

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 99-9450-CA 22

JOAN HALL-EDWARDS, individually,  
and as Personal Representative  
of the Estate of LANCE CROSSMAN  
HALL,

Plaintiff,

vs.

THE FORD MOTOR COMPANY, a  
foreign corporation,

Defendant.

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
TRIAL 3 - VOLUME VII (Pages 800 - 996)

**DATE TAKEN:** January 9, 2013  
**TIME:** 1:00 p.m.  
**PLACE:** Miami-Dade County Courthouse  
73 West Flagler Street  
Miami, Florida  
**BEFORE:** JENNIFER D. BAILEY, Circuit Judge

This cause came on to be heard at the time and  
place aforesaid, when and where the following  
proceedings were stenographically reported by:

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Realtime Systems Administrator

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<p>1 Thereupon, 2 the following proceedings continued at 1:00 p.m.:</p> <p>3 <b>THE COURT:</b> Let me start so I can make 4 sure I know who's who. Make appearances for 5 the record, please.</p> <p>6 <b>MR. KASTER:</b> Ready, your Honor? 7 <b>THE COURT:</b> Yeah.</p> <p>8 <b>MR. KASTER:</b> Bruce Kaster on behalf of the 9 plaintiffs, and I have with me . . .</p> <p>10 <b>MR. GUTIERREZ:</b> Gus Gutierrez on behalf of 11 plaintiff.</p> <p>12 <b>MR. ROBINSON:</b> Jason Robinson on behalf of 13 the plaintiff.</p> <p>14 <b>MR. KASTER:</b> We also have Richard Denney 15 on behalf of the plaintiffs. I guess he 16 stepped out, your Honor.</p> <p>17 <b>THE COURT:</b> Richard, last name? 18 <b>MR. KASTER:</b> D-E-N-N-E-Y.</p> <p>19 <b>THE COURT:</b> All right. On behalf of 20 defendants?</p> <p>21 <b>MR. SALAS:</b> Henry Salas, your Honor, on 22 behalf of Ford Motor Company.</p> <p>23 <b>MR. RUBIO:</b> Armando Rubio on behalf of 24 Ford.</p> <p>25 <b>MR. SCHUCK:</b> Greg Schuck on behalf of</p>	<p>1 don't need to repeat that? 2 <b>MR. SALAS:</b> I don't think it can hurt to 3 repeat it. 4 <b>THE COURT:</b> Okay. 5 <b>MR. RUBIO:</b> We had some jurors who were 6 playing with their phone during the process, so 7 it may be a good idea. 8 <b>THE COURT:</b> Okay. 9 <b>MR. KASTER:</b> The Internet was good. 10 <b>THE COURT:</b> Phones, Internet. 11 <b>MR. KASTER:</b> We're going to be reading a 12 lot of depositions. It might be good to go 13 ahead and give that instruction at this point. 14 <b>THE COURT:</b> I'll give that to them first 15 thing tomorrow morning. You guys are basically 16 doing opening today? 17 <b>MR. KASTER:</b> I have one deposition I was 18 going to play today. 19 <b>THE COURT:</b> Okay. Did you guys reach 20 agreement on the depo? 21 <b>MR. RUBIO:</b> Yes. 22 <b>THE COURT:</b> I did not see that instruction 23 in the pile. So I'll print that out. I also 24 did not see notetaking or -- 25 <b>MR. KASTER:</b> She gave notetaking.</p>
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<p>1 Ford. 2 <b>MS. LUMISH:</b> Wendy Lumish on behalf of 3 Ford. 4 <b>MS. ALONSO:</b> And Cristina Alonso on behalf 5 of Ford. 6 <b>MR. KASTER:</b> Your Honor, I left out 7 Kimberly Boldt, our appellate lawyer, who is 8 not here right now. 9 <b>THE COURT:</b> Okay. All right. Where did 10 Judge Platzer leave off in terms of instructing 11 the jury on the preliminary instructions? I 12 think she was going to give them one, and then 13 I told her I would probably give them another 14 one this morning. 15 <b>MR. KASTER:</b> She gave them the preliminary 16 instructions that were standard, that I'm aware 17 of. 18 <b>MS. ALONSO:</b> Explaining the process, the 19 sidebars, the opening statements. 20 <b>MR. KASTER:</b> I'm not sure what else there 21 is, your Honor. 22 <b>THE COURT:</b> Did she give the Internet 23 instruction? 24 <b>MS. ALONSO:</b> Yes, she did. 25 <b>THE COURT:</b> Are you all satisfied that we</p>	<p>1 <b>THE COURT:</b> She gave it? 2 <b>MR. KASTER:</b> Yes, ma'am. 3 <b>THE COURT:</b> Jury questions? 4 <b>MR. KASTER:</b> She gave it. 5 <b>THE COURT:</b> Good. I didn't see it in the 6 pile. 7 <b>MR. RUBIO:</b> Assuming you have the same 8 process, raise your hands she explained that 9 she would do, you probably would do the same 10 thing. 11 <b>THE COURT:</b> Let me explain my process, 12 because I don't know what her process is. We 13 go through the questioning. At the end of the 14 questioning, I say something like, now, the 15 attorneys have probably covered most of what 16 you need to know to decide, but if you have any 17 questions, raise your hand and write it down -- 18 actually I do it, write it down, and then raise 19 your hand so that we can give them a chance -- 20 an effort to commit one way, I'm going to ask a 21 question, then write it down, fold it, raise 22 their hand when it's ready. We go sidebar, we 23 read it, yay, nay, and then the Court reads the 24 questions. 25 I generally -- I would never say I don't</p>

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1 allow, but I'm willing to allow another  
2 repeated round of questioning because it tends  
3 to drag on and people -- just becomes a matter  
4 of fine-point clarifications that are not  
5 particularly helpful. So unless something  
6 really new, different, and odd comes up that's  
7 actually not objectionable or admissible, which  
8 frankly seldom happens, we just ask the  
9 questions, and then I'll look at them and say,  
10 does anybody have any follow-up on that, and  
11 that's the end of it. I'll entertain a request  
12 by counsel for continued questioning, but  
13 you've got to have a really good reason.

14 MS. BOLDT: That's pretty much what she  
15 explained, the process.

16 THE COURT: I bring them in, I let them  
17 sit wherever they want to sit. I don't require  
18 them to sit in any particular order.

19 The reason why you all are here is because  
20 I have all these books that I've read, most of  
21 which has been ruled upon by my predecessors,  
22 and my understanding is good, bad, or ugly  
23 we're proceeding on those rulings as they  
24 stand, and I just wanted to make sure everybody  
25 is on the same page with regard to what those

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1 rulings are.

2 So I'm going to ask this the generic way  
3 first. Is there anything that anybody is  
4 unclear on with regard to the judicial marching  
5 orders on this case?

6 MR. DENNEY: I think everybody, after as  
7 many times as we've been through this, is clear  
8 on what the various orders have been.

9 There's one of them, before I put  
10 Dr. Renfroe on, that I'll ask to revisit with  
11 you out of the hearing of the jury, and we'll  
12 take it up to deal with it.

13 THE COURT: And -- yes.

14 MR. GUTIERREZ: Your Honor, I'm sure  
15 Ms. Boldt will agree, as will as Ms. Lumish,  
16 that in terms of preserving the record, we'll  
17 also raise any prior objection that has been  
18 raised, although ruled upon, just to keep the  
19 record straight.

20 THE COURT: Here's what I'm going to ask  
21 you in this regard to say: While this matter  
22 had been ruled upon, your Honor, we object, to  
23 preserve our record. That way, I'll know that  
24 this is one of those that's already been  
25 completely addressed and is subject to this

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1 understanding. I think that's why I wanted to  
2 address, so I knew you all would want to  
3 protect your record.

4 MR. DENNEY: If it's something that's been  
5 excluded, your Honor, for either side, my  
6 suggestion is we just tell you at the time we  
7 offer it, we will have an offer of proof on  
8 that, and we agree it will be made at your  
9 convenience, out of the hearing of the jury,  
10 regardless of whether the witness has left, if  
11 that's all right. That's the most expeditious  
12 way to do it.

13 THE COURT: Okay. Works for me. Is that  
14 agreeable to everybody else?

15 MR. SCHUCK: That's great.

16 MR. KASTER: Matter of fact, I think you  
17 want to preserve some objections on Mason depositions  
18 that have already been ruled on.

19 MR. SCHUCK: Yes, that's one of the things  
20 I -- some of the exhibits to this first depo,  
21 it's been ruled on. But just to preserve the  
22 record, we need to make them.

23 THE COURT: So we just need to make sure  
24 that -- this is a unique situation. First of  
25 all, I never try a big case without picking my

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1 own jury, No. 1. And I appreciate the  
2 accommodation of the parties in light of the  
3 Chief Justice's visit.

4 Number 2, seldom do I say, okay, we're  
5 just going on where we started from and  
6 starting where we left off. So my  
7 understanding -- I just need to know if there's  
8 some of this that I need to have a deep and  
9 profound understanding about beyond what's  
10 going to come out from the witness stand to  
11 make any fresh rulings in this case.

12 And I grant you, it's hard to see what  
13 could constitute a fresh ruling in a 1999 case.  
14 I just need to make sure that you all are  
15 satisfied that I'm up to speed on it. Like I  
16 said, I've read all this, I got all the notes  
17 about what happened, when, and so on, and I  
18 think I'm pretty clear on it, but I just  
19 need -- if there's something coming up, you got  
20 to give me a heads-up so I can make sure I'm up  
21 to speed on it, too.

