around when he hits this thing and
25 that his feet are still on any pedals at that point.

1 And she just totally discounts any of that, doesn't
2 consider any of it, and then just looks at this one study and
3 shows it straight-on. And this wasn't straight-on. It came
4 in at an angle because of hitting that. And that right there
5 makes it totally different in and of itself, Your Honor.

6 There's another point to her testimony. I don't know if
7 you want any more from that.

8 THE COURT: Well, about her medical opinion?

9 MR. O'DELL: Just about the drugs.

10 THE COURT: Yeah, we'll get to that later.

11 MR. O'DELL: Okay.

12 THE COURT: Was there something --

13 MR. BIBB: I was going to emphasize, Your Honor, the
14 only point at which we can identify the location of the
15 occupant contact is at the moment of impact with that wall.

16 What happens, jumping curbs, I mean she acknowledged that
17 in her report, talked about that, but said, you know, All I
18 can identify based on the physical evidence is where his feet
19 were at the time of impact.

20 THE COURT: Okay. Anything else, then?

21 MR. HEISKELL: May I, Your Honor, because I briefed
22 this?

23 THE COURT: Sure. Okay. Briefly, go ahead.

24 MR. HEISKELL: And I took her deposition. This
25 man's Ranger has a quartering frontal impact with the bay wall

1 that knocks the bricks out of the wall and then glances off
2 and then it's a frontal collision. So the contact here that
3 Mr. O'Dell said was counterclockwise is exactly right.

4 Mr. Bibb has been talking as if that never happened, that
5 it was all about the final contact frontally with the office
6 building. We agree with that, but he'd already had his
7 vehicle slammed into this brick side wall, the car wash bay.

8 THE COURT: All right. I'm going to deny this part
9 of plaintiffs' motion.

10 Certainly the plaintiff raises reasonable questions that
11 go to how much weight, if any, should be given to Miss Gwin's
12 testimony and in particular the photographs and her testimony
13 about the alignment, but I think all that does go to the
14 weight of her testimony. So I'm going to rule that that part
15 is admissible. I deny that portion.

16 The next matter that was raised, as I understand it,
17 Dr. Gwin testified and/or provided as part of her written
18 opinion that she was familiar with the medication list of
19 Mr. Nease at the time and leading up to the time when he was
20 in this collision and that she would purport to testify that
21 based upon that medication list, she could testify that she's
22 familiar with those drugs, and that according to medical
23 literature, those drugs are known to have as a potential side
24 effect, to produce things like confusion, dizziness, etcetera.

25 Is that a fair statement of what it's about?

1 MR. O'DELL: Yes, Your Honor.

2 THE COURT: Okay. So what exactly is the
3 plaintiffs' objection?

4 MR. O'DELL: Your Honor, what she -- she doesn't
5 really come down -- she just says it "may" have affected. And
6 basically, you know, that goes back, when I argue this case --
7 it always reminds me of my grandfather. You know, he used to
8 tell me, said, If a frog had wings, it wouldn't bump its rear
9 end when it hopped.

10 And so she can't just come in and throw things on the
11 wall. I mean, she doesn't comment on what drugs were taken
12 that morning. She doesn't say when the drugs were ingested,
13 at what levels, whether they were with food, which drugs he
14 took every day, which drugs he took as needed, which drugs
15 were only at night.

16 No indication -- there's no indication that these drugs
17 were in Mr. Nease's system. You know, they went straight to
18 the hospital. They did blood work. There was no indication
19 that he had some type of drugs in his system.

20 THE COURT: Was he questioned about any of this in
21 deposition?

22 MR. O'DELL: They asked him a few questions about
23 some of the drugs in his deposition, which he answered as to
24 which ones he took in the morning and which ones he took at
25 night. But she doesn't delineate in her report which ones

1 she's saying somehow are related to what -- again "may" --

2 THE COURT: She just kind of says that all of these
3 have as potential side effects --

4 MR. O'DELL: "May." "May." And we get into, you
5 know, the prejudicial versus probative. I mean, if they just
6 come in and talk about the drugs this man had prescriptions
7 for and then say, Well, if you look at the drug list -- I
8 mean, if you've ever looked at a drug prescription list, I
9 mean, just about -- they're as long as your arm on about all
10 of them.

11 They're going to come in -- we're going to be fighting
12 over this, and it's very, very prejudicial because there's no
13 evidence in this case that Mr. Nease -- that these drugs
14 somehow caused what happened to him. The only --

15 THE COURT: All right. Go ahead.

16 MR. O'DELL: And they're going to point to the
17 police report that says there were some erratic driving, that
18 the witness said there was some erratic driving or the car
19 wasn't working properly, which is exactly what's alleged in
20 this case. His car wasn't working properly.

21 And then after the man hits the wall dead-on, the EMTs
22 note that he's confused and doesn't really know where he is
23 when he's going back to the ER. And that's the sum and
24 substance of their testimony.

25 THE COURT: Okay. All right.

1 MR. BIBB: I think there's a little bit more than
2 that is the sum and substance of the testimony. I took
3 Mr. Nease's deposition. He was on, at the time of this crash,
4 17 prescription medicines.

5 I tried to go through each and every one of them with him
6 as to whether he took them that day or the night before or the
7 day of the accident, was able to identify most of them on
8 whether he had taken them that day.

9 But Dr. Gwin, who also serves as an emergency room
10 physician -- she's trained to treat people in the emergency
11 room -- what her testimony is, is that the medication list
12 included medications which do have side effects with some of
13 the symptoms that Mr. Nease was exhibiting the day of the
14 crash, including, as the Court correctly noted, dizziness,
15 some confusion.

16 THE COURT: Where were those things noted on the day
17 of the crash? What's the evidence that you expect to be
18 adduced that she could then rely upon to say --

19 MR. BIBB: Until -- all we have, Your Honor, is
20 Mr. Nease's testimony that he was regularly taking these drugs
21 at the time.

22 THE COURT: Okay.

23 MR. BIBB: There was no drug screen or toxicology
24 screen performed at the hospital. So we do not know what the
25 levels are.

1 THE COURT: And I think you cited or quoted from one
2 witness. One of the other people out on the road that day
3 that was driving, as I recall, said that they observed the car
4 traveling in an erratic manner such that this witness thought
5 maybe something was wrong with the driver, and he changed
6 lanes or something to try to avoid him.

7 MR. BIBB: Right. That's Mr. William Daily. He
8 first observed the vehicle going very slowly and weaving in
9 the lane of travel.

10 Now, I don't believe that going very slowly is part of
11 plaintiffs' claim in this case or that there's anything wrong
12 with the steering on the vehicle. But that erratic driving, I
13 think he actually referred to it as inconsistent driving
14 initially, was why he got into the left lane and passed him
15 and then saw Mr. Nease come upon him very quickly and then run
16 off the road. That's the testimony of Mr. Daily.

17 THE COURT: So that's really all you've got in terms
18 of describing anything about Mr. Nease before the accident.

19 MR. BIBB: Before the accident. Post-accident we
20 have Mr. Kemplin who testified that he appeared to be
21 lethargic when he got out of the vehicle.

22 THE COURT: Right. Well, and just to be clear about
23 it, so you don't expect to ask Dr. Gwin literally anything
24 other than, Does this medication -- what are the side effects
25 of this particular medication?

1 MR. BIBB: That's exactly right, Your Honor. She
2 cannot and would not offer testimony in this case that more
3 likely than not this drug caused this accident because we do
4 not have that sufficient amount of evidence.

5 We do have evidence, though, that he was on a number of
6 medications which have as known effects confusion, items that
7 would be consistent with the activity we saw described.

8 THE COURT: I'm curious. Did you ask him about
9 whether he was aware of side effects like that?

10 MR. BIBB: I don't think I did because, frankly,
11 Your Honor, I believe at the time I took his deposition --
12 I'll be really candid with you -- I wasn't aware of what the
13 side effects of all the medications were. That was brought to
14 my attention subsequently.

15 THE COURT: All right.

16 MR. O'DELL: Your Honor, real briefly. Several of
17 the doctors have been deposed in this case. Mr. Cooke has
18 taken several of the doctors' depositions. The only doctor he
19 asked about whether any of these drugs would affect an ability
20 to drive was Dr. -- the doctor in Pittsburgh. His name
21 escapes me just for a moment.

22 And that doctor said the only drug that he would have
23 told him he couldn't drive a car on would have been pain
24 medication. And talking about narcotic pain medication,
25 there's no evidence that Mr. Nease took narcotic pain

1 medication that day.

2 And I just want to mention again, I mean the probative
3 value of this, Your Honor, is grossly outweighed by the
4 probative value -- I mean, once you start bringing these drugs
5 up -- and she's not saying that's what caused it, or just that
6 it could. I mean, she's just throwing things on the wall.

7 THE COURT: Do you have any quarrel with the
8 defendant asking Mr. Nease what medications he was on?

9 MR. O'DELL: Your Honor, I do believe that it's
10 prejudicial. I mean, it's grossly -- just because it's going
11 to be a side issue that's not in the case. I mean, no one is
12 saying that those drugs are the cause of what happened here.

13 If they have an expert that said these drugs,
14 specifically Ativan, this drug mixed with this drug, here's
15 what happens; this is my opinion to a reasonable degree of
16 scientific certainty, then, yeah, then they could do that.

17 But in this case, they're not saying that. They're just
18 saying it may have, Your Honor; it could have. It's an
19 explanation, but it's not -- there's no way an opinion says
20 that. It's just throwing something at the wall.

21 And we've got to try to refute it, and it's going to be,
22 again, the probative value is so outweighed that it's unfairly
23 prejudicial in this case.

24 THE COURT: Well, all right. I'll give you one last
25 shot.

1 MR. BIBB: The only thing is, Your Honor, I think
2 the plaintiffs are going to try to portray Mr. Nease as being
3 in very good health at the time of this crash, and that these
4 number of medications that he was still on for his restless
5 leg syndrome, for his pain, for his Barrett's esophagus, for
6 the Barrett's esophageal cancer that he just had surgery for,
7 if they're going to try to put in that sort of evidence, I
8 believe that the types of drugs that he was on, the reason he
9 was on them, is clearly relevant to the issue of his medical
10 condition at the time of the accident.

11 MR. O'DELL: Mr. Bibb brings up a very, very good
12 point. Mr. Cooke and I have been working diligently on a
13 stipulation about Mr. Nease's prior medical history, and we
14 have agreed that they're going to talk about, you know, the
15 fact that he had had esophageal cancer and part of his
16 esophagus removed. He'd had surgery five times. They're
17 going to know all that about Mr. Nease, every bit of it.

18 And the only part that I've had a squabble is the drugs.
19 And I said that's something we would have to bring to the
20 Court's attention.

21 So Mr. Bibb really kind of makes my case for me, is the
22 jury is going to know that this was not the healthiest
23 71-year-old man in the world when this crash happened. He had
24 a lot of health issues, and they're going to know about every
25 one of them. They don't need to know about a list of

1 medications that no one says is the cause of this crash.

2 THE COURT: Well, this is a bit different than what
3 I, frankly, expected. It's one thing to say whether or not
4 the doctor can offer this testimony. You've really kind of
5 expanded that to say that they shouldn't even be able to
6 elicit this information about his medications from Mr. Nease.

7 So I'm going to think about this a while. And if you've
8 got any further briefing that you want to do very quickly, in
9 the next day or two, about that, feel free to do it.

10 I have to say that I'm skeptical that the defendant
11 should not be allowed to ask Mr. Nease what kind of
12 medications he was on that day. And I don't know that since
13 they don't have the burden of proof, you know, it seems to me
14 they may be able to ask him things about what was his state of
15 mind, I mean, was he alert, all these things that go to
16 whether or not he, you know, knew what foot he had on which
17 pedal and so forth.

