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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DEPARTMENT N18

HON. GLENN SALTER, JUDGE

THOMAS JOSEPH SOULLIERE,)
)
 PLAINTIFF,)
)
 VS.)
)
 SUZUKI MOTOR AMERICA, INC.,)
)
 DEFENDANT.)
 _____)

CASE NO: 30-2015-00790644
CU-PL-CJC

REPORTERS' TRANSCRIPT OF PROCEEDINGS

APRIL 21, 2023

APPEARANCES:

FOR THE PLAINTIFF:

THE TRIAL LAB
BY: GABE HOUSTON, ESQ.
330 MAIN STREET, SUITE 203-A
SEAL BEACH, CALIFORNIA 90740

SIMON LAW GROUP
BY: ROBBIE MUNOZ, ESQ.
34 HERMOSA AVENUE
HERMOSA BEACH, CALIFORNIA 90254

FOR THE DEFENDANT:

FROST BROWN TODD
BY: RANDALL R. RIGGS, ESQ.
111 MONUMENT CIRCLE, SUITE 4500
INDIANAPOLIS, INDIANA 46204

(APPEARANCES CONTINUED ON NEXT PAGE.)

REPORTED BY:

SUZANNE ONUKI, CSR NO. 13734
K. DARLENE LEWIS, CSR NO. 13534
OFFICIAL REPORTERS PRO TEMPORE

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APPEARANCES: (CONTINUED)

FOR THE DEFENDANT: BOWMAN AND BROOKE LLP
BY: JORDAN TABAK, ESQ.
970 WEST 190TH STREET, SUITE 700
TORRANCE, CALIFORNIA 90502

BUTLER SNOW
BY: KATHLEEN CARRINGTON, ESQ.
150 3RD AVENUE S, SUITE 1600
NASHVILLE, TENNESSEE 37201

1 CASE NUMBER: 30-2015-00790644-CU-PL-CJC
2 CASE NAME: SOULLIERE VS. SUZUKI
3 ORANGE, CALIFORNIA APRIL 21, 2023
4 DEPARTMENT N18 HON. GLENN R. SALTER, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: SUZANNE ONUKI, CSR 13734
7 TIME: 8:59 A.M.

8
9 (OUTSIDE THE PRESENCE OF A JURY.)

10 THE COURT: OKAY. WE'RE ON THE RECORD NOW.
11 APPEARANCES THIS MORNING IN THE SOULLIERE
12 CASE.

13 MR. HOUSTON: GABE HOUSTON ON BEHALF OF
14 PLAINTIFF, YOUR HONOR.

15 MR. MUNOZ: ROBBIE MUNOZ ON BEHALF OF
16 PLAINTIFF.

17 MR. RIGGS: RANDY RIGGS FOR SUZUKI MOTOR
18 CORPORATION.

19 MR. TABAK: JORDAN TABAK FOR SUZUKI MOTOR
20 CORPORATION.

21 MS. CARRINGTON: GOOD MORNING. KAT CARRINGTON
22 FOR SUZUKI MOTOR CORPORATION.

23 THE COURT: OKAY. LET THE RECORD REFLECT
24 WE'RE OUTSIDE THE PRESENCE OF THE JURY. LET THE RECORD
25 REFLECT ALSO THAT COUNSEL'S BEEN IN HERE SINCE ABOUT
26 8:00 THIS MORNING WORKING DILIGENTLY TO GET EVERYTHING

1 SET AND READY TO GO. THINGS LIKE THAT SOMETIMES DON'T
2 APPEAR ON THE RECORD AND I THINK IT'S IMPORTANT TO PUT
3 ON THE RECORD HOW HARD COUNSEL'S BEEN WORKING TO GET
4 THIS THING READY FOR THE JURORS.

5 I HAVE AN ADMITTED EXHIBIT LIST THAT HAS --
6 IT'S A JOINT ONE. IT'S BEEN SIGNED BY BOTH SIDES. I'M
7 GOING TO FILE THAT. ANY REASON WHY I SHOULDN'T?

8 MR. HOUSTON: I WOULD REQUEST THE COURT TO
9 FILE IT.

10 THE COURT: OKAY. I'LL DO SO.

11 APPARENTLY, THE PROPOSED SPECIAL VERDICT FORM
12 HAS BEEN SUBMITTED TO MY CLERK. MR. HOUSTON, I BELIEVE
13 YOU DID SO?

14 MR. HOUSTON: CORRECT.

15 THE COURT: AND THIS IS ONE THAT'S BEEN
16 STIPULATED TO BY BOTH SIDES?

17 MR. HOUSTON: I SENT THIS VERSION TO
18 MS. CARRINGTON AT 3:00 O'CLOCK YESTERDAY AND I HAVE NOT
19 HEARD ANY OBJECTIONS OR ANY REQUESTS FOR AMENDMENTS, SO
20 I TAKE THAT AS AN AGREEMENT THAT SHE ACCEPTED.

21 MR. TABAK: YES, YOUR HONOR. WITH RESPECT TO
22 THE DIRECTED VERDICT FORM --

23 THE COURT: SPECIAL NOTICE.

24 MR. TABAK: I'M SORRY, EXCUSE ME. THINKING
25 AHEAD. MY -- ANYWAY, WITH RESPECT TO THE SPECIAL
26 VERDICT FORM, WE UNDERSTAND OUR CHOICES, BASICALLY

1 PLAINTIFF'S FOR THE GENERAL VERDICT FORM. WE --

2 THE COURT: NO, I DIDN'T -- THAT WASN'T THE
3 CHOICE. THAT'S A FALSE CHOICE THAT YOU PRESENTED. I
4 DIDN'T SAY THAT PLAINTIFF WAS THE ONE. I THINK WHAT I
5 SAID WAS THE PARTIES NEEDED TO GET TOGETHER, AND YOU
6 STIPULATE. IF THERE WAS NO STIPULATION, WE WOULD GO
7 WITH THE GENERAL VERDICT FORM, NOT THAT YOU HAVE TO
8 ACCEPT THE PLAINTIFF'S FORM.