22 MR. KASTER: We'll do that.

23 MR. DENNEY: May I make a procedural  
24 suggestion on that --

25 THE COURT: Yes.

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<p>1 MR. DENNEY: -- your Honor, that I think 2 will save everybody time during the trial? 3 What Greg and I have done on the technical 4 part of this case where there's so many 5 exhibits in the past is to get here a few 6 minutes early with you, before the jury comes 7 in, move admission of exhibits, let you make 8 your ruling, and then if there's an objection 9 that has to be preserved during the witness's 10 testimony, we just remind you, your Honor, 11 that's that thing that you overruled or that 12 thing you admitted or whatever to preserve the 13 record. 14 THE COURT: I need you to say, Judge, 15 we're raising the objection for purposes of the 16 record that's already been ruled on, and I say 17 something like the ruling stands and go on. 18 MR. DENNEY: That's what I'm going to 19 suggest. And if we do it a few minutes before 20 the jury gets here -- I think you'll find, for 21 the most part, the technical exhibits will 22 already be ruled on -- we'll just flow right 23 through them. 24 THE COURT: Okay. 25 Structurally, is there anything else? I</p>	<p>1 Whenever your Honor tells us you need to 2 be done working through it, we'll be done 3 working through it and ready to discuss it with 4 your Honor. 5 MS. BOLDT: The only thing I would add to 6 that is what I'm not sure is in your set, 7 Wendy, are any additional instructions that we 8 wanted that you all had objected to? I just 9 haven't had a chance to look at it. Maybe you 10 included those as well. 11 MS. LUMISH: We did, based on where we 12 were, and we have not -- your Honor, we have 13 not put in punitive damages at this point. I 14 think that's an issue we just need to deal with 15 and work through if and when we need those 16 instructions. 17 MS. BOLDT: That's why we provided you our 18 original proposed set, but Ms. Lumish is 19 absolutely correct, we are working off of the 20 set she gave you. 21 THE COURT: Do you want to look at this 22 and make sure the things you want are in there? 23 MS. BOLDT: Sure. 24 THE COURT: Okay. 25 MR. ROBINSON: Your Honor, one last thing</p>
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<p>1 was most concerned about the books and making 2 sure we were all on the same page with regard 3 to that procedure. Anything else I need to 4 address? I have the jury instructions. Is 5 there a time when the two of you, Ms. Boldt and 6 Ms. Lumish, want to tackle those? 7 MS. LUMISH: Your Honor, let me address 8 those so we all get on the same page. From 9 where we left off the last trial, we have been 10 working on agreements, and what we presented to 11 your Honor yesterday, which doesn't have the 12 name of either party on it, it's not anybody's 13 instruction. We've identified where we agree, 14 and then we've identified where we still have 15 an issue. We're waiting for Ms. Boldt to come 16 back and tell us her position on it. 17 Last night apparently she provided you 18 with an old 2008 set, which, to my knowledge, 19 is no longer in play. So what we're all 20 working on is what we provided to your Honor 21 yesterday afternoon. It's a set that says 22 agreed, and it says objected to, and it shows 23 where our differences are. And I think what 24 we'd like to do is continue to work through 25 that.</p>	<p>1 just before openings, there's an easel out 2 there, can we bring it in here for use? 3 THE COURT: I don't know whose it is, 4 until somebody comes in and says, what are you 5 doing with my easel. 6 MR. ROBINSON: I didn't know if it was the 7 Court's or the Court's staff. 8 THE COURT: If you need it, yeah, bring it 9 in. Possession is 9/10s of the law. 10 MR. DENNEY: We'll buy it. 11 MS. LUMISH: If the judge says it, it's 12 10/10, I think. 13 MR. DENNEY: Your Honor, one thing I'd 14 like to point out while we're talking here, one 15 thing confusing about these instructions to the 16 defense and both sides is you're dealing with 17 '97 law, which has changed remarkably, and so 18 attorneys are having to work back to the law as 19 it was and come forward, and that's going to 20 make it a little more difficult. 21 MS. LUMISH: Actually, surprisingly, the 22 product-liability law is about the same as it 23 was in 1997, not much has changed. The 24 punitive damages, obviously we're still dealing 25 with pre-'99 law, which looks different than</p>

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1 what we're dealing with today.  
2 Again, I think when you look at it, our  
3 differences are pretty minor all the way  
4 through and they're nothing that you will be  
5 surprised at when you look at typical issues,  
6 do we instruct on negligence, what do we do  
7 with warnings, what's the definition of  
8 negligence -- I mean, defect. So it's pretty  
9 basic issues.  
10 MR. DENNEY: Those parts are remarkably  
11 the same. What is remarkably different is  
12 punitive law, and that's where we'll have the  
13 most back and forth, I'm sure.  
14 THE COURT: Okay. When the time comes,  
15 we'll deal with it.  
16 MR. DENNEY: One last procedural matter,  
17 your Honor, I don't know if defense has any  
18 objection, but Judge Platzer was kind enough  
19 during voir dire, Lance's sister is an officer  
20 of the Court, she's a district attorney from  
21 down in Key West. At times, we'd like to have  
22 her with her mother. Judge Platzer was fine  
23 with that. I don't think the defense objects.  
24 I guess technically they could say no, but I  
25 don't think anybody would object.

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1 MR. SCHUCK: She's a witness, but we did  
2 the same thing we did last time, she is welcome  
3 to be here with her mom.  
4 THE COURT: Is anybody invoking the Rule?  
5 MR. DENNEY: They're all out-of-state  
6 witnesses.  
7 THE COURT: Kind of late.  
8 MR. DENNEY: We don't need it.  
9 THE COURT: Then it's not an issue.  
10 MR. DENNEY: I don't think there's live  
11 witnesses that could be coached by anybody.  
12 MR. SALAS: May we be excused, your Honor,  
13 five minutes?  
14 THE COURT: Let me tell you two other  
15 things. I don't give them their notepads until  
16 after opening, because I want them focused on  
17 the coming attractions. So they'll get their  
18 actual notepads once the evidence starts.  
19 I will keep an eye on them, but we should  
20 all keep an eye on them. If you see anybody  
21 doing this (indicating), ask for a sidebar.  
22 MR. DENNEY: We had that in voir dire,  
23 your Honor.  
24 THE COURT: You know what, everybody is so  
25 attached to these devices that they can't keep

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1 them in their pocket. You guys can't do it  
2 either.  
3 MR. DENNEY: I will tell you, your Honor,  
4 there are good reasons why a couple of lawyers  
5 here have asked, and Judge Platzer's allowed  
6 them to, and I have no objection to, there's  
7 some illness in some of the families.  
8 THE COURT: That's fine, we've already  
9 covered that, but I'm just saying, unless  
10 somebody is complaining with the jury, with the  
11 lawyers, I don't care, as long as it doesn't  
12 make a noise and it's unobtrusive. You just  
13 have to be unobtrusive; otherwise, they're  
14 thinking, well, they're doing it, I can do it.  
15 If you see them doing it, because I have  
16 to look here, I have to look there, I'm all  
17 over the place, get over here. And I do take  
18 the cell phones during deliberations.  
19 MR. DENNEY: Having had to retry at least  
20 one case because of exactly that, I'm very  
21 conscious of that. I had a juror that once got  
22 on his phone during deliberations, went on the  
23 Internet and did research, went back in and  
24 showed it to the jury and blew the whole thing  
25 up.

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1 THE COURT: The horror stories manifest.  
2 The interesting thing, we have constant  
3 discussions about this, people are so used to  
4 it now, particularly Gen X, they don't even  
5 think about it. Nobody memorizes state  
6 capitols anymore, because if you want to know,  
7 you Google it.  
8 MR. DENNEY: I saw a humorous comment  
9 about a person who allegedly had gone into a  
10 coma in 1950 and came back in the last year or  
11 so and realized that he could carry the whole  
12 world of knowledge in his pocket like this.  
13 Then two months later, he woke up and realized  
14 the only thing he was doing was getting  
15 constant reminders of things he forgot to do  
16 and playing games, so . . .  
17 THE COURT: It's like somebody once said,  
18 the entire purpose of the cell phone voice  
19 protocol is so you can say, I am here, where  
20 are you? I'm driving home from work, where are  
21 you?  
22 MR. ROBINSON: Now, even like my  
23 brother-in-laws, they don't use the voice  
24 aspects of the phone, they text.  
25 THE COURT: If you're under 25, nobody

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1 talks.  
2 MR. ROBINSON: Yeah.  
3 (Thereupon, a discussion was held off the  
4 record, after which the following proceedings  
5 were held:)  
6 THE COURT: How long -- did you all have a  
7 conversation about how long openings are going  
8 to take? Who is opening?  
9 MR. KASTER: Henry and I are opening. I  
10 think both of us are going to be around an  
11 hour.  
12 MR. DENNEY: In the past trials, there  
13 have been sort of an agreement that we would  
14 use what we needed, because we were likely to  
15 give the Court back whatever and save time.  
16 THE COURT: I'm fine with that. I'm just  
17 trying to get a vision on how the day is  
18 rolling out.  
19 MR. KASTER: We thought we would be done  
20 probably around 3:00 with the openings, and  
21 then we could go ahead and put Mr. Mason on.  
22 He's a little over an hour, it's a video.  
23 THE COURT: If you're an hour apiece,  
24 about 3:30.  
25 MR. KASTER: We both think we'll go a

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1 little longer than that, so we should still  
2 have confirmation. We'll just look and see.  
3 THE COURT: How long is Mason?  
4 MR. KASTER: A little over an hour. Like  
5 an hour.  
6 THE COURT: It will be all right. We'll  
7 probably take a recess between openings and the  
8 video, just so I can let them go to the  
9 restroom.  
10 MR. KASTER: I think that's a good idea.  
11 Thank you, Judge.  
12 MR. SCHUCK: Judge, to make use of our  
13 time, can we put on our objection to the Mason  
14 depo and exhibits right now so we don't have to  
15 interrupt?  
16 THE COURT: Sure. And I do need you to  
17 take down the depo, all the depo. Let me go  
18 off for just a minute.  
19 (Thereupon, a discussion was held off the  
20 record, after which the following proceedings  
21 were held:)  
22 MR. SCHUCK: Judge, I understand after  
23 openings, plaintiff is going to be offering the  
24 deposition of Jim Mason. He's a Ford employee.  
25 His testimony relates to a predecessor version