18 So I think that's a little bit different question than
19 the way it's more framed -- framed in a more limited way in
20 the motion. So I'm going to hold that.

21 Next is motion by the plaintiff as to defendant's expert
22 MacLean. It's Document 110.

23 Mr. Javins?

24 MR. JAVINS: I didn't take his deposition, Your
25 Honor, and I've had a chance to review his report this

1 morning. To be perfectly candid, I don't -- with one caveat,
2 I'll withdraw the motion, and really it addresses -- Mr. Bibb
3 and I were both in Philadelphia with the electron microscope.

4 I've got to tell you, I was really underwhelmed, what I
5 had heard about an electron microscope. It's no bigger than
6 this box and it looks like a microwave. And Mr. Bibb is
7 laughing.

8 THE COURT: How do you know that's not what it
9 really was?

10 MR. JAVINS: It may have been.

11 MR. BIBB: It was in a very cold basement room, but
12 it was very well-secured. So if they were concerned about
13 some -- the microwave, the University of Pennsylvania sure
14 spent a heck of a lot of money building a special room for it.
15 Let me say that.

16 MR. JAVINS: So I don't have a problem with
17 Mr. MacLean's methodology, but I want to let the Court know
18 and let Ford know that any suggestion that this electron
19 microscope looked on the inside of this tube -- because it did
20 not. All it could see was the top perimeter of this tube.

21 If Mr. Bibb will say, Yeah, that's a fair character-
22 ization, then I think we're fine. But all I want to avoid is
23 any misleading argument to the jury that, Oh, we have an
24 electron microscope, which it did sound really cool and it
25 sounds like it might trump a borescope, but it never looked

1 inside this tube. It looked at some material on the outside.

2 It looked at the top perimeter --

3 THE COURT: Okay.

4 MR. JAVINS: -- and it did not go inside.

5 THE COURT: All right. What do you say, Mr. Bibb?

6 MR. BIBB: Well, Your Honor, I actually -- if I
7 could have just two minutes, and I probably won't use more
8 than 30 seconds, just to make sure the Court understands. The
9 way this works, there's a wire. Maybe the Court can see it
10 here. It's got a plastic sheath here, which is called a guide
11 tube. The guide tube slides inside this black piece called
12 the casing cap.

13 And every time you step on the gas pedal, this is kind of
14 almost a master-and-slave situation because when you turn the
15 throttle, even when you don't have the cruise control on, Your
16 Honor, this thing moves back and forth.

17 When it's fully at idle, it's all the way -- it's long.
18 And when you step on the gas, you actually pull the throttle
19 back and it makes this short.

20 Now, the theory is not that there was some sort of debris
21 between the cable and either the guide tube or the plastic
22 sheath, but that there was material on the outside of this
23 guide tube that interfered with the larger plastic casing cap.
24 That's where the bind occurred or --

25 THE COURT: Okay. So it's not the cable itself.

1 MR. BIBB: It's not the wire --

2 THE COURT: The wire.

3 MR. BIBB: -- the wire itself. It's actually on the
4 guide tube interfering with the casing cap.

5 Now, the one Mr. Javins has is actually, I believe, from
6 the Explorer. And if you'll notice, that one is actually dead
7 backwards of this. It has the outside diameter on this end
8 and the inside diameter fixed down here. It is a totally
9 different design. It's kind of backwards from the way this
10 one is designed.

11 Now, what was examined with the electron microphone, the
12 first thing we did was we opened this up and there's a little
13 steel slug in there. We cut that off so we could then take
14 both pieces apart. The electron microphone examined this
15 guide tube in its entirety, okay, because we could see all of
16 the outer diameter.

17 Mr. Javins is correct, and I would not -- and Mr. --
18 excuse me -- Dr. MacLean would not try to say we were able to
19 examine with the scanning electron microscope all the way down
20 there.

21 We were able to go in -- I've forgotten if it was a
22 millimeter and a half or 2 millimeters -- by angling the
23 microscope down and looking around inside of that tube. But
24 there were other visual, using light microscopy, which you can
25 still -- you know, thousands of magnifications. The interior

1 was examined as best we could and the entire exterior of the
2 guide tube.

3 And you have to understand that this binding that
4 Mr. Sero has offered the opinion about would somehow have to
5 bind this plastic piece to this plastics piece so that a
6 7-pound spring would be unable to pull it open, okay?

7 And so the answer to Mr. Javins' question, if he's
8 concerned that Mr. -- Dr. MacLean would somehow offer the
9 testimony he examined the whole thing, oh, no, that is not
10 correct and we would not be offering any such testimony, at
11 least with the scanning electron microscopy.

12 You were present. You recall we first did light
13 microscopy and then went to the UP lab and did the scanning
14 electron microscopy.

15 THE COURT: All right. Does that clear it up for
16 you, Mr. Javins?

17 MR. JAVINS: And then we cooked a burrito from the
18 electron microscope because, I swear, it was a microwave.
19 That clears it up.

20 THE COURT: All right. Then I deny the motion as
21 moot. It doesn't appear that the expert was going to offer
22 testimony that was contrary to what Mr. Javins understood it.

23 Next, Document 126, Ford's motion to strike previously
24 undisclosed exhibits.

25 MR. CLARK: I think this one might be the easiest of

1 the lot, Your Honor. There are three exhibits, 1, 2, and 3,
2 and the plaintiffs have withdrawn 3. So the motion can either
3 be denied as moot or granted as unopposed as to that one. And
4 1 and 2 relate to the similarities between the *Nease* and *Olson*
5 cases. And if the Court rules as it has said that it is
6 inclined to do with regard to *Olson*, denies partial summary
7 judgment as to *Olson*, then it seems to me that it's moot as
8 to -- this motion is moot as to Exhibits 1 and 2 as well.
9 Other than that, we stand on the briefs.

10 THE COURT: All right.

11 MR. HEISKELL: I think that's correct, Your Honor,
12 and so it would be dependent upon Your Honor's --

13 THE COURT: All right. I'll take it under
14 advisement, then, based on that.

15 All right. I think that covers all of the formal motions
16 that were filed. I have also at least Ford's objections to
17 plaintiffs' trial witness and trial exhibits list.

18 MR. COOKE: Your Honor, I think there was one motion
19 that Your Honor granted in part that requested argument on the
20 remainder of that motion, and that is -- it's Document 100.
21 It's other -- it's the other incident motion, Ford's motion to
22 exclude other incidents.

23 THE COURT: Oh, okay. All right.

24 MR. COOKE: And as I understand, Your Honor, you've
25 denied the portion about whether they had disclosed them --

1 THE COURT: Right.

2 MR. COOKE: -- or properly. And I can address that.

3 THE COURT: Go ahead.

4 MR. COOKE: Your Honor, this is, no doubt, not in
5 appellate decisions of this Court, but the issue of improperly
6 admitting other incident evidence in product liability cases
7 is a common one that you see in the body of appellate law out
8 there. And what happens is that judgments for the plaintiff
9 are reversed because that lower court hasn't been careful in
10 making sure that 404(b) was followed, as well as 401 and 403.

11 So, Your Honor, this motion seeks to exclude those other
12 incidents that have been identified by the plaintiff because
13 none of them are substantially similar to the incident in
14 Mr. Nease's incident. And as I always have understood how we
15 start the 404(b) analysis, we start with the rule that other
16 acts are not admissible to show conformity therewith. And
17 then there are some enumerated exceptions. And so if a
18 litigant wants to offer other bad acts type of evidence, they
19 have to have a proper purpose for it.

20 And so in a product liability case like this, the purpose
21 that's often offered is notice or knowledge of a defect. And
22 so then you move to what's essentially a relevance analysis
23 or, as the case law has developed, a substantial similarity
24 analysis. And so -- and then the final part of the analysis
25 is a 403 analysis, whether it is unfairly prejudicial or

1 whether we waste too much time having mini-trials about other
2 cases that aren't this case.

3 And so just at the outset, Your Honor, I would say that
4 the -- the Court has ruled that the plaintiffs have a question
5 of fact that they can present, the Nease case. They've
6 developed evidence about the Nease case. We've got a vehicle
7 that's been inspected numerous times. We've got a plaintiff
8 who testifies about what he says happened. We've got
9 eyewitnesses who are more independent. We've got lots of
10 evidence about Mr. Nease's case.

11 Going on about other cases is going to consume a lot of
12 time and it is highly prejudicial. But let's go back to the
13 analysis of whether there's substantial similarity. I don't
14 know of any other way, Your Honor, to go through this other
15 than to go through the incidents that the plaintiffs have
16 identified.

17 THE COURT: I agree. Let's first talk about the
18 categories. As I recall, plaintiffs pointed to, first, the
19 *Olson* and *Huber* cases. Then there were two or three
20 individuals who have made claims and perhaps testified at some
21 of the earlier cases that they had one of these unintended
22 acceleration events which they attributed to the gas pedal
23 sticking or something like that. So we have those.

24 And then as I recall, Ford acknowledges that it keeps
25 records that might be -- that fall into two categories, and

1 there's an acronym for each of them. One set of records is
2 where people have called dealers and complained about
3 something. Another is where either dealers and/or service
4 technicians for Ford or the dealership associated with Ford
5 have called in and complained about something and there's
6 often typically sort of a one-page summary of that.

7 So is that the universe that we're talking about here, is
8 other incidents that --

9 MR. COOKE: I believe that it is, Your Honor.

10 THE COURT: Okay.

11 MR. COOKE: And just for clarification, the MORS and
12 the CQIS, those are the two acronyms. MORS is master owner
13 relation system.

14 THE COURT: I'm sorry? I didn't hear that.

15 MR. COOKE: MORS stands for master owner relation
16 system.

17 THE COURT: Right.

18 MR. COOKE: And CQIS stand for quality -- common
19 quality indicator system. And those are the way that Ford --
20 and other manufacturers have similar systems -- receive
21 information either directly from their owners or from
22 technicians at the dealerships.

23 THE COURT: Right. Okay.

24 MR. COOKE: So, Your Honor, I can go -- I can -- so
25 if we -- if the purpose is notice or knowledge of a defect,

1 then obviously the incident would have to happen before the,
2 in this instance, Mr. Nease's -- before the manufacture
3 actually of Mr. Nease's vehicle.

4 And so the *Olson* matter, for example, occurred prior to
5 the design decisions that were made in the Nease vehicle. So
6 that case can't be notice --

7 THE COURT: *Olson* was before?

8 MR. COOKE: Yes, sir.

9 THE COURT: All right.

10 MR. COOKE: It's also a '98 Explorer, and there's
11 another one that we'll talk about that was also a -- alleged
12 to be either a '97 or '98 Explorer.

13 So *Olson* can't be -- they can't have a proper purpose for
14 *Olson*.

15 I apologize, Your Honor. I think I misspoke.

16 THE COURT: Okay.

17 MR. COOKE: The *Olson* incident happened after the
18 Nease --

19 THE COURT: Right. So the defect alleged in *Olson*
20 didn't arise until after the Nease vehicle was made.

21 MR. COOKE: Correct.

22 THE COURT: Yeah. That's fine.

23 MR. COOKE: Thank you. So in the order as they are
24 presented, I think, in the plaintiffs' briefing, there's a --
25 there is a case called *Woddail*, or it's an incident called

1 Woddail, W-o-d-d-a-i-l. That involves apparently a '96
2 Explorer. That is a -- that's a different vehicle than we
3 have at issue in this case. It has a different engine
4 compartment and a different -- well, let me say this:

5 There's no showing in the record that there's any
6 similarity between the engine in the Explorer and the engine
7 in the Ranger. There's also no showing that they have the
8 same or substantially similar speed control cable, and we
9 have -- we have one that's from an Explorer. I don't know
10 what -- I think it's a '98. It's clearly not the same as --

11 THE COURT: So Mr. Sero didn't tie these together
12 for the plaintiff.

13 MR. COOKE: No, sir. Your Honor, thank you.
14 Mr. Sero hasn't tied any of the -- all -- the entire category,
15 his deposition testimony, and he was involved in some of
16 these, and he didn't tie any of them to the Neases. That's
17 the undisputed testimony. He then at his deposition and he
18 has then filed an affidavit to try to interpret what he said.