9 MR. TABAK: UNDERSTOOD, YOUR HONOR. GIVE ME
10 JUST ONE MOMENT TO CONSIDER WHAT I WAS ABOUT TO SAY.

11 MS. CARRINGTON: YOUR HONOR, IF I MAY.
12 UNDERSTANDING THAT THE INSTRUCTIONS WERE EITHER THAT THE
13 PARTIES NEEDED TO STIPULATE TO A SPECIAL VERDICT FORM OR
14 THE -- YOUR HONOR WOULD REQUIRE THE PARTIES USE A
15 GENERAL VERDICT FORM, IN LIGHT OF THE RULINGS THAT WE
16 RECEIVED FROM THE COURT TO DATE WHICH DON'T ALIGN WITH
17 WHAT SUZUKI HAS PROPOSED IN ITS SPECIAL VERDICT FORM,
18 WITHOUT WAIVING ANY OBJECTIONS THAT WE PREVIOUSLY RAISED
19 TO THOSE ITEMS, WE ARE AGREEABLE TO STIPULATING TO WHAT
20 THE PLAINTIFFS HAVE PROPOSED. THAT IS IN LIGHT OF THE
21 FACT THAT OUR UNDERSTANDING FROM THE PLAINTIFFS IS THAT
22 THEY WERE NOT WILLING TO NEGOTIATE, IT WAS EITHER THEIR
23 VERSION OR THE GENERAL VERDICT FORM.

24 THANK YOU, YOUR HONOR.

25 THE COURT: MR. HOUSTON, DID YOU WANT TO
26 RESPOND FOR PURPOSES OF MAKING A RECORD?

1 MR. HOUSTON: FOR PURPOSES OF MAKING THE
2 RECORD, THE PLAINTIFF'S POSITION WAS I WANTED TO ADHERE
3 STRICTLY TO THE CACI INSTRUCTIONS VERBATIM. IT WASN'T
4 THAT I WAS UNWILLING TO NEGOTIATE. I WAS UNWILLING TO
5 WAIVE ANY APPELLATE ISSUES THAT ARE CERTAIN TO OCCUR --
6 CERTAIN TO OCCUR IF THERE WERE ANY DIFFERENCES BETWEEN
7 CACI AND THE INSTRUCTIONS. SO FOR THAT -- AND I'LL
8 SUBMIT, BUT I DO WANT TO MAKE A RECORD ON THAT EXACT
9 POINT REGARDING CACI 431.

10 THE COURT: WELL, LET ME JUST INDICATE FOR THE
11 RECORD I DID TELL COUNSEL RIGHT BEFORE WE WENT ON THE
12 RECORD THAT IN GOING THROUGH THE INSTRUCTIONS, I NOTICED
13 THERE WAS AN EXTRA LINE THAT WAS SUBMITTED IN CACI
14 INSTRUCTION 431 THAT BRINGS IN A NONPARTY AND THEN TALKS
15 ABOUT THE SUBSTANTIAL FACTOR IN CAUSING A HARM AND WHO
16 IS RESPONSIBLE FOR IT. I WAS A LITTLE SURPRISED IT WAS
17 THERE.

18 MR. HOUSTON, DID YOU WANT TO SAY SOMETHING?

19 MR. HOUSTON: YES, YOUR HONOR. I -- I REF- --
20 I REPORTED TO THE COURT OFF RECORD THAT MS. CARRINGTON
21 AND I WERE NEGOTIATING THE CACI JURY INSTRUCTIONS TWO
22 AND A HALF, THREE WEEKS AGO, PREPARING TO GET READY FOR
23 THIS, AND AT THAT TIME, I DID -- MS. CARRINGTON WANTED
24 TO INCLUDE THE THIRD PARTY IN HERE, AND AT THAT TIME I
25 AGREED THAT WE COULD DO THAT.

26 I NEGLECTED TO BRING THIS TO THE COURT'S

1 ATTENTION BY AN OVERSIGHT ON MY PART. MY PATTERN HAS
2 BEEN TO STRICTLY ADHERE TO THE CACI JURY INSTRUCTIONS
3 VERBATIM IN PART THAT READS, "IF YOU FIND THAT CONNIE
4 CASTELLOW WAS A SUBSTANTIAL FACTOR IN CAUSING JOEY
5 SOULLIERE'S HARM, THEN CONNIE CASTELLOW IS RESPONSIBLE
6 FOR THE HARM," IS A REFERENCE TO A THIRD PARTY THAT'S
7 NOT A PARTY IN THIS ACTION, OBVIOUSLY, AND I'D ASK THE
8 COURT TO STRIKE THAT ON MY OMISSION OR ERROR IN NOT
9 BRINGING THIS TO THE COURT'S ATTENTION YESTERDAY OR
10 WEDNESDAY.

11 THE COURT: MS. CARRINGTON?

12 MS. CARRINGTON: THANK YOU, YOUR HONOR.

13 THE REASON THAT WE AGREED TO DO THIS WAS SO
14 THAT WE WOULDN'T HAVE REPETITIVE INSTRUCTIONS AS IT
15 RELATES TO MULTIPLE CAUSES. THE DIRECTIONS FOR USE DO
16 SAY THE INSTRUCTION WILL APPLY "ONLY WHEN NEGLIGENCE IS
17 THE THEORY ASSERTED AGAINST THE DEFENDANT. THIS
18 INSTRUCTION SHOULD BE MODIFIED IF THE DEFENDANT IS SUED
19 ON A THEORY OF PRODUCT LIABILITY OR INTENTIONAL TORT SO
20 THAT THERE" -- "THERE WAS NOT AN ISSUE AS IT RELATES TO
21 INSTRUCTING TWICE." WE AGREED THAT WE WOULD INCLUDE A
22 REFERENCE TO CONNIE CASTELLOW.