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1 of the Explorer. This was briefed extensively,  
2 it was argued extensively. Judge Genden  
3 overruled our objection. We adopt our prior  
4 arguments and just renew that objection at this  
5 time to the UN46 platform coming into this  
6 trial.  
7 THE COURT: Court will stand on the prior  
8 ruling.  
9 MR. KASTER: I thought you weren't going  
10 to object to the documents.  
11 MR. SCHUCK: If you're not offering all of  
12 them. Once you offer the ones you're offering,  
13 I'll make that same objection.  
14 THE COURT: You're good?  
15 MR. SCHUCK: I'm good. Thanks, Judge.  
16 THE COURT: I have one last question, when  
17 did you all tell this jury the case was going  
18 to end?  
19 MR. DENNEY: I'm sorry?  
20 THE COURT: When did you tell this jury  
21 the case would be finished?  
22 MR. ROBINSON: Three weeks from today.  
23 MR. DENNEY: Which it won't take, but at  
24 least we -- unless we get a hurricane, like we  
25 did the first time. First time we got a

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1 hurricane and lost a week.  
2 MR. SALAS: There's a juror that has to  
3 leave at 5:00 o'clock.  
4 THE COURT: Okay. We'll get them out.  
5 Every day or just --  
6 MR. SALAS: I think every day. I don't  
7 know if she can make arrangements if we give  
8 her a heads up.  
9 MR. DENNEY: She said she could, but she  
10 said she would prefer it wouldn't be very much.  
11 THE COURT: So she needs to be -- walk out  
12 the door at 5:00? Which juror is that?  
13 MR. SALAS: Juror No. 1.  
14 THE COURT: That answers the question, how  
15 long is the workday. The workday ends at 5:00.  
16 MR. SALAS: You can start whenever you  
17 like, but it ends at 5:00. What time will we  
18 generally start? 9:00?  
19 THE COURT: Yeah, except on Mondays --  
20 well, in this case, I have Platzer covering my  
21 other work. When they -- during voir dire, did  
22 anybody express any inability to start any  
23 earlier?  
24 MR. SALAS: No, it wasn't asked.  
25 MS. BOLDT: The one lady has a

824	<p>1 5:00 o'clock issue.</p> <p>2 THE COURT: I'm usually here pretty early</p> <p>3 I think we'll go 9:00 to 5:00 unless it looks</p> <p>4 like we're falling behind, in which case, I'll</p> <p>5 try to figure out how to add more time to the</p> <p>6 day before 5:00.</p> <p>7 I'm going to step off for just one second,</p> <p>8 make sure everything is squared away in the</p> <p>9 office before we start, and I'll be back at</p> <p>10 1:30.</p> <p>11 (Thereupon, a discussion was held off the</p> <p>12 record, after which the following proceedings</p> <p>13 were held:)</p> <p>14 THE COURT: Ready to proceed?</p> <p>15 MR. SALAS: Yes.</p> <p>16 MR. KASTER: Yes.</p> <p>17 THE COURT: Bring them in.</p> <p>18 (Thereupon, the jury entered the</p> <p>19 courtroom, after which the following</p> <p>20 proceedings were held:)</p> <p>21 THE BAILIFF: Circuit court is now in</p> <p>22 session, Judge Bailey presiding. Please be</p> <p>23 seated.</p> <p>24 THE COURT: Good morning, ladies and</p> <p>25 gentlemen. You haven't had the opportunity to</p>	826	<p>1 JUROR GARCIA: Here.</p> <p>2 THE COURT: Mr. Valladares.</p> <p>3 JUROR VALLADARES: Here.</p> <p>4 THE COURT: Mr. Howard.</p> <p>5 JUROR HOWARD: Here.</p> <p>6 THE COURT: Mr. Talley.</p> <p>7 JUROR TALLEY: (Indicating.)</p> <p>8 THE COURT: And Mr. Marin.</p> <p>9 JUROR MARIN: Here.</p> <p>10 THE COURT: Thank you very much. I'll try</p> <p>11 to keep in mind who's who and, again, welcome.</p> <p>12 I'm going to, as I said, go over the</p> <p>13 preliminary instructions again and I'm going to</p> <p>14 add a couple of instructions that are</p> <p>15 fine-tuned for the 21st century.</p> <p>16 I know that Judge Platzer explained to you</p> <p>17 that in a few moments each attorneys will have</p> <p>18 an opportunity to make what are called opening</p> <p>19 statements, and in the opening statements, the</p> <p>20 attorneys is allowed to give you his or her</p> <p>21 views about what the evidence will be in the</p> <p>22 trial and what you're likely to hear and see in</p> <p>23 the testimony.</p> <p>24 After the opening statements, the</p> <p>25 plaintiffs will bring their witnesses and</p>
825	<p>1 see me before. I'm going to be the judge who's</p> <p>2 going to be trying the case with you. I want</p> <p>3 you to know I appreciate your service. I know</p> <p>4 Judge Platzer has done a great job explaining</p> <p>5 why you're here and you have already spent a</p> <p>6 fair amount of time with these folks. So we're</p> <p>7 going to get started with the trial. We're</p> <p>8 going to go over some of the original</p> <p>9 instructions that Judge Platzer went over with</p> <p>10 you, just to make sure we're all on the same</p> <p>11 page.</p> <p>12 But first, I'm going to go through kind of</p> <p>13 a roll call just so I can figure out who's who,</p> <p>14 because I didn't participate in jury selection.</p> <p>15 So Ms. Arguedas.</p> <p>16 JUROR ARGUEDAS: Right here.</p> <p>17 THE COURT: Mr. Joseph.</p> <p>18 JUROR JOSEPH: Here.</p> <p>19 THE COURT: Ms. Cano.</p> <p>20 JUROR CANO: Here.</p> <p>21 THE COURT: Ms. Victor.</p> <p>22 JUROR VICTOR: Here.</p> <p>23 THE COURT: Ms. Ramirez.</p> <p>24 JUROR RAMIREZ: Here.</p> <p>25 THE COURT: Mr. Garcia.</p>	827	<p>1 evidence to you. Evidence is the information</p> <p>2 that the law allows you to see or hear in</p> <p>3 deciding this case. Evidence includes the</p> <p>4 testimony of the witnesses, documents, and</p> <p>5 anything else I instruct you to consider. That</p> <p>6 may also include previously given testimony,</p> <p>7 sometimes called depositions, we'll be using</p> <p>8 those as well in this case and I'll give you</p> <p>9 more instructions about that.</p> <p>10 A witness is a person who takes an oath to</p> <p>11 tell the truth and answers the attorneys'</p> <p>12 questions for the jury. The answering of the</p> <p>13 witness is -- the attorneys' questions by</p> <p>14 witnesses is called "giving testimony."</p> <p>15 Testimony means statements that are made when</p> <p>16 someone has sworn an oath to the tell the</p> <p>17 truth. The answers are evidence. The</p> <p>18 questions are not evidence.</p> <p>19 The plaintiffs attorney normally asks a</p> <p>20 witness the questions first, that's called</p> <p>21 "direct examination." Then the defense</p> <p>22 attorney may ask the same witness additional</p> <p>23 questions about whatever the witness has</p> <p>24 testified to, that's called</p> <p>25 "cross-examination." Certain documents or</p>

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1 other evidence may also be shown to you during  
2 direct or cross-examination.

3 After the plaintiffs' witnesses have  
4 testified, then the defense will have the  
5 opportunity to put its witnesses on the stand  
6 and go through the same process and the  
7 plaintiffs' attorney gets to cross-examine  
8 those witnesses. The process is designed to be  
9 fair to both sides. It is important that you  
10 remember that the testimony comes from  
11 witnesses. The attorneys do not give  
12 testimony, they are not themselves witnesses,  
13 and none of their argument that they make, nor  
14 the questions they ask should be considered as  
15 evidence in the case.

16 Sometimes the attorneys will disagree  
17 about what the rules for the trial procedure  
18 require when a question is asked of a witness.  
19 When that happens, one of the lawyers may make  
20 what's called an objection. You see that all  
21 the time on TV. The rules for a trial can be  
22 complicated, and there are many reasons for an  
23 attorney to object. You should simply wait for  
24 me to instruct the parties how to proceed. If  
25 I say that an objection is "sustained," that

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1 means that the witness may not answer the  
2 question. If I say that an objection is  
3 "overruled," that means the witness may answer  
4 the question.

5 When there is an objection, and I make a  
6 decision, you must not assume from that  
7 decision that I have any particular opinion  
8 other than that the rules for conducting the  
9 trial must be correctly followed. If I say a  
10 question may not be asked or answered, you must  
11 not try to guess what the answer would have  
12 been, that's against the rules too.

13 Sometimes I need to speak with the  
14 attorneys about the legal elements of the case  
15 that deal with the judge's job, which is the  
16 law that you are to apply and the rules under  
17 which the trial needs to be conducted. We try  
18 and have as few of these conferences as  
19 possible when you're in the courtroom. If we  
20 do need such a conference during the testimony,  
21 it will occur over here to the side. We hold  
22 the conference at the side of my desk, so we  
23 don't have to take a break and ask you to leave  
24 the courtroom. We try and keep them as short  
25 as possible.

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1 Breaks in an ongoing trial are usually  
2 called "recesses." During a recess, you still  
3 have an obligation to follow the rules that  
4 we're sharing with you about being a juror,  
5 even when having coffee at lunch or at home.  
6 You can't talk about the case, you can't  
7 research the case, and you need to keep an open  
8 mind. Those rules apply from the time you were  
9 sworn yesterday until the time I release you  
10 from your jury service.

11 After all the evidence has been presented  
12 to you, I will instruct you in the law you must  
13 follow. It is important that you remember  
14 these instructions to assist you in evaluating  
15 the final attorney presentations and later  
16 during your deliberations to help you correctly  
17 sort through the evidence to reach your  
18 decision.

19 The attorneys at the end of the case will  
20 make closing arguments, we will give you the  
21 instructions on the law that you must apply in  
22 deciding the case, and you will, at that time,  
23 retire to deliberate.