19 The Woddail matter happened on an interstate. It was a
20 70-mile-an-hour incident. Apparently the cruise control was
21 being used.

22 Mr. Nease was not using his cruise control. Mr. Nease
23 was driving on MacCorkle Avenue, which was where the speed had
24 changed from 40 to 50. It's a stop-lighted area. It's not a
25 divided interstate highway.

1 Mr. Woddail says he tapped the brake and then he stepped
2 on the brake and then turned the cruise off, and he then
3 brought his vehicle to a stop. So that would not appear to be
4 anything like what Mr. Nease has described.

5 And I can go through them one at a time, Your Honor. If
6 that's the best way for the record to do it, I'll go through
7 all of them.

8 THE COURT: I don't know how many there are.

9 MR. COOKE: I think I have -- I noted -- I don't
10 know how many the plaintiffs intend to offer, but I did
11 prepare for the ones that they mentioned in their briefing.

12 THE COURT: Okay. Let's do that at least, then.

13 MR. COOKE: Okay. Your Honor, the *Olson* case we've
14 talked about.

15 THE COURT: Yes.

16 MR. COOKE: And also the facts of that accident are
17 also different.

18 The Hackney matter involves a 1997 Ranger. There's no
19 evidence as to what speed control was used. And there's no
20 evidence whatsoever, except Mr. Sero's testimony that this
21 isn't -- that it isn't the same if he knew about the Hackney
22 incident.

23 There is a different cable design in the Hackney Ford
24 Ranger, the '97 Ranger, for each engine that is offered with
25 that vehicle. So we don't have any evidence to show that that

1 cable was the same as Mr. Nease's cable.

2 In fact, the FMEA that we talked about earlier, Your
3 Honor, discusses changes in the 1997 year that would have
4 applied to the 2001 Ranger.

5 THE COURT: Okay.

6 MR. COOKE: Again, it's an interstate speed
7 incident, and Mr. Hackney testified he was using his speed
8 control, which Mr. Nease was not.

9 THE COURT: So it was cruise control.

10 MR. COOKE: Yes, sir.

11 Your Honor, the next matter is Casey Mulder, M-u-l-d-e-r.

12 THE COURT: That's the test driver?

13 MR. COOKE: Yes, sir.

14 THE COURT: I remember him.

15 MR. COOKE: Okay. The evidence -- and this is one
16 Mr. Sero knows about because he was involved in the *Huber* case
17 and I believe the deposition that was offered was from *Huber*.
18 And Mr. Sero says in his testimony that he does not believe or
19 generally he's not aware of any incident that is like Mr.
20 Nease's. And we have to presume that he knows about the
21 others.

22 There's an email that the plaintiffs rely upon. The
23 email talks about a brake on/off switch. There's no
24 description really of the accident in the email that is
25 described. And then if you compare the exemplar cables in

1 a -- this is either a '97 or '98 Explorer -- and 2001 Ranger,
2 the cable is different.

3 THE COURT: Did Mr. Mulder testify about -- was it a
4 cruise control issue with him too, or did he say?

5 MR. COOKE: I don't know the answer to that, Your
6 Honor. I do not know the answer to that.

7 THE COURT: Okay. Go ahead.

8 MR. COOKE: The next one, Your Honor, is Miss Wise,
9 W-i-s-e. They didn't -- I don't know if they intend to use
10 this one because there was no reference to Miss Wise in the
11 response.

12 THE COURT: Is Miss Wise somebody you could use?

13 MR. HEISKELL: We withdraw Miss Wise.

14 THE COURT: All right. We don't have to worry about
15 Miss Wise.

16 MR. COOKE: The same for Mr. Padilla?

17 MR. HEISKELL: No, we want to talk about --

18 MR. COOKE: Okay. Mr. Padilla, Your Honor, was
19 driving --

20 THE COURT: Say that name again.

21 MR. COOKE: Padilla, P-a-d-i-l-l-a.

22 THE COURT: Okay.

23 MR. COOKE: This is an incident in a Lincoln
24 Navigator. I do not have the model year. It's a low-speed,
25 less-than-10-mile-an-hour incident, on a snowy drive with 2 to

1 3 inches of snow. And apparently Mr. Padilla hits the brakes
2 and slid into a tree.

3 And, Your Honor, those are -- and then the other -- there
4 are no specific MORS or CQIS events that have been identified
5 by the plaintiffs.

6 THE COURT: They, as I recall, as one of their
7 responses -- and I don't know which one it was -- they
8 included a bunch of the records from those two reporting
9 systems for which you've cited the acronym.

10 MR. JAVINS: MORS and CQIS.

11 THE COURT: Yes. So, first -- well, does the
12 plaintiff agree that with the addition of those documents,
13 Mr. Cooke has identified all of the prior incidents that
14 plaintiff intends to offer as evidence?

15 MR. HEISKELL: I think so, Your Honor, yes.

16 THE COURT: Okay.

17 MR. COOKE: And the one other point I want to make
18 and I'll sit down, Your Honor, is that the plaintiffs I think
19 have -- I think we've made some progress here in identifying
20 what the defect theory is. The plaintiffs have relied, I
21 think, largely on some testimony that Ford used a Next
22 Generation speed control system across different vehicle
23 lines.

24 The testimony also says that each -- within each vehicle,
25 there were different cable designs that may be how the cable

1 functions, as well as how it's routed and packaged within a
2 vehicle; and that then even within a vehicle model, you may
3 have a different cable packaging because of, you know, what
4 engine is in that particular vehicle.

5 So, Your Honor, I just wanted to make sure the record was
6 clear about that.

7 THE COURT: Thank you.

8 MR. COOKE: Thank you.

9 THE COURT: All right. Mr. Heiskell?

10 MR. HEISKELL: Thank you, Your Honor. I was struck
11 by Mr. Cooke's glossing over of what Mr. Woddail actually went
12 through. This is quoting from a letter Mr. Woddail sent to
13 the president of Ford Motor Company after his wife and
14 daughter were put at risk when his Ford Explorer would not
15 disengage on that highway.

16 He said, "I first tapped on the brake. This failed to
17 disengage the cruise control. I then stepped on the brake and
18 simultaneously pressed the cruise control off button on the
19 steering wheel. Neither of these actions turned the cruise
20 control off. By this time, we were quickly closing on the car
21 to our front," which is exactly what Mr. Nease's problem was.

22 THE COURT: I'm going to stop you there. I remember
23 this quote. But the fact is that Mr. Woddail is reporting a
24 problem with the cruise control, not, it seems to me, a
25 problem that creates an inference that there was a mechanical

1 obstruction somewhere within the cables.

2 MR. HEISKELL: We're offering this for notice.

3 Their defense is if you step on the brake -- all you have to
4 do is step on the brake; the brake will always overcome the
5 open throttle.

6 THE COURT: Well, wait. We've already acknowledged
7 that this is not a case where you're alleging that the brakes
8 were defective.

9 MR. HEISKELL: True, Your Honor.

10 THE COURT: Okay. So whether the brakes are
11 effective or not with respect to a cruise control malfunction
12 isn't the issue. If the malfunction was the cruise control
13 and not a physically obstructed cable, then I don't see how
14 it's relevant.

15 MR. HEISKELL: Here's the point, Your Honor: There
16 are three things that can hold the throttle open. One is the
17 driver's foot. Two is a stuck cable that we're talking about
18 here.

19 THE COURT: Right.

20 MR. HEISKELL: Or three is the electronics of the
21 speed control through this cable holding the throttle open.
22 Those three things can do it.

23 Now, Ford basically says it doesn't matter; brakes will
24 always overcome.

25 THE COURT: And in a sense, it doesn't matter to me

1 whether the brakes were good enough to stop this acceleration
2 or not. The brakes aren't alleged to be defective. So the
3 question is, what defect did Mr. Woddail have in his car
4 that's the same or similar to the defect you've alleged in
5 Mr. Nease's car?

6 In Mr. Nease, you say the defect is a cable that's
7 physically obstructed. In Mr. Woddail, it's not a cable
8 that's physically obstructed. It's a problem with the cruise
9 control.

10 So it seems to me that there's not the same defect. Even
11 though the same countermeasure didn't prevent Mr. Woddail's
12 problem any more than Mr. Nease's problem, allegedly, isn't
13 proof that the defect is the same. It's not proof of
14 knowledge of the same defect. It's not the same defect.

15 MR. HEISKELL: Right, Your Honor. We don't offer it
16 to prove that that's the defect. What we offer it to prove is
17 that when Ford stands in front of this jury and says the
18 brakes will overcome it, that Mr. Nease -- all he had to do
19 was put his foot hard enough on that brake and hold it there
20 and that vehicle would have stopped --

21 THE COURT: Well, that's going to really confuse a
22 jury because now you're saying that it's not just a defect in
23 the accelerator pedal being stuck; it's that the brakes don't
24 fix that problem. And now you're saying the brakes also don't
25 fix this other problem that results in going too fast. But

1 that's -- that, it seems to me, is confusing and misleading to
2 the jury. And that's going to make the jury start to think,
3 as it would me, that you're complaining that the brakes aren't
4 good enough, the brakes won't stop you when the accelerator
5 pedal is stuck, it won't stop you when the cruise control is
6 on.

7 But if the defect that you're alleging is that the cable
8 is bound, evidence that there's a different defect that can
9 result in high speed is just not the same thing.

10 MR. HEISKELL: And I understand perfectly, Your
11 Honor. You're absolutely correct. But what this jury is
12 going to hear from opening statement through closing argument
13 from Ford is that all a driver has to do, if he's confronted
14 with an open throttle, no matter what the cause, if it's stuck
15 there, all he has to do is put on brakes.

16 We have -- in fairness, we should be able to rebut that
17 with a Mr. Woddail, who's 6'3", 220. He's a U. S. supervisor
18 of U. S. Marshals in St. Louis, who said, It took me
19 seven-tenths of a mile to stop this thing. The brakes were on
20 fire. When I got out, I could barely stand up.

21 THE COURT: All right. I don't want to cut off all
22 of the discussion of this. I do want to make sure I get the
23 fundamental point to see if we can move along.

24 So with regard to Woddail and Hackney at least, you would
25 seek to offer their incidents as other incidents because it

1 demonstrates that the brakes will not overcome a stuck
2 accelerator, whether the accelerator is stuck or "on" because
3 of obstruction to the cable, the defect you've alleged here,
4 or another problem, or any other problem, for that matter,
5 including in their case the specific that somehow the cruise
6 control wasn't working right.

7 MR. HEISKELL: Again, we're offering it to counter
8 their -- Ford's defense, which is that all you have to do to
9 stop this thing is to apply brakes.