23 THE JURY NEEDS TO BE INSTRUCTED THAT THEY HAVE
24 AN OPPORTUNITY TO ASSIGN FAULT TO CONNIE CASTELLOW.
25 THERE -- THIS WAS -- IN WHAT WAS SUBMITTED TO THE COURT,
26 THERE WAS NOT AN OBJECTION RAISED, THIS WAS AGREED UPON.

1 IF THE COURT IS INCLINED TO NOT ALLOW THIS AT THIS LATE
2 HOUR, WE WOULD REQUEST TO BE ABLE TO HAVE A SEPARATE
3 INSTRUCTION THAT RELATES TO THE JURY'S ABILITY TO ASSIGN
4 FAULT TO CONNIE CASTELLOW AS REFLECTED IN THE VERDICT
5 FORM THAT HAS NOW BEEN STIPULATED TO.

6 MR. HOUSTON: AND YOUR HONOR, JUST FOR -- I'LL
7 WITHDRAW MY REQUEST. I'M READING THE DIRECTIONS FOR USE
8 AND MS. CARRINGTON DID REFRESH MY RECOLLECTION ON THAT
9 CONVERSATION. IT DOES STATE IN THE DIRECTIONS "THIS
10 INSTRUCTION SHOULD BE MODIFIED IF INTENDED TO SUE ON A
11 THEORY OF PRODUCT LIABILITY FOR INTENTIONAL TORT." SO
12 IT DOES PERMIT SOME VARIANCE AND TO JUST -- WE HAVE A
13 JURY WAITING OUTSIDE. MS. CARRINGTON ACCURATELY
14 REFLECTED OUR CONVERSATION. I WITHDRAW MY REQUEST.

15 THE COURT: VERY GOOD.

16 DOES ANYBODY HAVE A COPY OF THE PROPOSED JURY
17 INSTRUCTIONS?

18 MR. MUNOZ: I DO, YOUR HONOR. MAY I APPROACH,
19 YOUR HONOR?

20 THE COURT: YOU MAY.

21 WHAT I'M GOING TO DO, COUNSEL -- WELL, LET ME
22 FIRST ASK THE QUESTION. ARE THESE INSTRUCTIONS AGREED
23 UPON, MR. HOUSTON?

24 MR. HOUSTON: YES, YOUR HONOR.

25 MS. CARRINGTON: IN LIGHT OF THE RULINGS THAT
26 YOUR HONOR HAS PROVIDED, YES, THEY ARE AGREEABLE.

1 THE COURT: IT'S ALWAYS IN LIGHT OF THE
2 RULINGS.

3 MS. CARRINGTON: THANK YOU, YOUR HONOR.

4 THE COURT: OKAY. I WON'T -- DON'T REALLY
5 HAVE TIME TO GO THROUGH AND VERIFY THAT THEY ARE
6 CONSISTENT WITH WHAT THE COURT HAD, BUT I WILL ACCEPT
7 THAT THEY ARE THE RIGHT ONES.

8 WHAT I PROPOSE TO DO IS THIS. THESE START OFF
9 WITH CACI 5000, THEN THEY GO TO THE 200 SERIES ALL THE
10 WAY THROUGH 3964. THEN THEY GO TO 5009. THIS IS A LOT
11 TO READ, AND I'M TRYING TO DECIDE WHETHER I SHOULD READ
12 5009 AND THE REST OF THE 5000 SERIES AT THE SAME TIME
13 OR, SINCE IT DEALS WITH, REALLY, MATTERS INVOLVING
14 JUROR -- THE JURY HEADED OFF TO THE JURY ROOM AND WHAT
15 THEY'RE GOING TO DO, WHETHER I SHOULD READ THOSE AFTER
16 CLOSING AND RIGHT BEFORE THEY GO TO THE JURY ROOM.

17 ANYBODY HAVE ANY PREFERENCE ON THAT?

18 MR. HOUSTON: YES, YOUR HONOR. I THINK
19 READING FROM 5009 ON IS MORE APPROPRIATE AFTER BOTH
20 PARTIES HAVE PROVIDED THEIR ARGUMENTS. SO THAT WOULD BE
21 MY REQUEST TO THE COURT.

22 MR. RIGGS: WE THINK IT'S A GOOD IDEA TO SPLIT
23 THEM UP.

24 THE COURT: OKAY. I THINK THE ONLY
25 RESERVATION THE COURT HAS IN SPLITTING THEM UP IS THAT
26 THE JURY IS THINKING, OH, MY GOSH, THERE'S ANOTHER 30

1 MINUTES OF INSTRUCTIONS. IF YOU WATCH THEIR FACES, AND
2 I'M SURE YOU'VE SEEN LOTS OF JURIES, THEY'RE NOT REAL
3 THRILLED WHEN THE COURT STARTS READING INSTRUCTIONS.

4 OKAY, ANYTHING WE NEED TO TALK ABOUT BEFORE WE
5 BRING THE JURY IN, MR. HOUSTON?

6 MR. HOUSTON: NO, YOUR HONOR.

7 MR. RIGGS: NO, YOUR HONOR.

8 THE COURT: VERY GOOD.

9 LET'S BRING THE JURY IN. BRING THEM IN.

10 (IN THE PRESENCE OF A JURY.)

11 THE COURT: OKAY. LET THE RECORD REFLECT THAT
12 THE JURY HAS REJOINED US.

13 GOOD MORNING, EVERYONE.

14 THE JURY: GOOD MORNING.

15 THE COURT: WE HAVE COMPLETED THE EVIDENTIARY
16 PORTION OF THE TRIAL. THE LAST STEP IN THIS PROCESS IS
17 FOR THE COURT TO READ JURY INSTRUCTIONS. THAT TAKES
18 ABOUT 30, 35 MINUTES TO DO SO. I AM REQUIRED BY LAW TO
19 READ THEM TO YOU, SO YOU'RE GOING TO HAVE TO SIT THERE
20 AND LISTEN, AND I APOLOGIZE FOR THAT. I DIDN'T WRITE
21 THEM, THEY -- BUT THEY HAVE A LOT OF REALLY GOOD
22 INFORMATION IN THEM AND I WOULD ASK THAT YOU PAY CLOSE
23 ATTENTION TO WHAT'S IN THEM.