24 In terms of the process of trying this  
25 case, there are some fundamental rules that you

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1 must follow. You must pay close attention to  
2 the testimony and the other evidence as it  
3 comes in during the trial. However, you must  
4 avoid forming any final opinion or telling  
5 anyone else your views on the case until you've  
6 gone back into the jury room to begin your  
7 deliberation. This rule requires you to keep  
8 an open mind until you heard all the evidence.  
9 And it's designed to prevent you from  
10 influencing about how you felt or jurors might  
11 think until they heard all the evidence and had  
12 an opportunity to form their own opinions. The  
13 time and place for coming to your final  
14 opinions in the case is during deliberations in  
15 the jury room, which will be your first  
16 opportunity to share your opinions with your  
17 fellow jurors.

18 After all the evidence is presented, after  
19 you've heard closing arguments, and after  
20 you've been instructed on the law which you  
21 must follow in deciding the case, it's  
22 important that you hear all of the facts and  
23 the instructions on the law and how to apply it  
24 before you start deciding anything. It is the  
25 things you hear and see in this courtroom that

832	<p>1 matter in this trial.</p> <p>2 The law tells us that a juror can consider</p> <p>3 only the testimony and other evidence that all</p> <p>4 of the jurors have also heard and seen in the</p> <p>5 presence of the judge and the lawyers and the</p> <p>6 parties, doing anything else is wrong and it's</p> <p>7 against the law. That means you must not do</p> <p>8 any work or any investigation on your own about</p> <p>9 this case. You must not obtain, on your own,</p> <p>10 any information about the case or anyone</p> <p>11 involved in the case from any source</p> <p>12 whatsoever, this includes reading newspapers --</p> <p>13 okay, you can read the Herald, I don't think</p> <p>14 this is going to be covered in the Herald, or</p> <p>15 any other newspaper you might read. Watching</p> <p>16 television, you can watch television, this is</p> <p>17 not going to be covered on the evening news.</p> <p>18 But using a computer, cell phone, Internet, any</p> <p>19 electronic device that I haven't thought of to</p> <p>20 mention, anywhere or any means at all to get</p> <p>21 information related to this case or the people</p> <p>22 or places involved in this case, this applies</p> <p>23 whether you're in this courtroom, in this</p> <p>24 courthouse, at home, in your car, on the</p> <p>25 Metrorail, wherever you are, whenever you are</p>	834	<p>1 chatting, no Facebooking, no Googling, no</p> <p>2 Yahooing, you cannot do any research on your</p> <p>3 own about this case. Do not -- tweeting, did I</p> <p>4 say tweeting? If I missed tweeting, I'm sorry.</p> <p>5 You must not use phones, computers, or any</p> <p>6 other electronic devices to communicate. Do</p> <p>7 not send or accept any messages related to this</p> <p>8 case or about your jury service, you can't even</p> <p>9 talk about being on jury duty. Do not discuss</p> <p>10 this case by any device or any means at all,</p> <p>11 including posting information on the Internet</p> <p>12 website, chat room, or blog.</p> <p>13 Is everybody clear on that? Because</p> <p>14 here's the thing, we're all attached at the hip</p> <p>15 to these devices now, and I understand that,</p> <p>16 and if I see you during the trial on your</p> <p>17 phone, the first time I'm going to ask you</p> <p>18 really nicely to put it away, I know Mark has</p> <p>19 already asked you to put it on silent. If I</p> <p>20 see them on -- if I see you on it again, in a</p> <p>21 really nice way, I'm taking it and we're going</p> <p>22 set it over here to the side in a box and you</p> <p>23 get it back at the end of the day, because if</p> <p>24 you don't have the willpower to not use it, I'm</p> <p>25 going to have to impose that willpower on you.</p>
833	<p>1 there, from now until you finish this case and</p> <p>2 you complete your deliberations, you must not</p> <p>3 visit places mentioned in the trial or use the</p> <p>4 Internet to look at maps or pictures to see</p> <p>5 anyplace discussed during the trial.</p> <p>6 You also must not provide any information</p> <p>7 about this case to anyone, including friends or</p> <p>8 family members. You're going to be in this</p> <p>9 trial for three weeks, everybody is going to</p> <p>10 ask you what's going on with your life. You</p> <p>11 have to tell them you can't talk about it until</p> <p>12 it's finished. You can't tell them anything</p> <p>13 about it. Do not let anyone, even the closest</p> <p>14 family members, make comments to you or ask</p> <p>15 questions about the trial. Jurors must not</p> <p>16 have discussions of any sort with friends or</p> <p>17 family members about the case or the people or</p> <p>18 places involved. So don't even, with closest</p> <p>19 family members, make comments to you or ask</p> <p>20 questions about the trial.</p> <p>21 In this age of electronic communications,</p> <p>22 I want to stress again that just as you must</p> <p>23 not talk about this case with anyone</p> <p>24 face-to-face, you must not talk about this case</p> <p>25 using any electronic device; no tweeting, no</p>	835	<p>1 I don't want to go there, I want you to have</p> <p>2 your phones, people are used to having their</p> <p>3 phones, you feel naked without them, I get</p> <p>4 that, but you can't be on the phone because</p> <p>5 your attention has got to be on this trial,</p> <p>6 okay, everybody understand? Okay. Thank you.</p> <p>7 While we are in recess, don't discuss</p> <p>8 anything about the trial between yourselves or</p> <p>9 with anyone else. If any attorneys approach</p> <p>10 you, don't speak with them. The law says they</p> <p>11 are to avoid contact with you. If an attorney</p> <p>12 during -- we're going to be together for three</p> <p>13 weeks. If you see them walk past you, they</p> <p>14 don't look you in the eye, they ignore you, you</p> <p>15 get on the elevator, they hop off, they're just</p> <p>16 trying to follow the rules, they're not trying</p> <p>17 to be rude, don't be offended. The same is</p> <p>18 true of any witness or party, you see them,</p> <p>19 don't get on the elevator with them, they're</p> <p>20 not supposed to have contact with you either.</p> <p>21 The attorneys and the parties are not supposed</p> <p>22 to interact with jurors outside the courtroom,</p> <p>23 and they're just following the rules, they're</p> <p>24 not being impolite. If anyone does talk to</p> <p>25 you, an attorney, a witness, parties try to</p>

836	<p>1 speak with you or says something about the case</p> <p>2 in your presence, please inform the bailiff</p> <p>3 immediately.</p> <p>4 Only you get to deliberate and answer the</p> <p>5 verdict questions that will be placed before</p> <p>6 you at the end of the trial. I will not</p> <p>7 intrude in your deliberations at all. I am</p> <p>8 required to be neutral. You should not presume</p> <p>9 that I prefer one decision over another, you</p> <p>10 should not try to guess what my opinion is</p> <p>11 about any part of the case. It would be wrong</p> <p>12 for you to conclude that anything I say or do</p> <p>13 means I'm for one side or another in the trial.</p> <p>14 Discussing and deciding the facts in this case</p> <p>15 is your job alone when you retire to</p> <p>16 deliberate. Okay.</p> <p>17 So with those admonitions, let me give you</p> <p>18 a couple of other nuts and bolts. Our days</p> <p>19 will generally run from 9:00 to 5:00 and know</p> <p>20 that we need to be out of here every day at</p> <p>21 5:00 and I will honor that request. I want to</p> <p>22 make sure that the trial ends on time. If, for</p> <p>23 some reason, we start running behind, I may ask</p> <p>24 you to come in a little earlier in the morning,</p> <p>25 because I want to make sure we finish on time,</p>	838	<p>1 for another four or five days, please don't do</p> <p>2 that. Be here on time, respect each other's</p> <p>3 time. I will do my level best to make sure we</p> <p>4 start right on time when I tell you.</p> <p>5 From time to time, we may have to take</p> <p>6 breaks because I'll be dealing with legal</p> <p>7 issues with the lawyers, and if I know that's</p> <p>8 going to take a little bit longer than</p> <p>9 normally, I'll give you little bit longer</p> <p>10 breaks. I'd rather have you downstairs</p> <p>11 breathing the fresh air than trapped out there</p> <p>12 on the bench. So we'll do our level best at</p> <p>13 every moment to make sure we use your time as</p> <p>14 efficiently as possible. But you have to</p> <p>15 respect your own time. Everybody understand</p> <p>16 that?</p> <p>17 Great. Okay. So with that, we're ready</p> <p>18 to go to opening and on behalf the plaintiff.</p> <p>19 MR. KASTER: Bruce Kaster, yes, ma'am, may</p> <p>20 I start?</p> <p>21 THE COURT: You may.</p> <p>22 OPENING STATEMENT</p> <p>23 MR. KASTER: Sunday, April 20, 1997,</p> <p>24 beautiful spring day. Early that morning,</p> <p>25 Lance Hall and two of his friends, close</p>
837	<p>1 but generally, plan on 9:00 to 5:00. Each</p> <p>2 morning I'm going to ask you to have a seat</p> <p>3 outside, we'll bring you in as soon as</p> <p>4 everybody is here.</p> <p>5 Now, it's my job to assure that your time</p> <p>6 is respected. I can do that with all of them,</p> <p>7 but I can only do that as far as you-all</p> <p>8 respect each other's time. You need to be here</p> <p>9 on time, and I know sometimes that's hard with</p> <p>10 Miami traffic, but you need to leave early to</p> <p>11 make sure you're here on time. Because if one</p> <p>12 of you is late, we can't start until</p> <p>13 everybody's here. And if somebody's late --</p> <p>14 we're basically going to break four times a</p> <p>15 day. You're going to come in the morning,</p> <p>16 we're going to break midmorning, we'll break</p> <p>17 for lunch, we'll break midafternoon, you go</p> <p>18 home. So there's four breaks. If somebody is</p> <p>19 five or ten minutes late every time we break,</p> <p>20 which doesn't really seem like a big deal at</p> <p>21 the time, that's 40 minutes we're going to lose</p> <p>22 every day, over the course of the week, that's</p> <p>23 a day. At the end of this trial, you're not</p> <p>24 going to want me to be saying, well, everybody</p> <p>25 was late all the time, so I have to keep you</p>	839	<p>1 friends from MAST Academy, Seth Mondschein and</p> <p>2 Melahn Parker, were returning from -- to Miami</p> <p>3 from Tampa on I-75 and Alligator Alley. At</p> <p>4 approximately 8:15 in the morning, a tragic</p> <p>5 accident occurred, and Lance Hall was killed.</p> <p>6 You're going to learn that Lance was an</p> <p>7 exceptional young man.</p> <p>8 May I see that photo.</p> <p>9 I'm going to show you a few photographs of</p> <p>10 him. This is a picture of Lance shortly before</p> <p>11 he died. I'm not going to discuss all his</p> <p>12 photographs at length, I'm going to leave that</p> <p>13 for his mother and his sister, Loriellen. Just</p> <p>14 to give you an idea of who we're talking about.</p> <p>15 This is Lance Hall.</p> <p>16 Next one.</p> <p>17 This is Lance when he was much younger</p> <p>18 with Loriellen, who you've seen in the</p> <p>19 courtroom, his twin sister. They were very,</p> <p>20 very close from the youngest age all the way up</p> <p>21 until Lance died, and you will hear about that</p> <p>22 as well.</p> <p>23 Next one.</p> <p>24 This is Lance and his sister celebrating,</p> <p>25 and I'm going to let the family tell you about</p>