10 THE COURT: Okay.

11 MR. HEISKELL: And that's --

12 THE COURT: All right. Let me -- I'm going to think
13 about that.

14 MR. HEISKELL: Okay. Thank you.

15 THE COURT: Now, what about all the reports from the
16 dealers and service techs?

17 MR. HEISKELL: If we may, we're going to split this
18 up. There's one other, though --

19 THE COURT: Go ahead.

20 MR. HEISKELL: -- personal -- two personal reports
21 from Ford employees.

22 Now, Your Honor, here's Casey Mulder who was asked to
23 test drive a Ford Explorer from the same family as the Ranger.
24 And he's got it out and he gets into a situation where he
25 can't shut the throttle down, and he's forced to stamp on the

1 brakes. And said, It's a good thing that I go to the gym
2 every day to have enough force to hold my foot on the brakes
3 to bring this thing to a stop. If this happened to a
4 customer, he's in big trouble.

5 He put those words in caps.

6 THE COURT: This would fall within the same
7 reasoning that you just discussed --

8 MR. HEISKELL: Yes, Your Honor.

9 THE COURT: All right.

10 MR. HEISKELL: And the same thing with Mr. Padilla,
11 a vice-president of Ford Motor Company. It is pretty curious
12 the way Ford handled that one.

13 He reported he took his Lincoln Navigator into the shop
14 at Ford Motor Company. It was a special lease deal that he
15 gets because he's the vice-president. He takes it in and
16 says, Check this out. Something is going wrong with this car.
17 I couldn't get it stopped. I ran off my driveway at my
18 country home and hit a tree or some bushes.

19 And the point is, Ford didn't suggest to him that he
20 should have pressed harder on the brake. He obviously pressed
21 harder on the brake, couldn't overcome the open throttle. So
22 it's the same issue, Your Honor, with those four witnesses.

23 THE COURT: Did he say why he thought it was an open
24 throttle?

25 MR. HEISKELL: He didn't.

1 THE COURT: Okay.

2 MR. HEISKELL: He asked the shop people to look into
3 it. So some poor American is driving that Navigator around to
4 date somewhere.

5 THE COURT: All right. Okay.

6 Mr. Javins, do you want to address the complaint reports
7 made to Ford?

8 MR. JAVINS: I will, and I'll also add, for what
9 it's worth, the failure mode effects analysis, whichever
10 iteration, I'm simply saying binding is binding. And so
11 whether it's because -- because one way the throttle might be
12 stuck open, because it doesn't respond to brake input, or one
13 of the ways it may stay stuck open is binding. And every time
14 it says binding, you're going to find a finding that, This is
15 so remote that we didn't do anything to take corrective
16 action.

17 Bigger picture, I'm giving you that. Okay. Binding is
18 binding. And regardless if it sticks on its own or if it
19 fails to disengage because someone has turned the throttle --
20 I'm sorry -- the speed control or the cruise control on,
21 binding is binding according to the failure mode effects
22 analysis because at the right-hand side it always says binding
23 is binding. It's a 10, but it's remote.

24 And so that takes us to the MORS. Are you --

25 THE COURT: Well, yeah, I still don't quite

1 understand. You know, if one of the failure modes was that
2 somehow the cruise control signal isn't being properly handled
3 and that's causing the accelerator to stick, that's not what
4 you're saying.

5 MR. JAVINS: That's not an allegation here. I'm
6 simply saying that -- I'm going a little far afield. For the
7 Court's informational purposes, binding can be because the
8 speed control cable just binds. It can also bind because you
9 mean to turn it off with your little off button, but because
10 of mechanical binding, it doesn't disengage. Or you can try
11 to disengage it through your brake pedal; and because there's
12 mechanical binding, it doesn't disengage.

13 THE COURT: Okay.

14 MR. JAVINS: My point is, binding is binding.

15 THE COURT: All right. I've got you. I've got you.
16 I agree with you.

17 MR. JAVINS: As for the MORS reports, those are
18 customer calls, actual owners calling into Ford's hotline.
19 It's been in different places. Dearborn, Michigan --

20 THE COURT: All right. I read through a good
21 sampling of those.

22 MR. JAVINS: The point of that -- and, admittedly,
23 we don't have the follow-up diagnostics. But, again, as
24 you've heard me discuss throughout the day, the analysis --
25 the end of the analysis is this event or a stuck throttle --

1 and ultimately all of these consumers are saying, you know, My
2 throttle stuck.

3 My point, Your Honor, or the point of offering that
4 evidence is Ford maintains that it's a remote finding, okay?
5 This is I don't know that it's as remote as Ford says it is.
6 And that's chiefly what it is. It's, slash, notice, but these
7 are all 2001 Ford Rangers, and so it's hard to say that
8 they're different, okay? And they're all customers
9 complaining of a stuck throttle, or words of that import.

10 THE COURT: Did you see to it that's only as going
11 to as evidence of notice or knowledge of the possible defect?

12 MR. JAVINS: And -- yes. And, Your Honor, as part
13 of the analysis that this is not remote, as part of the
14 overall analysis --

15 THE COURT: Well, sort of like a -- all right. Like
16 a general causation that demonstrates that it's possible for
17 this defect to occur.

18 MR. JAVINS: I fully expect -- it proves that it's
19 not so hypothetical. Thank you.

20 So when we talk about those FMEAs and we have a finding
21 within the FMEA, This is so remote, we're not going to address
22 this -- okay? -- and that's the evidence.

23 This is it's not as remote as you say it is. And so it's
24 notice in that.

25 THE COURT: Okay.

1 MR. JAVINS: And the same for the CQIS, Your Honor,
2 except in that case, it's dealers call in. It's dealers call
3 in, Hey, this customer is talking about a stuck throttle.

4 And they run it in Ford's big computer and they say,
5 We've got no notice; we don't know about that.

6 THE COURT: Couldn't replicate it.

7 MR. JAVINS: No, we just don't -- we've never heard
8 of it. It's not a known.

9 THE COURT: Okay.

10 MR. JAVINS: Now, known is defined. I don't want to
11 speak out of turn. Phillip Moore, who's a fine witness, has
12 known as two -- two variables: One is it's reported. Two,
13 it's understood.

14 And so the point is, by definition, I think, in other
15 words, not understood by Ford. I don't want to say anything,
16 but that's largely what Mr. Moore says.

17 THE COURT: All right.

18 MR. COOKE: Your Honor, all of MORS and CQIS, they
19 can't serve as notice or knowledge because they all happened
20 after the manufacture of --

21 THE COURT: Is that right?

22 MR. COOKE: Every one of them.

23 MR. JAVINS: Ours happened in two thousand -- I've
24 got '06s, '05s.

25 MR. COOKE: After the manufacture date of the

1 vehicle. So what they would need to have would be problems
2 with this system prior, before that notice, of some problem
3 with this system.

4 Number one is it can't be notice or knowledge, if that's
5 the purpose. Number two, stuck throttle because of what?
6 Binding because of what?

7 There's no evidence there that shows that it's the defect
8 that's being alleged here. And just to be complete about the
9 record, the company, like other manufacturers, they monitor
10 this data and they meet every week; and if something is red-
11 flagged because it shows up a lot, that's how you get recalls.

12 And that's not an issue in this case. There's no
13 allegation that there is, because it's the -- the unverified
14 complaints about which there was no follow-up are miniscule.

15 MR. JAVINS: Your Honor, the notice -- Mr. Cooke
16 seems to conflate the notice with the deal date, that this was
17 sold in 2001. My client's injury, the event giving rise to
18 the cause of action, happened in 2012.

19 THE COURT: Well, but isn't design defect determined
20 as to the state of the art at the time it's manufactured?

21 MR. JAVINS: And we have notice of people saying,
22 This is doing exactly what your document said it would do.
23 The throttle is sticking.

24 I think that's adequate notice, Your Honor; I think it
25 is.

1 THE COURT: It's after the fact --

2 MR. JAVINS: What would be the point of notice if
3 all of them had to happen before you design it? That would
4 kind of be impossible. I don't mean to be disrespectful, but
5 if before we design something and put it on the market, it has
6 to have failed --

7 THE COURT: All right. So it's not a matter of
8 knowing before they design. It's when does it go to market.
9 If it goes to market after they've received, you know, 20
10 complaints that the gas pedal sticks or something, then
11 they've got notice. But if it's on the market and sold and
12 then they receive this notice afterward, is it the same?

13 MR. JAVINS: Your Honor, the only way I was able to
14 get any reports of MORS is I was only given by Ford the 2001
15 Ranger because that's the germane vehicle. Now --

16 THE COURT: Okay. Okay. I can't help that.

17 MR. JAVINS: It goes to notice, Your Honor, because
18 over this entire period, then perhaps there should be a
19 recall. And if you recall this vehicle before 2012, we're not
20 here litigating this. And so I think it does go to notice,
21 Your Honor. It's conflating the whole notice requirement
22 before the build date.

23 THE COURT: Well, I'm going to need to look at this.
24 I'm going to have to find some case law that helps guide the
25 Court on this, and I invite you to supplement or identify

1 something if you've already submitted it that you think is
2 really key to this because to me that's a big question.

3 I went back and looked at -- I read through a lot of
4 these. So I'll be honest with you. I didn't pay particular
5 attention to the dates of them and sort of assumed that they
6 were probably prior to the event of Mr. Nease's accident,
7 which sounds like they were, but they certainly seemed to be
8 apparently well after the manufacture.

9 And so if we're trying to determine -- I mean, trying to
10 determine the defect at the time it leaves, I'm not sure
11 that --

12 MR. JAVINS: With all due respect, defect -- a
13 design defect exists at the date of manufacture.

14 THE COURT: Okay.

15 MR. JAVINS: With all due respect, Your Honor, I
16 think it would be impossible to have notice of a defect
17 through other similar incidents of a product that doesn't
18 exist in 2001.

19 Let's say a 2001 iteration -- or 2000 iteration never
20 existed, okay? More than likely, according to Ford, a 2000
21 iteration of this is far different than a 2001. It would be
22 impossible to have notice, Your Honor. Notice is we've got
23 our product. You've identified the potential failure mode of
24 the defect, and you've got 48 reports, and before my clients
25 give you notice, okay?

1 THE COURT: Well, again, notice at the time -- it's
2 the state of knowledge at the time of manufacture.

3 MR. JAVINS: Understood.

4 THE COURT: Okay. So if you manufacture a car in
5 2001, but you don't get notice of a defect until after that,
6 then it seems to me that that notice would apply to a later
7 model but not necessarily to an earlier --

8 MR. JAVINS: The National Highway -- with all due
9 respect, the National Highway Traffic and Safety
10 Administration, that would put it on its head. The National
11 Highway Traffic and Safety Administration gets notice of a
12 defect and they do product improvement notices. And there's
13 no product improvement notices. And they do recalls, and so
14 do manufacturers like Ford.

15 I think -- I think Ford is conflating how notice works,
16 because you built this, you've identified a problem, we've got
17 48 reports before my client's injury; and within that time,
18 with that notice, you could have gone back to your failure
19 mode effects. You could have changed the design. You could
20 have considered an alternative design.

21 THE COURT: All right. It's a fair question. Is
22 that what the duty is that the law applies to it?

23 I agree, the federal regulatory agency can do things that
24 aren't necessarily the same and coextensive with a person's
25 right to sue. So it's not the same thing to say that the

1 National Highway Traffic and Safety Council could have taken
2 action based on these later complaints.

3 It's a question of, is it -- is after the manufacture and
4 sale of the product notice of a defect the same as if it were
5 before?

6 MR. JAVINS: Well, Mr. O'Dell -- first of all, as I
7 understand it -- admittedly, I've not written a learned
8 treatise on that. But as I understand notice, as I described
9 it to you, that's notice.

10 Secondly -- Mr. O'Dell brought this up -- it certainly
11 goes to Ford's ongoing duty on a negligence claim. And how
12 many notices do you have to have until your duty rises to the
13 level that you've got to consider an alternative design?