24 COUNSEL WILL THEN HAVE AN OPPORTUNITY TO ARGUE
25 THEIR CASE TO YOU. THE PLAINTIFF WILL GO FIRST, THE
26 DEFENSE WILL GO SECOND, AND THE PLAINTIFF WILL HAVE AN

1 OPPORTUNITY TO GIVE YOU SOME REBUTTAL.

2 RIGHT BEFORE I SEND YOU TO THE DELIBERATION
3 ROOM, I HAVE A FEW OTHER INSTRUCTIONS I'LL NEED TO READ
4 TO YOU THAT TAKES PROBABLY ABOUT ANOTHER 7, 8 MINUTES TO
5 DO SO. AND AGAIN, IT GIVES YOU YOUR INSTRUCTIONS AS TO
6 WHAT YOU'RE TO DO IN TERMS OF GOING TO THE JURY ROOM AND
7 WHAT YOU CAN EXPECT. AND THEN AT THAT POINT, IT'S ALL
8 YOURS.

9 SO WE'RE GOING TO BEGIN WITH THE JURY
10 INSTRUCTIONS. SOME OF THESE YOU MAY HAVE HEARD BEFORE,
11 BUT IT IS PART OF THE PROCESS.

12 MEMBERS OF THE JURY, YOU HAVE NOW HEARD ALL
13 THE EVIDENCE. THE ATTORNEYS WILL HAVE ONE LAST CHANCE
14 TO TALK TO YOU IN CLOSING ARGUMENTS.

15 OH, ONE THING, COUNSEL, BEFORE I EVEN GET INTO
16 THE INSTRUCTIONS, ARE YOU WAIVING THE REPORTER'S
17 REQUIREMENT TO TRANSCRIBE THE JURY INSTRUCTIONS?

18 MR. RIGGS: YES, WE WOULD.

19 MR. HOUSTON: YES, YOUR HONOR.

20 THE COURT: I THOUGHT WE'D AGREED, BUT I
21 WANTED TO MAKE SURE.

22 (WHEREUPON, THE COURT READ THE JURY
23 INSTRUCTIONS, NOT REPORTED BY THIS STENOGRAPHER.)

24 THE COURT: COUNSEL, DID THE COURT READ THOSE
25 INSTRUCTIONS CORRECTLY?

26 MR. RIGGS: YES, YOUR HONOR.

1 MR. HOUSTON: YES, YOUR HONOR.

2 THE COURT: VERY GOOD.

3 LADIES AND GENTLEMEN OF THE JURY, IT'S NOW THE
4 OPPORTUNITY OF COUNSEL TO PROVIDE THEIR CLOSING
5 ARGUMENT. AGAIN, AS YOU'VE HEARD MANY TIMES, THEIR
6 ARGUMENT IS NOT EVIDENCE. IT'S SIMPLY THEIR RECITATION
7 OF WHAT THEY THINK THE EVIDENCE SHOWS AND HOW THE LAW
8 APPLIES TO IT. WE BEGIN WITH THE PLAINTIFF.

9 MR. HOUSTON.

10 MR. HOUSTON: THANK YOU, YOUR HONOR.

11 ALL RIGHT. WE STARTED THIS OUT -- IT'S BEEN
12 ALMOST A MONTH AT THIS POINT AND AT THE BEGINNING, I
13 TOLD YOU THAT WAS THE LAST TIME WE GOT TO TALK UNTIL
14 TODAY, ESSENTIALLY. AND WE MIGHT GET A CHANCE,
15 HOPEFULLY -- YOU'LL HAVE TO GIVE THE PERMISSION FOR IT,
16 BUT WE MIGHT GET A CHANCE TO TALK WHEN THIS IS OVER.

17 BUT BEFORE WE GET THERE, ALL I CAN SAY IS
18 THANK YOU SO MUCH FOR YOUR ATTENTIVENESS, FOR YOUR
19 PRESENCE, FOR YOUR PARTICIPATION IN THIS PROCESS. I
20 KNOW WHEN YOU GOT THE JURY INSTRUC- -- THE NOTICE THAT
21 YOU HAD JURY DUTY, THE LAST THING YOU WANTED TO DO WAS
22 BE A PART OF A JURY FOR A DAY, A WEEK, OR A MONTH. I
23 KNOW IT. BUT -- BUT THIS IS AN IMPORTANT PROCESS AND WE
24 NEED YOU TO BE A PART OF THIS PROCESS, AND YOU'VE DONE
25 IT SWIMMINGLY. WE CHOSE FOUR ALTERNATES AND WE STILL
26 HAVE ONE IN THE GROUP, BUT I THINK WE LOST OUR FIRST

1 ALTERNATE BEFORE WE EVEN STARTED PUTTING ON EVIDENCE AND
2 IT WAS SOMETHING THAT COUNSEL AND I, WE STARTED THINKING
3 LIKE, OH, THIS IS A LONG TRIAL, WE MIGHT BE IN TROUBLE.

4 BUT WHAT I JUST AM TRYING TO IMPART IS THANK
5 YOU SO MUCH FOR YOUR PARTICIPATION. I MADE A -- NOT A
6 PROMISE, BUT A SUGGESTION TO YOU THAT AT THE BEGINNING
7 WE TRY AND FINISH EARLY, AND WE TRIED TO GET THIS TO YOU
8 TUESDAY, WEDNESDAY OF THIS WEEK. WE'RE STILL HERE A
9 WEEK EARLY AND IT WAS BECAUSE WE WORKED TOGETHER TO JUST
10 TRY AND HONOR YOUR TIME AND YOUR EFFORTS HERE. SO I
11 HOPE YOU CAN APPRECIATE THAT AS WELL. WE DID GET HERE
12 EARLY, BUT -- WE DID GET TO THIS POINT A WEEK EARLY.