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1 what they were celebrating. But you can see he  
2 was a joyous guy, as his sister is.  
3 This is a photograph of Lance, he's next  
4 to the end on the left where they received an  
5 award where he won a science project award, and  
6 his mom is going to tell you about that during  
7 the course of the trial.  
8 Next one, please.  
9 This is a photograph I particularly like,  
10 Lance holding up that trophy. Lance started  
11 the water polo team at MAST Academy, very small  
12 school, and they won the state championship.  
13 He started the team, he was the captain, and  
14 they won the state championship. Remarkable  
15 young man. He was also a surfer, and I showed  
16 you that picture because of something that's  
17 going to come up in just a minute.  
18 Next one, please.  
19 Lance Crossman Hall, born September 4,  
20 1975 and died April 20, 1997, when he was 18  
21 years old.  
22 This last photograph is a photograph of  
23 the family after they spread his ashes at his  
24 favorite place for surfing, Lance was cremated  
25 and his ashes were spread there by the family

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1 members.  
2 Thank you.  
3 Lance Hall was an exceptional young man.  
4 He excelled at everything he did. He was an  
5 honor student, a star athlete in several  
6 sports, a loving son to his mom and a loving  
7 brother to his twin sister, Loriellen. He was  
8 also a young man of compassion. You will hear  
9 how he would take the change out of his pocket  
10 and give it to people whenever he went to the  
11 Metro station. He even gave them the money  
12 that he was supposed to use to ride the Metro,  
13 so he had to walk home occasionally. He helped  
14 the homeless people around the Metro station  
15 because he was a person of compassion, you will  
16 hear about that. He volunteered, while in high  
17 school, to work with inner-city children in a  
18 program to motivate young kids to keep them out  
19 of trouble, it's called Respect. He had a  
20 phenomenal success rate as a volunteer in that  
21 program. You will hear from the program  
22 coordinator, I believe, Barbara Wade, who will  
23 tell you Lance had excellent people skills and  
24 that everyone that he dealt with benefited from  
25 him.

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1 When you hear the witnesses talk about  
2 Lance Hall, like me, you will probably find  
3 it's hard to believe that anyone who was a  
4 senior in high school could have accomplished  
5 what he accomplished already in life. You will  
6 find he was extraordinary. His life was  
7 snuffed out at the age of 18 because Ford Motor  
8 Company cared more about their profits than  
9 they did about the safety of people who were in  
10 their vehicles.  
11 The evidence in this case will establish  
12 that Ford's conduct, which caused Lance's  
13 death, was intentional and shameful and that  
14 their conduct goes beyond the negligence  
15 justifying what we believe to be punitive  
16 damages for their gross misconduct. And this  
17 evidence comes primarily from Ford's own  
18 employees and their own documents, and you're  
19 going to see some of that this morning in  
20 opening and then you're going to see -- and  
21 during the trial you'll see the actual  
22 evidence.  
23 The Explorer involved in this accident was  
24 a 1996 model and it had three major defects,  
25 all of which contributed to Lance's death.

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1 Now, this is back '97 before the recall that we  
2 talked about that occurred and there was not  
3 widespread knowledge of how dangerous the  
4 Explorer was. That first defect is what's  
5 known as a "handling defect," commonly referred  
6 to by Ford as "skate." That's how they  
7 describe it. It's described also as a "loss of  
8 directional control." Ford has known about  
9 this problem for decades. A Ford engineer, who  
10 you will hear in this trial, by sworn  
11 testimony, Mr. Kramer, actually wrote a paper  
12 about skate and its causes and effects. And in  
13 the summary conclusion of that --  
14 Could you put that up for me?  
15 I'm just going to read for you the summary  
16 and conclusion that Mr. Kramer came up with.  
17 Let's see if we can get that focused.  
18 "This paper presented experimental  
19 evidence that rear end breakaway, or skate,  
20 occurs in conjunction with the tramp mode of  
21 Hotchkiss rear suspensions. Further, it was  
22 shown that skate can be reduced by damping axle  
23 tramp motions, both shock absorber valving and  
24 shock placement were investigated as a means to  
25 reduce skate. The principal conclusion of this

<p style="text-align: right;">844</p> <p>1 work is that although some reduction in skate 2 are possible, by adjusting shock absorber 3 valving, optimum control of skate is 4 facilitated by packaging the shock absorbers 5 near the wheels." 6 Now, what does that tell us? Two things 7 you can do to overcome this problem; one is to 8 make the shocks stiffer, and the other is to 9 move them further out. Packaging the shock 10 absorbers near the wheels, outboard, and you 11 can essentially eliminate this problem. 12 Let's go to the next document, 13 February 26th, 1994, the "Conclusions." I just 14 want to go to "Conclusions," which would be the 15 last page. 16 This document, dated February 26th, 1994. 17 Do you have that conclusion for me? Yeah. 18 What's that conclusion tell us? 19 "Great care must be taken to package the 20 shock absorbers in a manner that will damp out 21 not only the yaw and lateral motions of the 22 axle, but also tramp motions. This may be 23 accomplished by ensuring that the shocks are 24 placed as far outboard as possible to improve 25 the lever ratio."</p>	<p style="text-align: right;">846</p> <p>1 surface (Caution: At rear tramp resonance, 2 rear wheels may lose traction and cause 3 oversteer.)" 4 Oversteers make the vehicle going too far. 5 You are going to hear about that. This is 6 skate. It's not called skate, but this is what 7 skate is. As far back as 1985, Ford is warning 8 their own test drivers to be cautious because 9 their vehicles skate, they lose control. 10 A skate or loss of control can be caused 11 by a variety of things, including uneven 12 surfaces like washboard roads, highway medians, 13 like we had in this situation here, rear tire 14 tread separations where one of the tires has 15 tread come off and causes the axle to bump, 16 bump, bump, bump, bump, bump, bump. 17 It doesn't happen all the time, only 18 happens at certain speeds, like usually at high 19 rate speeds where this occurs. It's not going 20 to occur every time there's a bumpy road or 21 there's some reason that the back axle is 22 bumping, but it happened in this case, and the 23 physical evidence is going to show that. 24 Anything that causes that rear axle of the 25 Explorer to vibrate can result in skate. And</p>
<p style="text-align: right;">845</p> <p>1 This is back, as I said, 1994. Again, 2 move the shocks out. Very simple thing to do. 3 Ford did not do it. And you're going to hear 4 the evidence about that, that they did not do 5 this very simple modification to eliminate this 6 problem. 7 There's another document that's important 8 from all the way back in 1985, and this is a 9 document called "Corporate Engineering Test 10 Procedure." 11 This is the better copy. 12 And this is a document that Ford Motor 13 Company gave to their test drivers to tell them 14 what to do when they're testing vehicles like 15 the Explorer. As early as 1985, what did they 16 tell their test drivers on rough road stability 17 testing? 18 "Operate the vehicle on straight and 19 curved random rough road surfaces, both wet and 20 dry conditions. Make moderate accelerations at 21 10 kilometers per hour, (5 miles per hour), 22 increments from 55 to 95 kilometers per hour 23 (80 kilometers wet), 35 to 60 miles per hour, 24 (50 miles per hour wet) on both straights and 25 curves. Make mild steering corrections on each</p>	<p style="text-align: right;">847</p> <p>1 at shortened frequencies, this vibration is 2 loss of control, and there's nothing you can do 3 about it. 4 This will be explained to you by an expert 5 by the name of Dr. David Renfroe. But his -- 6 what Dr. Renfroe is going to tell you is really 7 the same thing Mr. Kramer had already said in 8 his paper, and the Ford documents already said. 9 Dr. Renfroe is not coming up with anything new. 10 Skate is what caused this vehicle to go out of 11 control, resulting in this accident. 12 The second defect is what's known as the 13 stability defect. Simply stated, the vehicle 14 is unstable because it has a high propensity to 15 roll over. This is because it's too tall and 16 too narrow. This is just common sense. If 17 you've got something that's wide, it will 18 slide, it's not going to roll over, spin 19 around. But if you make it high and narrow, it 20 will roll over. Again, this is something that 21 Ford has known about for many years but decided 22 to ignore it in order to maximize their 23 profits. 24 This design hazard, you're going to learn 25 from the evidence in this case, was made worse</p>