14 THE COURT: Mr. Cooke?

15 MR. COOKE: Your Honor, we'll look through all the
16 MORs that they identified to see if any of them pre-date the
17 manufacture.

18 THE COURT: Okay.

19 MR. COOKE: I don't believe that there -- but that's
20 the only way there could be notice or knowledge under the
21 *Morningstar* case. The *Morningstar* case is the authority in
22 West Virginia. There's no post-sale duty to warn recognized
23 in West Virginia. And the Court has said in the *Johnson v.*
24 *General Motors* case that they declined to recognize a
25 post-sale duty to warn.

1 So then you -- you might have that theory then if that
2 were the case, but it's not the law in West Virginia.

3 THE COURT: All right. Here's what I'd like you to
4 do: You've argued what essentially the facts are about the
5 other incidents. You've either represented what the key facts
6 are here or it's already in your briefing. So I don't need
7 any more of that.

8 But I would invite each side to send me literally -- I
9 don't want a brief -- but a list of the cases that you think
10 apply to guide this Court on this issue of whether notice
11 of -- by a similar occurrence after the date of sale, whether
12 that has relevance as to notice or knowledge of a defect.

13 Just send me the cases, the names of the cases that you
14 think would guide the Court. And whatever you send me, make
15 sure you exchange a copy to opposing counsel. I'm fine if you
16 want to do it by some type of email, which I was going to get
17 to next anyway while I'm thinking about it.

18 Did you all get the order requiring that proposed jury
19 instructions be filed, I think, today?

20 MR. COOKE: (Nods head up and down)

21 THE COURT: All right. How far are you guys -- do
22 you have instructions? Have you --

23 MR. JAVINS: We swapped them and we filed them.

24 THE COURT: How did you file them? Did you send
25 them by email to Sandy or did you file them in the docket?

1 MR. COOKE: Both, Your Honor. Did we just email
2 them?

3 THE COURT: Just emailed them to Sandy? Is that
4 what you did, or do you know?

5 MR. JAVINS: I don't know.

6 THE COURT: Well, before you leave, I want to give
7 you another law clerk's email address because Sandy is gone.
8 Her father is very ill suddenly. So she --

9 MR. JAVINS: If you'll give me a moment to look at
10 my phone, I can tell if it was emailed to the court.

11 THE COURT: Well, if you filed them with the
12 court -- and they're not showing up here, so apparently you
13 sent them to Sandy. Before you leave, make sure you get an
14 email address for one of my law clerks so when you get back to
15 your office, just email those proposed instructions to this
16 new law clerk so that we get them.

17 MR. JAVINS: Ours were emailed to Miss Slack.

18 THE COURT: So I need to change that. So we'll give
19 you another name.

20 MR. COOKE: As far as form, Your Honor, do you
21 like -- I know you'll put your charge together. Do you like
22 Refused -- or Given, Refused, Modified?

23 THE COURT: That's fine. You know, here's the way I
24 usually handle the instructions: First, especially in a case
25 like this if each side proposes a lot of instructions, which I

1 imagine you will with the number of claims, I almost always
2 prefer to have an informal off-the-record charge conference
3 once we get into the case. Usually it's either around the
4 time that the plaintiff has rested, or not long after that,
5 depending on when it's a good time to have a break so we don't
6 hold the jury up here longer than necessary. And we'll run
7 through the instructions, see what's at issue, see what are
8 differences, try to talk through them to see if we have
9 agreement about a fair way to instruct.

10 And once I do that, I find that that really eliminates
11 about 80 percent of the dispute. And then what's left is I
12 give the parties plenty of time to, you know, go over what is
13 a final draft and then prepare objections where you can either
14 do them in writing or orally on the record and where I'll rule
15 formally on any objections that you want to, in order to
16 create the record that you believe you need to appeal an
17 adverse ruling.

18 So that's the way I prefer to do it. So when you prepare
19 these, if you have Given or Refused or Modified at the bottom,
20 it kind of helps my law clerk. So that's fine to do. But
21 other than that, it's a matter of just separately setting them
22 out and expect that we'll handle them that way once we get the
23 trial started. So that to me, it's easier to do it and it
24 doesn't create such a voluminous record that ends up tying up
25 my court reporter for two or three hours after a long day of

1 testimony.

2 So I've taken several of these in abeyance. Is there
3 anything else in particular that the parties believe the Court
4 ought to try to resolve now?

5 MR. COOKE: I don't think so, Your Honor. There
6 were some pretrial type issues that we would like to discuss.

7 THE COURT: Okay. Well, I'm going to have you back
8 Monday. It's characterized as the final settlement
9 conference.

10 Apart from settlement, whether there's any reason to
11 discuss it then or not, I almost always like to take that time
12 to go over last minute things that could help us avoid slowing
13 down the jury.

14 I know both sides wanted to conduct voir dire. My
15 practice has been that I conduct the voir dire. I try to ask
16 questions that elicit enough information that we can do
17 follow-up on jurors individually. I prefer to do follow-up
18 questions when we start talking -- out of the hearing of the
19 rest of the jury -- when we start talking about people having
20 some predilection about the type of case or anything like that
21 that in my view -- and I'm sure you'd agree -- generally just
22 shouldn't be discussed openly in front of all the other
23 jurors.

24 You know, I've struggled with this because I liked to do
25 it the other way when I was trying cases, but I always talk to

1 my jurors after a trial and talk to them about a lot of
2 things. And I've talked to them about that type of
3 questioning, and almost always they tell me that they're kind
4 of offended when they're asked about things like this, sort of
5 open-ended questions, that they feel very uncomfortable, that
6 they know and understand their duty is to come in with a clean
7 slate and not let any bias or anything affect them, and they
8 really try hard to do that.

9 So that, coupled with the fact that it just takes so much
10 longer to pick a jury, caused me to continue my usual
11 practice. The biggest problem we've got right now with
12 jurors -- and this is going to be an issue in the case -- is
13 the length of a trial. I mean, an awful lot of these people
14 are going to lose money because they're here at a trial, and
15 it's -- for many of them, it's very difficult, and I can't
16 just let them go because of that, because if I did, we'd have
17 a jury made up of unemployed people pretty much and nobody
18 else.

19 So because of that, I'm very diligent in trying to move
20 things along and make this as short an experience as
21 reasonably we can for the jury's benefit because it's very
22 difficult for them, with our usual working class population,
23 to spend a week or two weeks at a trial where they're not
24 getting paid and they're having trouble at work because
25 there's not generally some corporate policy for many of them

1 that excuses jury service or encourages it. So that's been my
2 thinking.

3 Go ahead.

4 MR. COOKE: Mr. O'Dell may want to address this,
5 Your Honor. And he mentioned this. We have -- there are a
6 whole bunch of witnesses listed on our pretrial. We have been
7 working to take the medical evidence and all -- because that
8 will substantially shorten the trial, and we've been -- you'd
9 be proud of us.

10 THE COURT: That would be great.

11 MR. COOKE: So I think that -- I think we can make a
12 lot of progress, and the case will be primarily about the
13 liability issues, a few damages issues.

14 THE COURT: Well, that's good to know. You know,
15 first, I always ask jurors if they know the witnesses. So
16 give me a list of anybody that might testify. And if it's
17 changed and you whittle it down now, that's even better. If
18 you can stipulate to the admissibility of some of the
19 documents, medical records, or Ford documents, or those
20 things, and speed that along, it helps.

21 I know that you all have requested -- identified a large
22 number of exhibits and requested a lot of stickers. So have
23 you thought about trying to do any type of a notebook or
24 something like that with documents?

25 I don't know what your documents are. I haven't seen

1 them. You know, you all are good trial lawyers, experienced
2 on both sides. So just keep that in mind, if there's
3 something like that that can be done to make it easier for the
4 jury to handle.

5 Given the length of the trial that you've estimated --
6 and I've seen anywhere from five to ten or twelve days -- I
7 will probably use at least eight and perhaps nine jurors.
8 There are no alternates in federal court. So all jurors
9 participate in the verdict. We need six to go to verdict
10 unless the parties stipulate to a lower number. And
11 although -- you know, hopefully we won't have weather
12 problems.

13 We had eight jurors on the last trial and lost two of
14 them in the first three days. So we'll go with nine -- I'm
15 going to guess probably nine or ten jurors. You know, I like
16 to let you have more strikes than the minimum number. So
17 after we -- I'll probably get 25 to 30 people here, and we'll
18 go through the for-cause strikes. And then once we've done
19 that, depending on whether it's an even or odd number, we'll
20 end up with eight, nine, or ten -- probably nine or ten -- and
21 then you'll get to divide up the rest evenly in strikes.

22 So have there been any -- go ahead.

23 MR. HEISKELL: Your Honor, it just occurred to me,
24 to make the fullest possible disclosure on those five or six
25 OSI witnesses, when they testified before, we designated and

1 counter designated depositions. Most of them are videos. I
2 think the average length of time is like 20 to 30 minutes max,
3 just for the Court's -- if that helps.

4 THE COURT: Well, good. That helps.

5 MR. HEISKELL: Very brief.

6 MR. COOKE: The plaintiffs have done some
7 designations. I think there's a couple I think that we need
8 to talk about because we might not have a transcript of them.
9 We'll do that. And then we'll counter-designate. I hope, if
10 there's objections, we could bring those to your attention on
11 Monday if that's okay.

12 THE COURT: Okay. That would be great.

13 I know that you all have been through a mediation
14 session, but, you know, sometimes when the Court is able to
15 rule on a few things, it might change perspective.

16 Are you all still talking or has that come to a
17 standstill?

18 MR. JAVINS: I think we're waiting to hear from you.

19 THE COURT: Okay.

20 MR. JAVINS: This has been helpful, Your Honor.
21 It's been very productive.

22 THE COURT: Well, I know you had a mediator. Who
23 was it?

24 MR. O'DELL: Don O'Dell, Your Honor. And I think it
25 broke down -- I mean, it's definitely different. I think when

1 we went to mediation, we had more room to move and we were
2 willing to negotiate, but I don't think Ford saw the case as
3 having basically any merit based on the offers that were made.

4 THE COURT: Well, you're a week from trial.
5 Everybody is going to be spending an awful lot of time and
6 resources getting ready to try the case. You all know the
7 case better than I do. I have no idea how some of these
8 things are likely to turn out, but, you know, I certainly
9 invite and encourage you all to talk if there's room to be
10 talking now.

11 And Don does a great job. You can go back to Don O'Dell.
12 That would be my first suggestion since he's already pretty
13 familiar with it. But if for any reason you can't or don't or
14 he can't be available, I've used Magistrate Judge Tinsley in
15 Charleston for a number of really complicated cases. He's
16 done a great job, helped settle several of them, not all of
17 them. But I would be happy to talk with him and see if he
18 could be available to meet with you folks, you know, on short
19 notice before trial.

20 So if I could help in that regard, let me know. But at
21 this point, I do expect you to show up Monday and be able to
22 tell me where you are in settlement, to have somebody on each
23 side who has full authority to settle the case. And by that,
24 the way I define it is that you know where each side has been
25 in the last mediation. So I expect Ford to have somebody here

1 with authority that could settle for what the plaintiffs asked
2 at the mediation and you turned down, and, likewise, the
3 plaintiffs with your client or a representative who could
4 authorize accepting the low offer that you feel like you've
5 gotten from the defendants. So I want people with full
6 authority from both sides to be able to talk about the case,
7 and we'll see where that leads, okay?

8 MR. COOKE: Thank you, Your Honor.

9 THE COURT: Yes.

10 MR. COOKE: Your Honor, there was -- we had one
11 witness issue that I mentioned to Mr. O'Dell. He's Dr.
12 MacLean. He leaves the country the second week of trial, and
13 we have talked about that we'd like to try to fit him in at
14 any time the plaintiffs want on that Friday or Thursday,
15 whatever, and he's about an hour long. His direct will be
16 less than an hour.