13 I'M GOING TO -- I'M GOING TO CIRCLE BACK TO
14 THAT IN THE END, BUT THERE'S ONE THING THAT HAPPENED
15 THAT WAS A LITTLE FUNNY TO ME, I GUESS. SUZY, THE COURT
16 REPORTER, AND I HAVE KNOWN EACH OTHER FOR PROBABLY TEN
17 YEARS OR SO. JUST -- IT'S A SMALL INDUSTRY, YOU GET TO
18 KNOW THE COURT REPORTER. AND DURING ONE OF THE BREAKS I
19 ASKED HER A QUESTION AND SHE LOOKED AT ME AND SHE GOES,
20 THIS IS MY BREAK FROM YOUR VOICE; RIGHT? SHE SAYS THAT
21 TO ME AND I LOOKED AT HER, I WAS LIKE, YOU KNOW -- AND
22 SHE'S SMILING RIGHT NOW TOO. SHE SAID THAT AND I
23 REALIZED, YOU KNOW, I GET IT, I GET IT. IT HURT, YOU
24 KNOW, JABBED ME RIGHT IN THE HEART A LITTLE BIT, BUT I
25 GOT IT; RIGHT?

26 YOU FOLKS PROBABLY ARE TIRED OF HEARING OUR

1 VOICES, YOU WANT TO GET ON WITH YOUR LIVES, AND WE'RE
2 GOING TO RESPECT THAT, AND IDEALLY, THIS IS GOING TO BE
3 OVER PRETTY CLOSELY. SO I THANK YOU FOR WHAT YOU'VE
4 DONE. THANK YOU FOR THIS.

5 I'LL GET THROUGH THIS AS QUICKLY AS WE CAN.
6 IT'S GOING TO TAKE ME A LITTLE WHILE, THOUGH, SO BE
7 PATIENT. WE'LL HAVE A BREAK IN THE MIDDLE OF IT. I
8 HOPE WE GET DONE BY LUNCH, AND THEN THIS WILL BE THE
9 LAST TIME -- WELL, HOPEFULLY THE SECOND-TO-LAST TIME I
10 GET TO TALK TO YOU. OKAY?

11 SO THIS ISN'T GOING TO BE A -- I HAD --
12 THERE'S GOING TO BE A LOT OF PRESENTATIONS, BUT
13 ESSENTIALLY, LET ME SAY THIS: YOU FOLKS ARE THE MOST
14 IMPORTANT PEOPLE IN THIS ROOM. YOU DON'T BELIEVE IT,
15 YOU REALLY DON'T BELIEVE IT, BUT WHAT WAS THE FIRST
16 THING WE DID? WE COULDN'T GET STARTED UNTIL WE PICKED
17 YOU FOLKS. WE COULDN'T DO ANYTHING UNTIL WE PICKED A
18 JURY. AND WHY DO WE STAND WHEN YOU COME? IT'S OUT OF
19 RESPECT FOR THE JURY, PERIOD. LIKE, WE STAND FOR YOU,
20 WE -- I -- I -- WE CAN'T EVEN LOOK AT YOU BECAUSE WE
21 CAN'T HAVE ANY SEMBLANCE OF INTERACTION, BUT YOU FOLKS,
22 YOU WANT TO KNOW HOW -- YOU WANT TO KNOW HOW YOU'RE THE
23 MOST IMPORTANT PEOPLE IN THE ROOM? BECAUSE YOU GET TO
24 WEAR FLIP FLOPS IN HERE; RIGHT? I DON'T GET TO WEAR
25 FLIP FLOPS IN HERE. YOU GUYS CAN WEAR WHATEVER YOU
26 WANT; RIGHT? BUT I KNOW THAT YOU FEEL THAT YOU'VE BEEN

1 SORT OF CAPTIVE HERE, BUT BELIEVE ME, THE POWER IS ON
2 YOU FOLKS THE ENTIRE TIME.

3 THERE WAS A DAY WHEN SOMEBODY GOT INTO A CAR
4 ACCIDENT AND SOMEBODY WAS SICK, AND WE COULDN'T EVEN GO
5 ANY MORE THAT DAY BECAUSE WE DIDN'T HAVE ALL OF YOU
6 HERE. YOU FOLKS ARE THE MOST IMPORTANT PART OF THIS
7 PROCESS. I KNOW IT DOESN'T FEEL THAT WAY TO YOU, BUT
8 IT'S TRUE. IT'S TRUE, AND THAT'S WHY EVERY TIME WE'RE
9 TRYING TO RESPECT YOUR TIME AND THE COURT IS APOLOGIZING
10 WHEN WE'RE LATE, AND WE'RE TRYING TO GET MOVING FASTER
11 FOR YOU AS QUICKLY AS WE CAN. THE SYSTEM DEPENDS ON
12 YOU, PERIOD. I'LL SAY -- AND WHY IT DEPENDS ON YOU?
13 BECAUSE ULTIMATELY IT -- IT'S THE SEVENTH AMENDMENT OF
14 OUR CONSTITUTION AND YOU FOLKS --

15 MR. RIGGS: YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. RIGGS: I'M VERY SORRY TO INTERRUPT, BUT
18 APPARENTLY PLAINTIFF HAS A POWERPOINT I'VE NOT SEEN.

19 THE COURT: COUNSEL?

20 MR. HOUSTON: COURT SAID WE COULD USE EVERY --
21 ANYTHING THAT WAS ADMITTED INTO EVIDENCE. I'M NOT USING
22 ANY DEMONSTRATIVES OTHER THAN WHAT WAS ADMITTED INTO
23 EVIDENCE AND A POWERPOINT PRESENTATION, YOUR HONOR.