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<p>1 by the tires on this vehicle. The tires on 2 this vehicle are what are known as 235 tires. 3 The Ford Explorer stability problem, which it 4 had, was made worse by using these tires. They 5 already had a bad design, they put on tires 6 that were too large. The tires that this 7 vehicle was designed for are 225 tires. And 8 I'm going to tell you in a minute why -- what 9 happened when they went to the 235 tires and 10 the engineering analysis that was done by them 11 that showed them that this was a mistake. 12 The third defect is in the restraint 13 system, seat belt system. This car has 14 reclining seats, and they reclined further than 15 is safe, which can affect -- it really negates 16 the effect of the seat belts. 17 Now, Ford knew this was a problem and 18 caused people to be ejected, such as Lance was, 19 but they elected to create the problem and not 20 fix it. Instead, they relied on inadequate 21 warnings to try and deal with what they claim 22 is how they dealt with the problem. This is 23 really almost a fourth defect claim against 24 Ford, failure to warn of a known hazard that 25 they created.</p>	<p>1 and six hours of sleep. 2 When Seth becomes tired, he pulls over, 3 Melahn Parker wakes up. And he says they get 4 something to eat, drink, and he says, can you 5 drive? 6 Melahn says, yeah, let me see if I can 7 drive. 8 So Melahn starts driving. 9 Not too long after that at approximately 10 8:15, Melahn nods off and he leaves the roadway 11 towards the center median. As soon as he nods 12 off and he starts to go off, he hits the rumble 13 strips and he wakes up and he sees what's 14 happened. 15 Fortunately, he didn't panic. He goes off 16 the roadway for a couple hundred feet, and at 17 60 miles per hour, talking about two to three 18 seconds. So he goes driving along, nods off, 19 hits rumble strips, wakes up, for 1,000, 2,000, 20 3,000, and then he tries to come back on the 21 roadway. But it was impossible for him to 22 control the vehicle, and it flipped on the 23 roadway and rolled over several times off the 24 road, ejecting Seth and Lance. Melahn, who was 25 also belted like Lance was, stayed in the</p>
849	851
<p>1 The evidence will be the combination of 2 these design defects in the 1996 Explorer were 3 a recipe for disaster, and that's what we had, 4 a disaster. When this accident occurred, Lance 5 and his friends, Melahn and Seth, were 6 returning from Tampa where they had gone the 7 previous day to observe a regatta, a rowing 8 event, and to visit with Seth's girlfriend from 9 MAST Academy. 10 They drove to Tampa on Saturday and spent 11 some of the time with their friends during the 12 day, then went to a hotel where the drama 13 students were staying and watched a movie. And 14 Lance and Melahn went to sleep, slept about 15 four hours. You're going to hear evidence 16 about this. Seth did not go to sleep. He woke 17 his friends early in the morning and said, you 18 want to go back or get a room? They had sleep, 19 they decided to go back to Miami. 20 Now, Seth is wide awake at that point and 21 he's willing to drive, so they take off and 22 Seth drives for several hours. Lance goes to 23 sleep in the front seat, Melahn goes to sleep 24 in the backseat. So they get a couple more 25 hours sleep. They get somewhere between four</p>	<p>1 vehicle, he suffered some minor injuries. 2 Lance was ejected and killed. And miraculously 3 Seth, who was not wearing a belt in the 4 backseat, suffered only minor injuries. And 5 that will be explained to you why he wasn't 6 more severely injured. 7 Now, obviously if Melahn had not dozed 8 off, the incident would not have occurred. But 9 more importantly, even with Melahn going off 10 the roadway, for whatever reason, whether he 11 had nodded off, had to avoid something or 12 pushed off, the accident and Lance's death 13 would not have occurred if the Ford Explorer 14 had not been defective in both handling and 15 stability. And most importantly, Lance would 16 have survived if the seat belt hadn't been 17 defective, if it had been designed so that it 18 didn't go back too far. And I'm going to come 19 back to that. 20 Let me talk about the skate handling 21 problem for a minute. Melahn could not bring 22 the vehicle back down the roadway and continue 23 down the road, which he should have been able 24 to do. What should have happened, he nods off, 25 hits the rumble strips, he stops driving,</p>

852	<p>1 doesn't put great input into the vehicle, puts 2 a slight input back in, he should have been 3 able to drive back on the road and go on home. 4 That's what should have happened. If the 5 vehicle had not been defective, if it hadn't 6 been for skate, we wouldn't be here, nobody 7 would have ever heard of this.</p> <p>8 You will hear Melahn's sworn testimony 9 where he explains his recollection of what 10 occurred. Melahn Parker was not aware of the 11 defects in the Explorer. He blames himself for 12 his friend's death, because he doesn't know 13 what you're going to learn from this case, 14 evidence from the witness stand and documents, 15 some of which you've already seen.</p> <p>16 Lance's death was the fault of Ford, not 17 Melahn. You'll hear the sworn testimony of 18 eyewitnesses. Gentleman by the name of Forrest 19 Campbell, man going along about the same speed 20 and same location as these gentlemen.</p> <p>21 Mr. Campbell was traveling in the right-hand 22 lane, and he was slightly overtaken by Melahn.</p> <p>23 Mr. Campbell provides us with the most 24 critical information about this accident. You 25 will hear his testimony that Melahn was driving</p>	854	<p>1 vehicle was not bouncing as it traveled along 2 the median. It's an obvious attempt to 3 overcome the skate problem that the Ford had. 4 They're attempting to show that Mr. Parker was 5 driving straight and then made a hard right, it 6 will try and show that.</p> <p>7 Listen carefully to what Mr. Campbell 8 says, not only when they ask him questions but 9 when I ask him questions. This is what he 10 actually says. He's going to tell you that he 11 did not observe the rear axle of the vehicle. 12 He couldn't see the bumper bouncing, but that's 13 not what happens with skate. With skate, it's 14 the rear axle that vibrates. The vehicle 15 doesn't bounce down the road. The rear axle 16 start vibrating. And he's going to tell you 17 that he could not see the rear axle.</p> <p>18 Mr. Campbell will also tell you that he 19 was concentrating on his driving. He's going 20 alongside the vehicle, drifts off, then goes 21 off the roadway, he's concentrating where he 22 is, not staring at the Explorer. But even with 23 the limited amount of vision he could utilize 24 in order to watch it, what he says is very 25 good, very important.</p>
853	<p>1 at or below the speed limit, approximately 2 70 miles an hour, which is the same thing 3 you're going to hear from Melahn. He will tell 4 you that Melahn was passing him and he slowly 5 drifted off the roadway, obviously because he 6 had nodded off. And he will also tell you the 7 vehicle did not flip over. It went off the 8 roadway and then came back on and did not flip 9 until it was on dry pavement.</p> <p>10 One interesting aspect of Mr. Campbell's 11 testimony is his communication with some Ford 12 lawyers. You will hear Mr. Campbell testify he 13 met with the Ford lawyers a few times before he 14 gave his testimony that you're going to hear, 15 although he was reluctant to admit it. When he 16 was faced with his prior sworn testimony, he 17 conceded that the Ford lawyers helped him with 18 his testimony and helped him remember things.</p> <p>19 You will also learn that he came to Miami 20 at Ford's request for which they reimbursed 21 him. He will tell you that to the contrary, he 22 never met with me or anybody on behalf of my 23 clients. It will be obvious when you hear 24 Mr. Campbell's testimony that Ford is 25 attempting to utilize him to try and show the</p>	855	<p>1 He'll agree that the surface of that 2 roadway over on the side, not the roadway but 3 the grass median, is not smooth and there would 4 have been some amount of bounce on the tires as 5 the Explorer traveled across the median, that's 6 what caused the skate. This is common sense.</p> <p>7 Indeed, much of what you hear in this 8 trial is just going to be common sense. And 9 when you apply your common sense, the evidence 10 is going to establish without any question that 11 Ford marketed a vehicle that was not only 12 defective but they knew was defective.</p> <p>13 Mr. Campbell will testify that initially 14 the Explorer was traveling in a straight line 15 with the rear tires tracking behind the front. 16 What's that mean? When you're off the road, 17 you leave a track. If the tires are lined up 18 straight like this, you have one track and one 19 track, but if it starts to go sideways, then 20 you have four tracks.</p> <p>21 Let's look at the police photos. 22 Now, what you see -- it's a little bit 23 hard on this, but the documents will show it as 24 well. When he initially goes off the roadway, 25 you see one line here and there's another line</p>