17 THE COURT: How long will it take you to put your
18 case on?

19 MR. O'DELL: We think we'll be done by the end of --
20 we think the first Friday.

21 THE COURT: You think you'll be done by Friday
22 morning?

23 MR. O'DELL: Yeah.

24 THE COURT: In any event, are you willing to, if
25 necessary, interrupt your case to allow the defense expert to

1 testify?

2 MR. HEISKELL: I don't think we'd have any
3 objection, Your Honor. I think in *Huber* and *Olson* I put the
4 case on in three to four days, our case-in-chief.

5 THE COURT: Right.

6 MR. O'DELL: Your Honor, if it looks like we're
7 going to finish that morning on Friday, if he could wait
8 around and testify at one o'clock on Friday.

9 THE COURT: Oh, sure.

10 MR. COOKE: We can just reserve argument on motions
11 until after the jury is gone or something like that.

12 THE COURT: Okay. And then other than MacLean,
13 you'll have other -- you know, we'll know better next Thursday
14 what it looks like, but I expect you to have witnesses
15 available every day, and I don't really want to have a jury
16 have to sit here for an hour or two waiting on somebody or,
17 even worse, to have to just stop early during a day because
18 nobody arranged to have a witness ready.

19 So, you know, you've got to gauge how long it's going to
20 take. And you're directing a play, so you don't want the
21 audience sitting there.

22 MR. HEISKELL: That's another advantage. As
23 eyewitnesses, they can be fit in and still --

24 THE COURT: Okay. Perfect. All right.

25 MR. COOKE: I don't think that's discretion, Your

1 Honor.

2 Your Honor, the only other issue that -- we've been
3 talking to Miss Ruffner about a potential daily transcript
4 and --

5 THE COURT: Well, here's the problem: We have a
6 limited number of court reporters for the district, and we've
7 had an agreement with the parties to other cases, and
8 primarily it's the MDL cases in Charleston, where both sides
9 came early, said they wanted a daily transcript and were
10 willing to pay for it; and to accommodate them, we were able
11 to arrange, well in advance of the trials, coverage, because
12 what happens is I've got a court reporter who's here taking
13 the testimony down, and then somebody else either has to type
14 it up that night or the court reporter has to take the next
15 day off, you know, and type up things that night and get it
16 generated. And so the end result is it takes two full-time
17 reporters to get it done, and we just do not have them right
18 now.

19 As a matter of fact, we were down one reporter because
20 somebody left and just late last week hired a replacement, but
21 that person is not going to be available. And I wouldn't,
22 frankly, expect them to impose upon the judge to whom that
23 reporter is assigned to have them come down here and help do
24 this for what could be more than a week.

25 So there's just no way that we can do it. And that's,

1 frankly, about the last word. I don't know of any
2 alternative.

3 MR. COOKE: I understand.

4 THE COURT: Okay. All right. Is there anything
5 else?

6 If not, I'll see you back here next Monday for the final
7 settlement conference, and we'll be expected to start trial
8 the next day. We stand adjourned.

9 (Hearing concluded at 4:09 p.m.)

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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.

24

25 /s/Teresa M. Ruffner

June 23, 2015

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware Corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

On April 3, 2015, a jury awarded Plaintiffs Howard E. and Nancy Nease \$3,012,828.35 in damages as the result of an automobile crash. On the verdict form, the jury found that Defendant Ford Motor Company was liable to Plaintiffs because the 2001 Ford Ranger Mr. Nease was driving at the time of the crash was defective and not reasonably safe for its intended use, and the defect was the proximate cause of Plaintiffs' injuries and damages. *Verdict Form*, ECF No. 216. Although the jury found in favor of Plaintiffs on their strict liability claim, the jury found in favor of Ford on Plaintiffs' claims of negligence and breach of warranty. *Id.* Ford now has filed two post-trial motions. First, Ford has filed a Renewed Motion for Judgment as a Matter of Law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure. ECF No. 238. Second, Ford has filed a Motion, in the Alternative, for a New Trial pursuant to Rule 59(a)(1)(A) of the Federal Rules of Civil Procedure. ECF No. 240. Plaintiffs also have filed a Motion for Leave to Submit a Sur-Reply. ECF No. 250. For the following reasons, the Court **DENIES** Ford's motion pursuant to Rule 50(b) and **DENIES, in part**, and **GRANTS, in part**, Ford's

motion pursuant to Rule 59(a)(1)(A). The Court also **GRANTS** Plaintiffs' motion to file a Sur-Reply.

I.
RULE 50(b) MOTION

Pursuant to Rule 50(b), this Court must determine “whether a jury, viewing the evidence in the light most favorable to [the nonmovant], ‘could have properly reached the conclusion reached by this jury.’ If reasonable minds could differ about the result in this case, . . . [the Court] must affirm the jury's verdict.” *Bryant v. Aiken Reg'l Med. Ctrs. Inc.*, 333 F.3d 536, 543 (4th Cir. 2003) (citations and internal quotation marks omitted); *accord Int'l Ground Transp. v. Mayor and City Council Of Ocean City*, 475 F.3d 214, 218–19 (4th Cir. 2007) (“When a jury verdict has been returned, judgment as a matter of law may be granted only if, viewing the evidence in a light most favorable to the non-moving party (and in support of the jury's verdict) and drawing every legitimate inference in that party's favor, the only conclusion a reasonable jury could have reached is one in favor of the moving party.” (citation omitted)). In this case, Ford argues that there was insufficient evidence to support the jury’s verdict for strict liability because the claim was dependent upon the testimony of Plaintiffs’ expert Samuel J. Sero. Ford asserts the Court erred in permitting Mr. Sero to testify because he was not qualified and his testimony was unreliable and lacked foundation. Ford further argues that, even if admissible, Mr. Sero’s testimony was insufficient to establish a defect.

The essence of Mr. Sero’s testimony in this case was that, at the time of Mr. Nease’s crash, contaminants bound the speed control cable in his 2001 Ford Ranger, causing the throttle to stick in the open position and making the brakes ineffective in stopping the vehicle. By

Memorandum Opinion and Order entered on March 13, 2015, this Court previously found Mr. Sero's testimony admissible. As the Court stated therein, Mr. Sero "is a registered professional engineer with a degree in electrical engineering." *Mem. Op. & Order*, at 2, ECF No. 172. He has experience in "the design and operation of mechanical systems in a variety of settings, in addition to his forensic evaluations." *Id.* His opinions in this case involved general engineering principles, for which he has the "knowledge, skill, experience, training, [and] . . . education" to testify. Fed. R. Evid. 702, in part. In considering the arguments made by Ford, the Court found they went to the weight, not the admissibility, of Mr. Sero's testimony. *Mem. Op. & Order*, at 3. Therefore, the Court denied Ford's Motion to Exclude. *Id.* Ford renewed its motion at trial, and the Court again denied it.

Ford now argues, inter alia, that Mr. Sero's testimony was unreliable because the borescope examination he performed on the cable lacked scientific methodology. During cross-examination, Mr. Sero was shown the borescope examination he performed in this case compared to a borescope examination he performed in another case. Although he could not distinguish between the two borescopes, he opined in this case the cable was bound, but in the other case the cable was not bound. Ford asserts this evidence proves Mr. Sero's testimony is unreliable and merely speculative. Additionally, Ford argues Mr. Sero never demonstrated unidirectional binding of Mr. Nease's speed control cable, he did not attempt to simulate his theory, he did not conduct any tests that a foreign substance could withstand the seven-pound spring pressure, he did not demonstrate alternative designs were equally or more safe, and he has never published his theory in a peer-reviewed journal. Thus, Ford contends the Court should have excluded Mr. Sero's testimony.

This Court rejects Ford's contention that Mr. Sero engaged in "junk science." Mr. Sero relied upon Ford's own fault tree analysis and Potential Failure Modes and Effects Analysis (FMEA). FMEA is the methodology developed by Ford and adopted by the Society of Automotive Engineers. Mr. Sero also conducted visual inspections of Mr. Nease's truck; collected data from the vehicle, the cable, and the guide tube; performed a borescope examination of the cable and guide tube; and applied general engineering principles in reaching his opinion. Mr. Sero further stated that the methodology he employed is consistent and trustworthy and what historically is used in failure to decelerate cases. Although Ford's counsel questioned Mr. Sero about the borescope he performed in another case, Mr. Sero explained that the facts of the two cases were different and the facts in the other case led him to reach a different conclusion than he did in the present case.

Specifically, in this case, Mr. Nease gave compelling testimony that he was operating his truck in an ordinary fashion when the accelerator pedal stuck and the truck went out of control for a considerable distance before he struck a brick wall. A witness at the scene, John Alan Kemplin, Jr., testified that he saw Mr. Nease's truck traveling fast off the road, through landscaping, over curbs, and through a carwash bay and the throttle sounded as if it was in a wide-open position. Trial Tr., 26-30, Mar. 25, 2015, ECF No. 249. He further stated that, after Mr. Nease hit the wall, his truck continued to run with a wide-open throttle, with the tires spinning, until the engine blew. *Id.* at 36. In addition, the police officer who responded to the scene, Jacob Dent, testified he found that the accelerator pedal was in the down position, and he directed another officer to photograph it. *Id.* at 65. All of this evidence is consistent with Mr. Sero's

opinion that the pedal was stuck. Given Mr. Sero's explanation as to how he reached his opinion and the totality of his testimony, the Court finds that Mr. Sero did not engage in "junk science."

Upon examination of the cable and the guide tube, Mr. Sero identified contaminants and gouges in the in the wall of the cable housing on Mr. Nease's vehicle. Mr. Sero testified to a reasonable degree of engineering certainty that the contaminants made the cable bind and the throttle to stick in the open position. Trial Tr., 82-83, Mar. 26, 2015, ECF No. 221. He further opined it would not take much binding to resist the seven-pound spring and the brakes would be ineffective in this type of situation. *Id.* at 57 & 83. Upon his review and analysis, Mr. Sero opined that the speed control system was defective and not reasonably safe. *Id.* at 83. Additionally, he stated there were other safer design alternatives, such as a nipple wipe and a boot, which existed prior to the 2001. *Id.* at 81. Mr. Sero explained his conclusions, and Ford cross-examined him on his methodology and conclusions.

As this Court stated in its earlier Memorandum Opinion and Order, Mr. Sero's testimony was consistent with Ford's own engineers. *Mem. Op. & Order*, at 2, ECF No. 172. Ford's "design engineers had recognized, many years before when Ford developed the basic configuration of this throttle control system, that a cable such as this may become jammed from foreign material which typically may be found under the hood of a vehicle." *Id.* at 2. Ford agrees it identifies a jammed cable as a potential problem, but it asserts its design addressed the problem and there is no evidence any cable actually has jammed. However, after listening to Ford's thorough cross-examination of Mr. Sero and the other evidence presented, including Ford's own experts, the jury obviously rejected Ford's argument that the potential problem was resolved.

Based upon the evidence, the Court also rejects Ford's argument that Mr. Sero's methodology was unreliable and based upon his "subjective belief or unsupported speculation." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (4th Cir. 1998). The Court finds that Ford's arguments go to the weight the jury should afford Mr. Sero's testimony, not its admissibility. Given the evidence presented and viewing it in a light most favorable to Plaintiffs, the Court has no difficulty finding a reasonable jury could have reached a verdict in favor of Plaintiffs on their strict liability claim. *See* Syl. Pt. 4, *Morningstar v. Black & Decker Mfg. Co.*, 253 S.E.2d 666 (W. Va. 1979) (stating "the general test for establishing strict liability in tort is whether the involved product is defective in the sense that it is not reasonably safe for its intended use. The standard of reasonable safeness is determined not by the particular manufacturer, but by what a reasonably prudent manufacturer's standards should have been at the time the product was made"). Accordingly, the Court **DENIES** Ford's Renewed Motion for Judgment as a Matter of Law.