24 MR. RIGGS: IT WAS ON THE SCREEN JUST NOW.

25 THE COURT: MY SCREEN'S BLANK.

26 MR. RIGGS: IT WASN'T.

1 THE COURT: OKAY. I'M GOING TO OVERRULE --
2 OVERRULE THE OBJECTION.

3 MR. HOUSTON: MAY I PROCEED USING THE
4 POWERPOINT --

5 THE COURT: YES.

6 MR. HOUSTON: -- YOUR HONOR?

7 THE COURT: YES, SIR.

8 MR. HOUSTON: THANK YOU.

9 YOU'RE -- YOU FOLKS ARE LAW ENFORCEMENT. I
10 KNOW THAT SOUNDS WEIRD TOO, BUT WHAT WAS THE FIRST THING
11 THE JUDGE DID WHEN WE PICKED A JURY? HE SWORE YOU IN.
12 AND HE JUST READ A BUNCH OF JURY INSTRUCTIONS TO YOU.
13 YOU'RE LAW ENFORCEMENT. YOU'RE HERE TO DECIDE WHAT THE
14 FACTS ARE AND TO APPLY THE LAW AS YOU UNDERSTAND IT OR
15 AS YOU BELIEVE IT TO BE TRUE. AND OUR SYSTEM DEPENDS ON
16 THE 12, PLUS ONE, OF YOU BECAUSE THEY DON'T WANT TO RELY
17 ON ONE JUDGE SALTER. AND THAT'S NOT A POKE AT JUDGE
18 SALTER. HE'LL AGREE -- I CAN'T SPEAK FOR HIM, BUT I
19 ASSUME HE'LL AGREE WITH THIS STATEMENT. OUR SYSTEM
20 DEPENDS ON 12 JURORS OF OUR PEERS TO DECIDE WHAT IS
21 APPROPRIATE AND WHAT THE FACTS ARE IN THE CASE, AND
22 HE'LL APPLY THE LAW ONCE WE GET THERE.

23 BUT YOU MUST FOLLOW THE LAW. AND THAT'S WHY
24 HE READ THE INSTRUCTIONS TO YOU JUST NOW. AND YOU'LL
25 GET A COPY OF THOSE. I KNOW IT'S A LOT OF READING, BUT
26 YOU MUST FOLLOW THE LAW AND NOBODY CAN NOT MAKE YOU

1 FOLLOW THE LAW -- FOLLOW THE LAW. SO WE'RE GOING TO GET
2 TO SOME OF THOSE INDIVIDUAL JURY INSTRUCTIONS TO HELP
3 YOU UNDERSTAND HOW TO APPLY THAT LAW AND THEN THE -- THE
4 VERDICT FORM AT THE END SORT OF PUTS THAT WHOLE THING
5 TOGETHER.

6 ULTIMATELY, WHY YOU'RE HERE IS BECAUSE YOU ARE
7 THE DETERMINER OF COMMUNITY VALUES. WHAT DO WE VALUE IN
8 THIS SOCIETY? YOU DECIDE WHAT WE WILL ACCEPT REGARDING
9 PRODUCT SAFETY. YOU DECIDE WHAT A CORPORATION CAN GET
10 AWAY WITH REGARDING PUTTING EVERYONE AT RISK FOR A
11 DEFECT OF ONE OF THEIR PRODUCTS OR PUTTING OUR CONSUMERS
12 AT RISK FOR ONE OF THEIR PRODUCTS. YOU DECIDE WHAT'S
13 ACCEPTABLE REGARDING THE PUBLIC INTERACTION WITH THEIR
14 PRODUCTS. YOU DECIDE WHAT'S ACCEPTABLE REGARDING THE
15 INFORMATION FROM THEM TOWARDS THE PUBLIC ABOUT DEFECTS
16 OR POTENTIAL SAFETY ISSUES CONCERNING THEIR PRODUCTS.
17 AND YOU GUYS GET TO DECIDE -- YOU FOLKS -- SORRY -- GET
18 TO DECIDE WHAT YOU'LL ACCEPT REGARDING PUTTING PROFITS
19 OVER PEOPLE.

20 THIS IS A TOUGH ONE, BECAUSE PEOPLE DON'T LIKE
21 TO MAKE A STATEMENT, AND YOU'RE GOING TO MAKE A
22 STATEMENT TODAY. YOU DON'T WANT TO. GENERALLY YOU
23 DON'T WANT TO. PEOPLE DON'T LIKE TO BE PUT IN THIS
24 POSITION. BUT YOU WILL ONE WAY OR ANOTHER BECAUSE
25 THEY'RE WATCHING. EVERYBODY'S WATCHING. THAT'S WHY
26 THESE COURTS ARE OPEN. THEY'RE PUBLIC FORUMS. WHAT

1 HAPPENS TODAY WILL BE WRITTEN ON THE WALLS AS TO THIS
2 VERDICT IN THIS CASE, THIS TYPE OF CASE AND HOW JURORS
3 IN THIS COUNTY FOUND WITH THIS TYPE OF BEHAVIOR. SO YOU
4 GET TO DECIDE WHAT STATEMENT YOU WANT TO MAKE, BUT MAKE
5 NO MISTAKE, YOU WILL MAKE ONE. IF YOU DECIDE ONE WAY,
6 YOU'RE MAKING A STATEMENT, AND IF YOU DECIDE ANOTHER,
7 YOU'RE MAKING A STATEMENT. SO KEEP THAT IN MIND. WHAT
8 STATEMENT DO YOU WANT TO MAKE TO THE PUBLIC THAT WILL BE
9 HERE FOREVER? IT DOESN'T GO AWAY NEXT YEAR. THERE'S
10 NOT A TIME LIMIT TO THIS STATEMENT THAT GETS MADE AFTER
11 THIS.

12 AND BECAUSE THIS IS A PRODUCT CASE AGAINST A
13 CORPORATION THAT'S NOT VENUED HERE, LIKELY YOUR VOICE
14 HAS NOT BEEN AS FAR-REACHING OR PERSUASIVE AS IT WILL BE
15 IN THIS CASE. IMMEDIATELY YOUR VERDICT WILL GO
16 OVERSEAS. IMMEDIATELY YOUR VERDICT WILL GO TO BREA.
17 IMMEDIATELY YOUR VERDICT WILL GO TO OTHER MANUFACTURERS.
18 IMMEDIATELY YOUR VERDICT WILL OBVIOUSLY GO TO JOEY -- OR
19 IT WILL GO TO JOEY WHATEVER THE VERDICT IS. OKAY? JUST
20 KNOW WHAT YOU SAY IS IMPORTANT, AND I ASK THAT YOU NOT
21 TAKE IT LIGHTLY. YOU INVESTED THIS MUCH TIME, WE'RE
22 ALMOST THERE. MR. SOULLIERE HAS INVESTED TEN YEARS IN
23 THIS. HE'S ASKING FOR YOUR PATIENCE AND YOUR ATTENTION
24 AND YOUR BEST EFFORTS, WHICH I KNOW YOU WILL GIVE. YOU
25 ALREADY HAVE.