856	<p>1 not very clear in this photograph, but it will</p> <p>2 track initially.</p> <p>3 Let's look at the next one, the next</p> <p>4 photograph -- oh, as a matter of fact, I put</p> <p>5 that on a board because I thought the photos</p> <p>6 weren't clear.</p> <p>7 Now, this is a lot clearer, as you can</p> <p>8 see. When he kicks the brake to come back on</p> <p>9 the roadway, there's one, two, three, four</p> <p>10 tracks. That means that vehicle is already</p> <p>11 sideways, not because he steered it sideways,</p> <p>12 because he doesn't make any steering input</p> <p>13 until he gets here and that's very minor. The</p> <p>14 vehicle is skating and turning.</p> <p>15 Because of skate, the vehicle -- he's not</p> <p>16 able do this, the vehicle has done this. And</p> <p>17 when he gets on the roadway, he's on dry</p> <p>18 pavement, and instead of spinning out, he rolls</p> <p>19 over on the dry pavement. That's the stability</p> <p>20 problem that we talked about.</p> <p>21 Mr. Campbell assumed that when he saw the</p> <p>22 vehicle move to the right that there was</p> <p>23 steering input. Melahn is going to tell you he</p> <p>24 made very little steering input. The reason</p> <p>25 the vehicle turned was because of the skate</p>	858	<p>1 normal operation of the vehicle. Like we</p> <p>2 talked about, could be a dead animal or</p> <p>3 obstruction in the road, it doesn't really</p> <p>4 matter. Vehicle manufacturers know that this</p> <p>5 happens, and they design their vehicles, or</p> <p>6 they should design their vehicles, so you're</p> <p>7 able to come back on the road safely.</p> <p>8 One of the witnesses you're going to hear</p> <p>9 from is a nationally recognized accident</p> <p>10 reconstructionist, Micky Gilbert. He's also a</p> <p>11 racecar driver. He teaches young people about</p> <p>12 road edge recovery, and he's going to tell you</p> <p>13 that what Melahn Parker did was exactly the</p> <p>14 right thing do. It's as if he had gone through</p> <p>15 Mr. Gilbert's course on road edge recovery.</p> <p>16 But that doesn't do any good if the vehicle</p> <p>17 doesn't respond appropriately, if it skates.</p> <p>18 And perhaps more importantly, as I started</p> <p>19 to talk about, this '96 Explorer had a second</p> <p>20 defect and that's this stability defect. When</p> <p>21 the vehicle came back on the roadway, it would</p> <p>22 not have rolled over while still on the highway</p> <p>23 if it were stable. It would have spun out and</p> <p>24 we would not be here.</p> <p>25 Now, you're going to hear from experts on</p>
857	<p>1 defect.</p> <p>2 Obviously you're going to see Ford</p> <p>3 attempting in their questioning of Mr. Campbell</p> <p>4 to overcome the fact that the accident was</p> <p>5 caused by the skate phenomenon, skate problem,</p> <p>6 but when you finish listening to Mr. Parker,</p> <p>7 you're going to understand that they failed in</p> <p>8 that attempt.</p> <p>9 Because people's memories are not always</p> <p>10 clear, especially in circumstances such as</p> <p>11 this, you can bring an accident</p> <p>12 reconstructionist in to look at the physical</p> <p>13 evidence, including the photographs taken by</p> <p>14 the police, in order to determine what has</p> <p>15 actually happened.</p> <p>16 Now, we have a police diagram. All right.</p> <p>17 In the police diagram, you have the vehicle</p> <p>18 going off the road and then coming back and</p> <p>19 then it rolls on the road and then rolls off</p> <p>20 and ends up over to the right. But it doesn't</p> <p>21 spin out because of its instability. It rolls</p> <p>22 over on the pavement and then continues to roll</p> <p>23 off of the pavement. Thank you.</p> <p>24 Now, obviously there's a lot of different</p> <p>25 reasons somebody might go off the road in the</p>	859	<p>1 both sides regarding the stability of the</p> <p>2 vehicle. And as you would expect, there will</p> <p>3 be differing opinions from the experts by the</p> <p>4 plaintiffs and the experts by the defense. But</p> <p>5 more importantly, Ford's own design engineer,</p> <p>6 the guy in charge of the chassis design on the</p> <p>7 Ford Explorer, Mr. James Mason, will testify by</p> <p>8 video deposition in this case, probably be our</p> <p>9 first witness, and he will tell you -- or</p> <p>10 you'll learn from his testimony, that they knew</p> <p>11 the vehicle was unstable in 1989 and they knew</p> <p>12 what to do about it, and they didn't. I'm</p> <p>13 going to come back and talk about that in just</p> <p>14 a little bit more.</p> <p>15 We're going bring an expert by the name of</p> <p>16 Dr. Renfroe, David Renfroe, Ford General Motors</p> <p>17 engineer and professor, who will agree with</p> <p>18 Mr. Mason why Explorer is defective and how the</p> <p>19 defect could have been easily corrected.</p> <p>20 Ford is going to bring a gentleman by the</p> <p>21 name of Mr. Tandy who used to work at Ford.</p> <p>22 Mr. Tandy was part of the team that designed</p> <p>23 this vehicle, and he's been working for Ford</p> <p>24 since he retired from there as a trial expert.</p> <p>25 You will learn that Mr. Tandy is a witness</p>

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<p>1 with direct knowledge in the outcome of a case  2 such as this. Because he was part of the  3 original design team, if the design defects are  4 there, he is personally and partially  5 responsible. Accordingly, he would have  6 personal responsibility for this accident.  7 Obviously he's not going to want to admit that.  8 You would expect him to vigorously defend a  9 vehicle he designed, even if it is defective.</p> <p>10 Since Mr. Tandy has left Ford, they have  11 paid him over \$65 million testify that the Ford  12 Explorer was not defective and do tests to try  13 and prove that it was not. Clearly he has a  14 monetary interest in defending Ford.</p> <p>15 You will see tests he's performed for  16 litigation. You're not going to see tests that  17 were performed for sign-off. And I'm going to  18 be talk about J-turn tests here in a minute. I  19 probably ought to go ahead and just do that  20 right now.</p> <p>21 When they're testing a vehicle to  22 determine its stability, there's a test that  23 Ford does called J-turn. They're driving a  24 vehicle straight down the track, and then they  25 turn it like a J, do it at different speeds.</p>	<p>1 about that from a gentleman by the name of  2 Mr. Figliomeni about that. But the ADAMS  3 modeling for the Explorer, all the input data  4 they gave Mr. Figliomeni is missing, so we  5 don't know what data they gave him, and all the  6 input and output data for ten years has  7 mysteriously disappeared.</p> <p>8 So we don't know what the Ford tests  9 showed about the J-turn. But we do know the  10 tests that we do have that it was unstable.  11 And you won't hear it, you won't see any J-turn  12 testing for that period of time. You won't see  13 any videos of it, and you won't see any records  14 of it or you won't see the ADAMS model of it.</p> <p>15 Now, I've talked about Mr. Mason. I think  16 you're going found his sworn testimony to be  17 not only interesting but perhaps shocking.  18 First, you'll see Mr. Mason deny under oath  19 that he was ever involved in any  20 recommendations that the Ford Explorer be  21 widened or lowered, the two things that need to  22 be done to make it safer. Going to say, no, I  23 didn't do that.</p> <p>24 Then when I confront him with his prior  25 sworn testimony and the documents that he</p>
861	863
<p>1 Now, when they're doing that, they don't  2 want the wheels to lift off. They don't want  3 the vehicle, when they start J-turning, for  4 wheels to lift off the ground. They're called  5 two-wheel lift. In this case it's not stable.</p> <p>6 Well, we have some J-turn testing you're  7 going to hear about from Mr. Mason, but you're  8 not going to see videos of the J-turn tests  9 that were done of this vehicle for sign-off.</p> <p>10 As a matter of fact, from 19 -- probably 1990  11 to 2000, you're not going to see anything about  12 J-turn testing.</p> <p>13 Now, they have other tests they did that  14 don't relate to stability, other tests, not the  15 J-turn, and they have videos of those. Well,  16 during this period of time, they also had  17 what's called ADAMS modeling. ADAMS modeling  18 is a computer model where you simulate a  19 vehicle in an accident avoidance maneuver like  20 a J-turn. We're going to hear some discussion  21 about J-turn not really being a good test, but  22 that's what Ford does, so let's just talk about  23 that for now.</p> <p>24 They did an ADAMS model for the J-turn.  25 We know about that because you're going to hear</p>	<p>1 authored that the vehicle should be widened and  2 lowered, then he admits, yes, I did make those  3 recommendations.</p> <p>4 Let's look at his document, 225,  5 Exhibit 225 that doesn't look very clear, let  6 me give you mine. I'll show you what I want to  7 look at.</p> <p>8 This is 1584, put that one up. Can you  9 zoom in on that?</p> <p>10 THE TECHNICIAN: Yes, I will.  11 MR. KASTER: Okay. Just focus. Drop down  12 just a little bit, a little bit further.</p> <p>13 "Proposed UN46 chassis design  14 modifications" that's the initial Explorer.  15 What did Mr. Mason say? This is guy that  16 was designing the chassis. What did he say?  17 "Lower front and rear. Widen track width,  18 2 inches. Lower front roll rates center 2."  19 Now, they did this, but they didn't lower  20 the front and rear, and they didn't widen the  21 track width. Why not? Why didn't they do  22 those two things?</p> <p>23 Well, what you're also going to learn from  24 Mr. Mason is that he was told, don't make any  25 changes --</p>

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1 Let's go to this document.  
2 These are all documents from Mr. Mason's  
3 testimony, Ford documents. What do they tell  
4 you?  
5 "Utilize as many of the chassis revisions  
6 as possible without delaying Job 1."  
7 I'm going to come back and explain what  
8 that is in a minute.  
9 "Incorporate additional revisions as  
10 running changes within one year after  
11 production."  
12 In other words, don't lower it and widen  
13 it now, but do it in a year. Well, they don't  
14 do that either. But what are they saying here,  
15 utilize as many chassis revisions, what he  
16 recommended, as possible without delaying  
17 Job 1.  
18 Job 1 is the date they project the vehicle  
19 goes into production. They were afraid Chevy  
20 was going to get their vehicle out first. They  
21 told him, don't make these changes, because  
22 that's going to delay us getting this vehicle  
23 into production. So they didn't. They didn't  
24 make the changes. They didn't make it because  
25 they put profit over safety. And so they

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1 didn't do what their own chassis design  
2 engineer told them to do.  
3 You're going to see dramatic evidence of  
4 the effect of what Mr. Mason said to do on the  
5 Explorer. What we did is we had Mr. Gilbert do  
6 exactly what Mr. Mason said. We widened an  
7 Explorer. You think that would be hard do,  
8 wouldn't you? It's not. Do this. This bolts  
9 onto the wheel. Take the tire off, put this  
10 on, then you put the vehicle back on here, and  
11 you can widen it by 2 inches or an inch or  
12 however much you want to do.  
13 You're going to see a video where the  
14 stock Explorer put to a J-turn test, accident  
15 avoidance maneuver. Mr. Gilbert fortunately  
16 has outriggers on the Explorer or it would have  
17 rolled over. You'll see it come way up on  
18 those outriggers. Then he puts a spacer on, it  
19 does the same thing that Mr. Mason said they  
20 should have done and the vehicle slides, it  
21 does not roll over on the pavement, which is  
22 what this vehicle would have done if Ford had  
23 done what their own chassis engineer told them  
24 to do, and Mr. Hall would be alive and we  
25 wouldn't be here, and that was in 1989.