II. RULE 59(a)(1)(A) MOTION

In its alternative motion for a new trial under Rule 59(a)(1)(A), Ford argues the verdict should be set aside because (1) there was an improper jury instruction; (2) the jury's verdict on strict liability is inconsistent with its decision on negligence; (3) the Court erred in allowing evidence of other incidents; (4) the verdict is a miscarriage of justice because Plaintiff used altered or false evidence; and (5) the Court erred in allowing undisclosed opinions from Mr. Nease's treating physician, Dr. Moreland, and denying rebuttal testimony from Ford's expert, Dr. Lisa Gwin. The Court will separately address each of these grounds.

A.
Jury Instruction

Ford's first argument is that the Court erred in giving the following jury instruction: "If a product can be made safer and the danger may be reduced by an alternative design at no substantial increase in price, then the manufacturer has a duty to adopt such a design." Trial Tr., 200, Mar. 31, 2015, ECF No. 232. Ford argues that there is no standard in West Virginia that a manufacturer has a duty to adopt an alternate design if a product can be made safer at no substantial increase in price. Instead, the strict liability standard entails determining whether "the manufacturer use[d] reasonable care in designing and manufacturing the product at the time it was marketed, not whether it could have possibly been made better or more safe, or later has been made better or more safe." *Chase v. Gen. Motors Corp.*, 856 F.2d 17, 20 (4th Cir. 1988) (applying West Virginia law); Syl. Pt. 4, *Morningstar*, *supra*. Ford argues that the instruction erroneously suggests that it had a duty to adopt the safest possible design at a comparable cost, rather than whether the design it actually used was reasonably safe.

On the other hand, Plaintiffs point out that the West Virginia Supreme Court also held in *Morningstar* that economic costs are appropriate factors for the jury to consider under the strict liability in tort standard. Specifically, it stated that "[t]he term 'unsafe' imparts a standard that the product is to be tested by what the reasonably prudent manufacturer would accomplish in regard to the safety of the product, having in mind the general state of the art of the manufacturing process, including design, . . . as it relates to economic costs, at the time the product was made." Syl. Pt. 5, *Morningstar*. Thus, Plaintiffs argue the instruction is accurate. Moreover, Plaintiffs assert that, even assuming *arguendo* that the instruction was erroneous, Ford has suffered no actual prejudice and, therefore, there is no reversible error.

In its Reply, Ford does not dispute design and economic costs are factors to consider. However, Ford asserts there is no “duty to adopt” a particular design based on cost. Ford argues that Plaintiffs’ instruction ignores the threshold determination that a product is “unsafe” before there can be a determination as to whether the unsafeness of the product can be designed away at a reasonable cost. Under Plaintiffs’ instruction, Ford insists it would have to adopt an alternate design even if its product already is reasonably safe.

In considering whether a particular jury instruction should result in a new trial, the Fourth Circuit has stated that “[a] jury charge must be construed in light of the whole record.” *Abraham v. County of Greenville, S.C.*, 237 F.3d 386, 393 (4th Cir. 2001) (citation omitted). If a jury instruction is given in error, “a judgment will be reversed . . . only if the error is determined to have been prejudicial, based on a review of the record as a whole.” *Id.* (citation omitted); *accord Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 484 (4th Cir. 2007) (stating “jury instructions will not furnish a basis for reversal of an adverse verdict so long as, taken as a whole, they adequately state the controlling law” (internal quotation marks and citation omitted)).

Assuming arguendo that the instruction in this case overstates the law in West Virginia, the Court finds the instruction was of no consequence and was harmless error. First, the jury expressly found on the verdict form that Mr. Nease’s 2001 Ford Ranger “was defective in that it was not reasonably safe for its intended use.” *Verdict Form*, 1, ECF No. 216. Thus, as the jury determined the product was defective and not reasonably safe, the jury never reached Ford’s argument that a jury could decide, based upon this instruction, that Ford had a duty to the make an

already safe product safer if it could do so at a reasonable cost. Second, even if the jury had not made this express finding that the Ranger was defective from the outset, the instruction Ford asserts is erroneous is a single sentence amongst five-pages of instructions on strict liability, which is just a small part of the overall instructions. Trial Tr., 189-215 & 285-87, ECF No. 232. In context, these instructions further provided:

Now, in this case plaintiff has alleged that there were design alternatives available to Ford which, had they been adopted, would have prevented the injuries and damages to the plaintiffs. Such a showing by the plaintiffs in and of itself is not sufficient to establish that the design used by Ford was defective. The plaintiffs are only entitled to a reasonably safe product, not an absolutely safe one.

In balancing the benefits and risks of a vehicle's design, you may consider the cost, feasibility, and utility, usefulness, of alternative designs for the Ford Ranger. If a product can be made safer and the danger may be reduced by an alternative design at no substantial increase in price, then the manufacturer has a duty to adopt such a design.

In presenting a design alternative for the subject vehicle, plaintiffs must establish that their design is feasible and show that it would have eliminated or significantly reduced the risk about which they complain, while at the same time not creating other hazards or harms or risks of injuries.

Id. at 200-21. The jury was fully instructed on what constitutes a defect and strict liability under West Virginia law, including the *Morningstar* standard quoted by Ford. *Id.* at 197-201. In addition, the Court instructed the jury that, although Plaintiffs are entitled to a reasonably safe product, they are not entitled "to an absolutely safe product." *Id.* at 200. The Court finds that Plaintiffs presented more than sufficient evidence to support the jury's verdict in favor of their strict liability claim. Therefore, based upon the record as a whole, the Court finds no reversible error.¹

¹Ford further asserts that Plaintiffs' counsel's mention of this instruction during his closing

B.
Strict Liability & Negligence

Ford next argues that the verdict is inconsistent on its face because the jury determined “by a preponderance of the evidence that the 2001 Ford Ranger owned by Howard Nease was defective in that it was not reasonably safe for its intended use,” but the jury also found Ford was not “negligent with respect to the design of the 2001 Ford Ranger owned by Howard Nease.” *Verdict Form*, 1-2, ECF No. 216. Ford insists that the inconsistent verdict also demonstrates the jury’s confusion as a result of the “duty to adopt” instruction. In order to prove negligence, a plaintiff must prove “duty, breach, causation, and damages.” *Carter v. Monsanto Co.*, 575 S.E.2d 342, 347 (W. Va. 2002). On the other hand, “‘strict liability in tort’ is designed to relieve the plaintiff from proving that the manufacturer was negligent in some particular fashion during the manufacturing process and to permit proof of the defective condition of the product as the principal basis of liability.” Syl. Pt. 3, *Morningstar*. To prove strict liability, a plaintiff must prove a “product is defective in the sense that it is not reasonably safe for its intended use. The standard of reasonable safeness is determined not by the particular manufacturer, but by what a reasonably prudent manufacturer’s standards should have been at the time the product was made.” Syl. Pt. 4, *id.* Thus, the negligence and strict liability are different concepts under West Virginia law, and it is possible for a jury to find in favor of a plaintiff under a strict liability theory, but find in favor of defendant on a negligence theory.

argument seriously prejudiced it. For the reasons stated above, the Court rejects Ford’s argument. In addition, the Court recognizes that Plaintiffs’ counsel brief mention of this instruction was followed by a statement that the jury could “find that Ford breached its duty,” which implicates a negligence theory, not strict liability. *Id.* at 238.

Here, the Court finds the jury easily could conclude that, although there existed a design defect for purposes of strict liability, the design of the product did not violate an industry standard for purposes of negligence. In fact, although there was testimony as to Ford's practices, there was very little testimony about what the practices of the automotive industry were at the time. Thus, given the totality of the evidence presented, the Court finds no inconsistency in the verdict² and **DENIES** Ford's motion on this issue.

D.
Evidence of Other Incidents

Ford also argues that the Court erred in admitting evidence from *Huber v. Ford*, Civ. Act. No. 01-C-391 (Cir. Ct. of Monongalia Cty., W. Va.), and *Olson v. Ford*, 4:04-cv-00102-DLH-SCM (N.W. Dist. N.D. 2006), because Plaintiffs did not establish the vehicles involved in those cases had substantially similar speed control cables as the 2001 Ford Ranger driven by Mr. Nease. Therefore, Ford asserts the evidence should have been excluded pursuant to Rules 401, 402, 403, 404(b), and 801 of the Federal Rules of Evidence. However, the jury was instructed the evidence could not be considered at all with respect to Plaintiffs' strict liability claim. Specifically, the Court instructed the jury that:

[i]n this case, the plaintiffs offered testimony concerning reports made to Ford of alleged other incidents of unintended acceleration. You are instructed that you may only consider the alleged other incidents for the limited purpose of determining whether Ford had notice of the defect that the plaintiffs allege. You may not consider this testimony for any purpose in evaluating plaintiffs' strict product liability claim, and you may not consider it as evidence that the 2001 Ford Ranger was defective or not reasonably safe for its intended use.

²Moreover, "even if the general verdicts are internally inconsistent, such is the jury's prerogative if . . . there is evidence to support the finding reached by the jury." *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076, 1094 (5th Cir. 1973).

Trial Tr., 192, ECF No. 232. Thus, as the jury was instructed it only could be considered for the purpose of notice and not for the purpose of evaluating Plaintiffs' strict liability claim, the Court **DENIES** Ford's argument.³

E.
**Allegation of Altered
or False Evidence**

Ford further argues that the case was based upon "altered" or "false evidence" regarding the position of the acceleration pedal. Specifically, Ford asserts the Court erred in allowing Officer Dent to testify that he observed the accelerator pedal in the down position and had it photographed. Trial Tr., 65, ECF No. 249. However, when the pedal was inspected by Mr. Sero nearly a year later, the pedal was in its normal position. Therefore, Ford insists evidence of the accelerator pedal being down was either spoliated or the evidence presented by Office Dent was false.

The Court finds no merit to Ford's spoliation argument. To prove spoliation, a party must show:

[T]he party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a "culpable state of mind;" and (3) the

³When discussing the jury instructions outside the presence of the jury, the Court stated that it "already ruled that evidence about the cables in *Huber* and *Olson* and Mr. Sero's inspection of them produces enough substantial similarity that it's relevant and that it can go to defect, but – and the parties can argue that, but I don't have an instruction before me. So it's premature to object." Trial Tr., 65, ECF No. 232. When the actual jury instructions were read to the jury, they specifically included the aforementioned limiting instruction. Given this limiting instruction, it was of no consequence that Plaintiffs' counsel stated during closing argument that "[y]ou also heard Ford claim that stuck throttles because of clogged up cap tubes don't happen in the real world, that there is no evidence of it. . . . Remind them when Mr. Sero talked about the *Huber* and the *Olson* cases that basically had substantially similar design of the speed cables." *Id.* at 233.

evidence that was destroyed or altered was “relevant” to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.

Goodman v. Praxair Serv., Inc., 632 F. Supp.2d 494, 509 (4th Cir. 2009) (internal quotation marks and citations omitted).

In this case, Mr. Nease was taken to the hospital with serious injuries following the crash. As is typical in this situation, his truck was towed to a salvage yard, and Mr. Nease had no control over the vehicle. The truck was then moved to a different salvage yard by his insurer. The truck was not returned to Mr. Nease’s control until April of 2013, five months after the crash, when Plaintiffs’ counsel was able to locate the truck and purchase it for salvage value from the insurance company. Mr. Sero testified that by the time he inspected the pedal and the speed control cable the pedal was off the floor and the cable was free to move. Trial Tr., 34, 63, & 88, ECF No. 221. However, he testified that he saw evidence of contaminants in the guide tube. *Id.* at 49.