26 REMEMBER WHAT KUDO SAID -- WHAT MR. KUDO SAID:

1 "Q YOU ARE LOOKING INTO WHAT HAPPENED TO
2 AN AUTO MANUFACT- -- OTHER MANUFACTURERS TO
3 DETERMINE WHAT SUZUKI SHOULD DO; CORRECT?

4 "A AS A CAR MANUFACTURER AND MOTORCYCLE
5 MANUFACTURER, WE LOOK AT OTHER COMPETITORS'
6 SITUATIONS REGARDING RECALL, AND IT'S EVEN MY
7 RESPONSIBILITY TO UNDERSTAND THE SURROUNDING
8 CONDITION OF RECALL OR QUALITY MATTER AND KEEP
9 THAT INFORMATION FOR FUTURE DISCUSSION."

10 THAT'S WHY I SAY THEY'RE WATCHING. THAT'S WHY
11 I SAY THIS IS AN IMPORTANT DECISION, BECAUSE IT WILL
12 STAND AND OTHER PEOPLE WILL LOOK TO IT TO MAKE THEIR
13 DECISIONS DOWN THE ROAD LATER.

14 AND THIS IS THE PART YOU SEE, BUT YOU PROBABLY
15 HAVEN'T SEEN ME IN THIS SORT OF LIGHT. THIS IS THE PART
16 THAT SCARES ME A LITTLE BIT. I'M SWEATING, RIGHT,
17 BECAUSE I'VE TAKEN RESPONSIBILITY FOR THIS FOR SO LONG
18 AND I HAVE TO GIVE IT OVER TO YOU SOON. AND THAT'S
19 OKAY. THAT'S WHAT I WANT TO DO. I WANT YOU TO TAKE THE
20 RESPONSIBILITY, BUT IT'S JUST TERRIFYING. IT'S
21 TERRIFYING TO KNOW I'M AT THE END OF THE ROAD.

22 LIKE, HAVE I DONE ENOUGH? HAVE WE SHOWN YOU
23 EVERYTHING YOU NEED TO MAKE THE DECISION -- THE RIGHT
24 DECISION, WHATEVER THE DECISION IS? AND IT'S
25 FRIGHTENING. IT'S FRIGHTENING TO STAND UP HERE AND
26 THINK LIKE, WOW, IT'S ALMOST DONE. BUT I HOPE I HAVE

1 AND I HOPE YOU FOLKS DON'T HAVE ANY QUESTIONS ABOUT
2 THINGS THAT YOU DIDN'T GET, THAT YOU WISH YOU HAD
3 GOTTEN, THAT YOU NEEDED TO SEE THAT YOU HADN'T SEEN YET.

4 I HOPE I REPRESENTED JOEY WELL. I HOPE
5 MR. MUNOZ AND I HAVE REPRESENTED HIM WELL. AND ONLY
6 TIME WILL TELL. ONLY JOEY WILL TELL ME THAT WHEN THIS
7 IS ALL OVER. AND I HOPE I'VE HONORED YOUR TIME AND
8 SERVICE HERE THE BEST I WAS ABLE TO, AND I HOPE WE ALL
9 HAVE, TO BE HONEST, BECAUSE ULTIMATELY YOU'RE
10 AMBASSADORS FOR THE SYS- -- THIS SYSTEM WHEN YOU GO OUT
11 THERE AND YOU TELL PEOPLE WHAT YOUR EXPERIENCE WAS.

12 SO LET'S TALK ABOUT THE BURDEN OF PROOF. WE
13 TALKED A LOT ABOUT THAT IN JURY SELECTION. REMEMBER
14 WHAT THE -- THE JUDGE READ YOU THIS INSTRUCTION. IT'S
15 CACI 200. "THE PARTY MUST PERSUADE YOU BY THE EVIDENCE
16 PRESENTED IN COURT THAT WHAT HE OR SHE IS REQUIRED TO
17 PROVE IS MORE LIKELY TO BE TRUE THAN NOT TRUE." OKAY?

18 YOU MIGHT RECALL MY QUESTIONS BEFORE HAD TO DO
19 WITH, YEAH, I'LL PROBABLY GET. AND THE REASON WHY I SAY
20 YEAH, PROBABLY, THAT'S MY WORDS. THAT'S NOT THE COURT'S
21 WORDS. THE COURT'S WORD IS MORE LIKELY TRUE THAN NOT
22 TRUE. BUT I LIKE TO USE WORDS THAT WE USE IN COMMON
23 LANGUAGE; RIGHT? DO YOU WANT TO GO DO THIS? YEAH,
24 PROBABLY I'D LIKE TO DO THAT. IT'S MORE LIKELY TRUE
25 THAT I WANT TO DO THAT VERSUS HMM, MAYBE. NO, WE'RE NOT
26 LOOKING FOR A MAYBE STANDARD. WE'RE LOOKING FOR A YEAH,

1 PROBABLY STANDARD, BUT THAT'S IT. THAT'S IT. IT'S A
2 FEATHER MORE. YOU DON'T HAVE TO BE 100 PERCENT CERTAIN.
3 IN FACT, YOU CAN BE 49.9 PERCENT UNCERTAIN AND I'VE
4 STILL MET MY BURDEN, OKAY?