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1 What this vehicle should have done is  
2 slide out, and if they had done what Mr. Mason  
3 said they would have done in 1989, this  
4 accident with a 1996 Explorer, seven years  
5 later, built seven years later, seven years to  
6 fix the problem.  
7 What did they tell them? They said,  
8 incorporate revisions as running changes within  
9 one year. One year, two, three, four, five,  
10 six, seven. There's no excuse. They put  
11 profits over safety and they continued to do  
12 it.  
13 You'll learn that the Explorer was  
14 slightly changed in 1994. Ford had another  
15 great opportunity to fix this, they didn't do  
16 it. Might have made it worse, you'll hear some  
17 testimony about that from Mr. -- from  
18 Dr. Renfroe.  
19 Now, you're going to learn, we're talking  
20 about Mr. Figliomeni.  
21 You can take that down.  
22 Talk about Mr. Figliomeni. Mr. Figliomeni  
23 worked for Firestone, not Ford. Ford sent  
24 Mr. Figliomeni data to run an ADAMS test, which  
25 they -- what they claimed they can do that to

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1 determine whether a vehicle is stable.  
2 Mr. Figliomeni got the data from Ford and he  
3 ran an ADAMS model to evaluate the Explorer  
4 before it went into production. This was the  
5 sign-off on the Explorer done by a Firestone  
6 engineer.  
7 Now, why Ford engineers didn't do it,  
8 we're never going to hear. Maybe they did do  
9 it, I don't know. But the sign-off saw was  
10 done by a Firestone engineer. The input data  
11 that they sent him, it's gone. It mysteriously  
12 disappeared. So we don't know what data they  
13 gave him, but we do know the results because we  
14 took his testimony, Mr. Denney and I, and  
15 you're going to hear that. You're going to  
16 learn that Mr. Figliomeni was able to determine  
17 the same thing as the testing done earlier when  
18 Mr. Mason was evaluating the vehicle that the  
19 vehicle was unstable.  
20 One thing that I mentioned, and I need to  
21 go back to this, Mr. Mason makes a  
22 recommendation to widen and lower. Well,  
23 you're also going to hear in his testimony that  
24 when they made that, Ford had already been  
25 doing J-turn testing and they got two-wheel

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1 lift. They knew that they had an unstable  
2 vehicle. Mr. Mason makes a recommendation,  
3 they ignore it. Then they send electronic day  
4 that over to Mr. Figliomeni, and he determines  
5 with the 235 tire, the vehicle is more unstable  
6 than it is with a 225 tire.  
7 What's Ford do? They use the 235 tire,  
8 the one that makes this bad vehicle worse. And  
9 the only way that they can even pass their own  
10 ADAMS model testing, the only way  
11 Mr. Figliomeni can say it passed, was to  
12 underinflate the tire by 9 pounds. So if you  
13 were a consumer and put the tire pressure back  
14 up to 35 pounds like it says on the tire, then  
15 you greatly increased the hazard of the  
16 rollover, why do that?  
17 Remember, we already had two-wheel lift  
18 with the 225 tires. What Mr. Mason was looking  
19 at when he made his recommendation was testing  
20 done with 225 tires, and they were getting  
21 two-wheel lift already. But Ford elects to put  
22 the vehicle with 235s, even after  
23 Mr. Figliomeni does his ADAMS modeling. After  
24 that, all the ADAMS modeling for J-turn is  
25 gone. You won't here or see any of that.

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1 Now, let's look at another document that  
2 confirms this. This is again from Mr. Mason's  
3 deposition. What's that document, what does  
4 this document tell us? It says nothing new on  
5 tires. Our tests indicate a high confidence of  
6 passing CU with 225 tire, and I need to explain  
7 that. J-turn test is a simple test. I think  
8 it's inadequate, but we're not debating that at  
9 this point.  
10 Consumer's Union test is more of an  
11 accident avoidance, it's two inputs. A lot of  
12 people are starting to do Consumer Union test  
13 going around piling to give a more accurate  
14 picture of what their vehicle can do. It says  
15 our test indicates a high confidence of passing  
16 Consumer's Union with 225 tire and less  
17 confidence with a 235 tire.  
18 We know from Mr. Figliomeni the reason  
19 they have less confidence is because of  
20 two-wheel lift. What do they say about that?  
21 All tires meet engineering J-turn test, but  
22 there is no J-turn test, and 225 we have  
23 two-wheel lift. We don't see that with 235.  
24 We can ask Mr. Figliomeni and he says it's  
25 marginal. I believe the new information is

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1 that our competitors are recognizing the CU  
2 test as a requirement as they design new  
3 utility vehicles to meet. Ford didn't do that.  
4 They didn't use that better test.  
5 OGC, Office of General Counsel, is  
6 concerned we will be only OEM vehicle that has  
7 a significant chance of failing the CU test.  
8 Office of General Counsel is concerned we will  
9 be the only OEM, original equipment  
10 manufacturer, with a vehicle that has  
11 significant chance of failing the CU test.  
12 Then what do they say? I believe that  
13 management is aware of the potential risk of  
14 the P235 tires and has accepted the risk.  
15 Mr. Hall didn't accept that risk, Mr. Parker  
16 didn't accept that risk, but Ford was willing  
17 to accept the risk of someone like Mr. Hall  
18 being killed. Management is aware of potential  
19 risk of 235 tires, and they accepted the risk.  
20 Thank you. Profits over safety.  
21 Now, I want to go back to the reclining  
22 seat for a minute. We now know reclining the  
23 seat causes some loss of the seat belt  
24 effectiveness, but Ford had options to deal  
25 with that. First of all, they could have said,

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1 we're only going to recline it this far. You  
2 got a big storage area in the back of the  
3 vehicle, you don't need to store things in the  
4 front seat, we're going to put it at 25 degrees  
5 so nobody can come out of it. That's a common  
6 sense, simple thing to do. They had that  
7 option, they didn't accept it.  
8 They could have put on what's called a  
9 pretensioner device. They weren't using that  
10 widespread in this county at that time, it's  
11 primarily used for frontal impact. So  
12 pretensioners would have tightened that seat  
13 belt up and might have saved his life.  
14 There's a much simpler thing to do:  
15 Attach the seat belt to the seat, so no matter  
16 how far you lean back, the seat belt is right  
17 across your chest. If you want to have a seat  
18 that leans back and you want to accept that  
19 risk for your people who drive in your vehicle,  
20 then attach the seat belt to the seat and they  
21 can't come out, common sense. They had three  
22 options, they didn't follow any of them.  
23 Now, Ford is going to, I believe, attempt  
24 to put on evidence to avoid responsibility for  
25 defective design of the seat by claiming they

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1 put a warning in the owner's manual. Should a  
2 passenger in a vehicle -- this is not Lance  
3 Hall's vehicle, it's -- it's owned by one -- by  
4 Seth Mondschein's parents. You really expect  
5 the passenger to take out a manual in a vehicle  
6 and read all through it and recognize  
7 everything in that? No, that's not reasonable.  
8 They're going to say, well, you know, he  
9 had a vehicle once that had some warning in it.  
10 There's going to be absolutely no evidence that  
11 he ever saw or read that, and the evidence is  
12 going to be to the contrary.  
13 But you're going to hear from one of the  
14 leading warnings experts in the country,  
15 Dr. Ken Laughery. He's going to tell you  
16 that's not how you solve design problems. You  
17 don't put a warning in the manual to solve  
18 design problem. You fix the design, which they  
19 had options to do.  
20 He's going to give you an example: In  
21 World War II, pilots started crashing  
22 airplanes. Trained combat pilots started  
23 crashing the airplanes because there were two  
24 levers for landing and they were shaped the  
25 same, one of them was wheels and one was flaps,

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1 and they started pulling the wheels up instead  
2 of down and crashing the airplanes.  
3 They didn't put a warning in there. They  
4 simply changed the design of one of the handles  
5 so when you put your hands on it, you know it  
6 wasn't the wheels, it was the flaps. They had  
7 a simple design solution that saved thousands  
8 of lives. That's back in World War II.  
9 There were design solutions to this seat  
10 as well. They didn't use them. If they had  
11 utilized the proper design and not allowed the  
12 seat to go back too far or put the seat belt so  
13 that it would hold on to you, we wouldn't be  
14 here no matter what happened. Even with  
15 rollover, we wouldn't be here. And Ford knew  
16 people drifted off the road, and they knew how  
17 to design SUVs to overcome it.  
18 Now, as I explained to you during jury  
19 selection, we have the burden of proof. But  
20 we're going to go past that burden. All we  
21 have to do is tilt those scales a  
22 featherweight. With Ford's own witnesses,  
23 Mr. Kramer and Mr. Mason, and you will hear  
24 from others and their documents, we're going to  
25 prove our case with their own people. We're

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1 going to tilt that way past what we have to,  
2 because it's much worse than just negligence.  
3 And it's not just one defect, it's three. Any  
4 of those three caused his death, they're  
5 responsible. In this case, there's three, all  
6 of which contributed.  
7 If their conduct falls within the  
8 definition of punitive damages, which I believe  
9 it will, but we have to wait and see, I  
10 anticipate that you will be dealing with that,  
11 of what are their damages for what they did,  
12 what they knew.  
13 And I want to make it clear, this is not a  
14 case about sympathy. My client,  
15 Ms. Hall-Edwards, is not asking you to make a  
16 decision on Ford's responsibility out of  
17 sympathy. She does not want sympathy, she  
18 wants justice, that's what she wants. And  
19 we're confident when you hear all the evidence,  
20 you're going to hear this vehicle had multiple  
21 design defects, Ford knew about every one of  
22 them, knew how to correct every one of them,  
23 chose to place profits over safety and did not  
24 do what a responsible person would do or a  
25 responsible corporation would do. Ford made

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1 multiple decisions that caused the death of my  
2 client, thank you. Thank you.  
3 MR. SALAS: Can we have a five-minute  
4 break?  
5 THE COURT: @@Yes, but we'll have an  
6 inside stretch, then a bathroom break. Stand  
7 up and stretch where you are. Once I send you  
8 out, no break is shorter than ten minutes. I  
9 want to make sure we get where we need to be.  
10 Go ahead, Mr. Salas, and get set up.  
11 MR. SALAS: Thank you, your Honor.  
12 (Thereupon, the following proceedings were  
13 held out of the presence of the jury:)  
14 MR. SCHUCK: Judge, based on the rulings  
15 and clear direction of the Court right before  
16 we started, we've now got to move for a  
17 mistrial, Mr. Kaster.  
18 THE COURT: Why wasn't there an objection?  
19 MR. SCHUCK: We were afraid it would only  
20 highlight the issue further at the time.  
21 THE COURT: Wait, you can't just let it go  
22 and not object at the time and come in here and  
23 ask me for a mistrial. I mean, you know,  
24 I'm -- I explained to you all when we started,  
25 this case is in an unusual posture, and I'm