Under these facts, there is absolutely no evidence of spoliation. Clearly, Plaintiffs did not have continuous control over the vehicle, nor has Ford set forth any evidence that they “willfully engaged in conduct resulting in the evidence’s loss or destruction.” *Turner v. U.S.*, 736 F.3d 274, 282 (4th Cir. 2013) (citation omitted). Moreover, although Ford was well aware of Plaintiffs’ theory of their case and the fact the pedal was in its normal position and the cable was not bound at the time it was inspected by Mr. Sero, Ford never raised the spoliation issue prior to its current motion. Thus, the Court further finds the motion untimely. *See Goodman*, 632

F. Supp.2d at 508 (“The lesson to be learned from the cases that have sought to define when a spoliation motion should be filed in order to be timely is that there is a particular need for these motions to be filed as soon as reasonably possible after discovery of the facts that underlie the motion. This is because resolution of spoliation motions are fact intensive, requiring the court to assess when the duty to preserve commenced, whether the party accused of spoliation properly complied with its preservation duty, the degree of culpability involved, the relevance of the lost evidence to the case, and the concomitant prejudice to the party that was deprived of access to the evidence because it was not preserved.” (citation omitted)).

Additionally, Ford’s suggestion that Officer Dent presented false evidence is without merit. Officer Dent presented evidence about what he observed at the scene, which was consistent with Mr. Nease’s assertion that the accelerator pedal was stuck. The fact Officer Dent’s observation of the pedal was different than what was found months later by Mr. Sero does not mean Officer Dent lied about what he saw. The jury easily could have determined that the cable became unbound and the pedal returned to its normal position between the date of the accident in November of 2012 and October of 2013, when Mr. Sero first inspected it. Therefore, the Court denies Ford’s spoliation and false evidence arguments.

E.
Opinion Evidence

Next, Ford argues that the Court erred in allowing Plaintiffs’ expert Dr. Mark Moreland to testify about matters outside Mr. Nease’s medical record and by not disclosing those opinions pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure. As a result, Ford argues that its expert, Dr. Lisa Gwin, did not have the opportunity to add opinions to rebut Dr.

Moreland's testimony and develop a defense that sensory difficulties in Mr. Nease's foot resulted in pedal error.

Dr. Moreland was Mr. Nease's treating physician and also was disclosed as an expert witness by Plaintiffs on July 15, 2014. Plaintiffs stated in their disclosure that he would offer expert testimony "within . . . [his] respective areas of expertise, based upon . . . [his] respective knowledge of Howard Nease's course of treatment, care, diagnoses, prognoses, medical condition and future medical care needs related to the subject crash[.]" Exhibit C to *Pls' Resp. in Opp. to Ford Motor Co.'s Mot., in the Alternative, for a New Trial*, at 6, ECF No. 245-3. Dr. Moreland's testimony regarding what medications Mr. Nease took prior to the crash fell within his range of treatment. As such, it was unnecessary for Dr. Moreland to prepare a written expert report pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. *See Order*, at 1-2, ECF No. 174 (holding "[t]he disclosures described in FR Civ P 26(a)(2)(B) shall not be required of physicians and other medical providers who examined or treated a party . . . unless the examination was for the sole purpose of providing expert testimony in the case"); *In re C.R. Bard, Inc.*, 948 F. Supp.2d 589, 616 (S.D. W. Va. 2013) (stating "treating physicians are, of course, able to testify as to opinions formed during the course of treatment"). Moreover, this testimony should have been of no surprise to Ford, and it certainly did not cause any unfair prejudice to Ford. *See id.* (finding any violation of Rule 26(a)(2)(B) was substantially justified or harmless to the extent the treating physicians offered opinions outside the scope of treatment because the defendant was not surprised, allowing the testimony did not disrupt the trial, and the plaintiffs relied upon a previous decision by the court in deciding not to submit expert reports).

As to Ford's arguments with respect to Dr. Gwin, the Court previously addressed these issues in its Memorandum Opinion and Order entered on March 19, 2015, finding she could not offer her opinion about whether Mr. Nease was experiencing side effects of his medications at the time of the accident. *Mem. & Op.*, at 2 ECF No. 186. As Dr. Gwin was an expert, and not a treating physician, she was required to put her opinions in an expert report. The Court decision to limit Dr. Gwin's testimony to those things contained in her report was not error.

F.
The Jury Award

Lastly, Ford argues that this Court should set aside or remit the jury verdict as excessive. Ford asserts the damages awarded for future medical care were against the clear weight of the evidence. At trial, Plaintiffs' forensic economist Zachary Meyers opined the present value of Mr. Nease's future life care plan was \$239,741. Trial Tr., 21, Mar. 27, 2015, ECF No. 242. Despite no other present value calculation presented by Plaintiffs, the jury awarded \$500,000 in future medical care and expenses. *Verdict Form*, 6, ECF No. 216. Ford argues the jury obviously speculated in making its decision because there was no evidence Mr. Nease would incur \$500,000 in future medical care.

Plaintiffs argue, however, that Mr. Meyers testified that his figure was very conservative because he typically calculates damages up through age 100, but in Mr. Nease's case he stopped at age 86. Trial Tr., 25-26, ECF No. 242. Given Mr. Meyer's testimony, Plaintiffs assert the jury was free to award an amount greater than the bare minimum, particularly in light of Dr. Moreland and Cathy Gross' testimony that Mr. Nease will require future medical care.

“Remittitur, which is used in connection with Fed. R. Civ. P. 59(a), is a process . . . by which the trial court orders a new trial unless the plaintiff accepts a reduction in an excessive jury award.” *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 305 (4th Cir. 1998) (quotation marks omitted). The decision as to whether a damage award is excessive and should therefore be set aside is “entrusted to the sound discretion of the district court.” *Robles v. Prince George's Cty., Maryland*, 302 F.3d 262, 271 (4th Cir. 2002) (internal quotation marks and citation omitted). Under the practice of remittitur, “the trial court orders a new trial unless the plaintiff accepts a reduction in an excessive jury award.” *Cline*, 144 F.3d at 305 (internal quotation marks and citation omitted).

In this case, Mr. Meyers opined that \$239,741 was a conservative figure for Mr. Nease’s future medical care to age 86, for a total of 12.25 years based upon Ms. Gross’s life care plan. Trial Tr., 20-21, ECF No. 242. He further stated that, in calculating the cost of future medical care, the amount of the life care plan is discounted each year by a person’s life expectancy. *Id.* at 25. Thus, for each year the life care plan extends into the future, the lower the damages are because there is less chance of being alive at that age. For instance, Mr. Meyer calculated the Present Value of Total Life Care Plan for Mr. Nease at age 74 as \$25,272. Exhibit 9B, at 3, ECF No. 227-17. At age 86, Mr. Meyers calculated the value at \$12,732. *Id.* However, in this case, the jury more than doubled the amount of future medicals calculated by Mr. Meyers through age 86. Even if the jury believed Mr. Meyer’s figure was too conservative and he should have calculated the damages through age 100, there is simply no evidence that the amount of damages from age 87 through 100 would exceed the future medical expenses Mr. Nease would incur between the ages of 74 and 86. In fact, such a calculation is contrary to Mr. Meyers’ own

testimony that the present value for each year in the future would decrease. Therefore, the Court finds that a remittitur is appropriate and **GRANTS** Ford's motion on this issue. As Plaintiffs' best evidence was that Mr. Nease would incur \$239,741 in future medical care and expenses, the Court reduces the jury award to that amount for his future medical care and expenses. If Plaintiffs do not agree to a remittitur, the Court will order a new trial on damages.

III. CONCLUSION

Accordingly, for the foregoing reasons, the Court **DENIES** Ford's motion Renewed Motion for Judgment as a Matter of Law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure (ECF No. 238), and **DENIES, in part, and GRANTS, in part,** Ford's Motion, in the Alternative, for a New Trial pursuant to Rule 59(a)(1)(A) of the Federal Rules of Civil Procedure. ECF No. 240. The Court also **DIRECTS** Plaintiff to notify the Court within seven (7) days of entry of this Memorandum Opinion and Order whether it accepts the remittitur or wants the Court to set a new trial. The Court also **GRANTS** Plaintiffs' Motion for Leave to Submit a Sur-Reply. ECF No. 250.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 24, 2015



ROBERT C. CHAMBERS, CHIEF JUDGE

Case 3:13-cv-29840 Document 258 Filed 08/05/15 Page 1 of 2 PageID #: 7981

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

HOWARD E. NEASE and
NANCY NEASE,

Plaintiffs,

v.

CIVIL ACTION NO. 3:13-29840

FORD MOTOR COMPANY,
a Delaware Corporation,

Defendant.

SECOND AMENDED JUDGMENT ORDER

This case was tried to a jury from March 24, 2015 to April 1, 2015. After deliberations, the jury returned a verdict in favor of Plaintiffs Howard E. and Nancy Nease with respect to their claim of strict liability and in favor of Defendant Ford Motor Company on Plaintiffs' claims of negligence and breach of implied warranty. The Court ordered that the verdict form be filed and that judgment be entered in accordance with the verdict form. Thereafter, by Memorandum Opinion and Order entered on July 24, 2015, the Court granted Defendant Ford Motor Company's request for a remitter with respect to the jury's award for future medical care and expenses. The Court also granted Plaintiffs seven days to decide whether it would accept the remittitur. On July 29, 2015, Plaintiffs responded that they accepted the remittitur. Accordingly, the Court **AMENDS** the Amended Judgment Order to reflect an award of \$239,741 in future medical care and expenses. The remainder of the Amended Judgment Order shall remain the same.

The Court **DIRECTS** the Clerk to send a certified copy of this Judgment Order to the all counsel of record.

ENTER: August 5, 2015



ROBERT C. CHAMBERS, CHIEF JUDGE

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**HOWARD E. NEASE and
NANCY NEASE,**

Plaintiffs,

v.

CIVIL ACTION NO.: 3:13-cv-29840

**FORD MOTOR COMPANY,
a Delaware corporation**

Defendant.

NOTICE OF APPEAL

Defendant Ford Motor Company hereby gives notice of its appeal to the United States Court of Appeals for the Fourth Circuit from the final order entered in the above civil action on August 5, 2015 (Second Amended Judgment Order [Doc. 258]) and all prior and subsequent orders incorporated therein, including but not limited to the Memorandum Opinion and Order [Doc. 256], dated July 24, 2015, and the Order Denying Ford's Objections [Doc. 260] and Costs Taxed by The Clerk [Doc. 261].

Dated: August 19, 2015

**FORD MOTOR COMPANY
By Counsel**

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**HOWARD E. NEASE and
NANCY NEASE,**

Plaintiffs,

v.

**CIVIL ACTION NO.: 3:13-cv-29840
JUDGE CHAMBERS**

**FORD MOTOR COMPANY,
a Delaware corporation**

Defendant.

CERTIFICATE OF SERVICE

I, Andrew B. Cooke, counsel for the defendant, do hereby certify that I served **NOTICE OF APPEAL** upon the following counsel of record this 19th day of August, 2015 via the CM/ECF system:

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Andrew B. Cooke (WV State Bar # 6564)

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2015, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

I further certify that a bound copy of the foregoing was mailed, via FedEx overnight delivery, to the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit.

Dated: November 19, 2015

/s/ Jonathan D. Hacker
Jonathan D. Hacker