5 AND THAT'S WHY IT'S SO IMPORTANT WHEN WE ASK
6 YOU CAN YOU FOLLOW THE LAW. THE LAW DOESN'T REQUIRE ME
7 TO CONVINCING YOU A HUNDRED PERCENT. THE LAW REQUIRES ME
8 TO CONVINCING YOU THAT IT'S MORE LIKELY TRUE THAN NOT TRUE
9 THAT, YEAH, PROBABLY, THAT'S PROBABLY TRUE, WHAT
10 HAPPENED, WHAT MR. HOUSTON REPRESENTED AND THE EVIDENCE
11 HE SHOWED AND THE PEOPLE FROM THE STAND. YEAH,
12 THAT'S -- YEAH, THAT'S PROBABLY TRUE, MORE LIKELY TRUE,
13 MORE LIKELY RIGHT. THAT'S THE BURDEN WE HAVE, NOTHING
14 MORE.

15 BUT I'LL SUBMIT TO YOU THAT WE'VE PRESENTED
16 CLEAR AND CONVINCING EVIDENCE TO YOU THROUGHOUT THE
17 TRIAL, CLEAR AND CONVINCING EVIDENCE ON EVERYTHING THAT
18 WE'VE SHOWN YOU. SHOULD BE NO DOUBT ABOUT IT THAT I'M
19 NOT LOOKING FOR A FEATHER. I'M NOT LOOKING FOR THIS
20 FEATHER OVER HERE. I'M NOT LOOKING FOR THIS. I'M
21 LOOKING FOR -- I'M LOOKING FOR YOU FOLKS TO BE
22 THOROUGHLY PERSUADED, BUT MY BURDEN ONLY REQUIRES THIS,
23 OKAY? AND THAT'S THE LAW.

24 SO WHEN YOU GO BACK ULTIMATELY AND ASK THESE
25 QUESTIONS -- AND MAYBE YOU'LL HAVE MORE -- BUT
26 IN ESSENCE, DID SUZUKI MOTOR CORPORATION KNOW THE

1 DEFECTIVE BRAKE WAS SAFETY RELATED?

2 MR. RIGGS: YOUR HONOR, THIS IS NOT -- THIS
3 WAS NOT IN EVIDENCE. THIS IS NOT AN EXHIBIT. THIS WAS
4 NOT DISPLAYED OR SHARED.

5 THE COURT: COUNSEL, WE'RE GOING TO GO --
6 WE'RE GOING TO GO FOR A MOMENT INTO CHAMBERS.

7 (A SIDEBAR CONFERENCE WAS HELD AT THE BENCH,
8 AS FOLLOWS:)

9 THE COURT: WE'RE IN CHAMBERS.

10 MR. RIGGS?

11 MR. RIGGS: YOUR HONOR, I THOUGHT IT WAS
12 TOTALLY UNDERSTOOD THAT IF EITHER PARTY INTENDED TO USE
13 DEMONSTRATIVE EXHIBITS OF ANY KIND DURING CLOSING, THAT
14 THEY WOULD BE SHARED WITH THE OTHER AND THERE WOULD HAVE
15 TO BE AGREEMENT OF THAT.

16 I HEARD NOTHING FROM MR. HOUSTON, NOT -- NOT
17 ANY REQUEST, NO SUGGESTION, NO CONTACT ABOUT THAT AT
18 ALL. AND NOW IT'S CLEAR THAT HE'S GOING TO BE USING A
19 POWERPOINT THAT HAS NOT JUST EXHIBITS, BUT ARGUMENT AND
20 GOLDEN RULE STATEMENTS. WE'VE ALREADY HEARD THAT.

21 THIS WAY, I THINK, TALKS ABOUT THE PUBLIC AS
22 OPPOSED TO MR. SOULLIERE. I HAD NO OPPORTUNITY TO
23 REVIEW THAT IN ADVANCE. I UNDERSTOOD THAT I WOULD HAVE
24 THAT OPPORTUNITY. AND NOW I'M PUT IN A VERY
25 UNCOMFORTABLE OF OBJECTING. I -- I ASSURE YOU, I HAD NO
26 INTENTION OF INTERRUPTING HIS CLOSING, BUT I HAVE TO

1 MAKE THIS POINT. THIS WAS NOT WHAT I UNDERSTOOD WE
2 WOULD -- HOW WE WOULD PROCEED.

3 THE COURT: MR. HOUSTON?

4 MR. HOUSTON: MY UNDERSTANDING OF
5 DEMONSTRATIVES, YOUR HONOR, IS THINGS THAT WERE EITHER
6 SHOWN DURING THE TRIAL OR OTHER SORT OF DEMONSTRATIVE
7 ITEMS OR DOCUMENTS OR PHOTOGRAPHS THAT WERE NOT
8 SUBMITTED OR ADMITTED INTO EVIDENCE THAT WERE PRESENTED
9 TO THE JURY.

10 A POWERPOINT PRESENTATION IS JUST A SUMMARY OF
11 THE ARGUMENT AND STATEMENTS THAT I'M MAKING. I DON'T
12 HAVE ANY DOCUMENTS THAT WERE NOT IN THIS POWERPOINT THAT
13 WERE NOT ADMITTED INTO EVIDENCE. I DIS- -- I DISAGREE
14 THAT I HAVE TO ESSENT- -- ESSENTIALLY EXCHANGE MY ENTIRE
15 POWERPOINT, BUT I'LL BE HONEST WITH YOU, IT DIDN'T EVEN
16 CROSS MY MIND THAT I WAS -- I DIDN'T INTEND TO NOT DO
17 IT. IT WAS DEVELOPED IN THIS.

18 MR. RIGGS PRESENTED ME WITH A PIECE OF PAPER
19 THIS MORNING OF A POWERPOINT HE WANTED TO USE AND I
20 INFORMED HIM THE SAME THING, THAT, HEY, I DIDN'T HEAR
21 ANYTHING FROM YOU ABOUT DEMONSTRATIVES THAT YOU WANTED
22 TO USE, SO I PULLED ALL DEMONSTRATIVES OUT OF MY
23 POWERPOINT PRESENTATION. HE KNEW AT THAT TIME I HAD A
24 POWERPOINT PRESENTATION AND DIDN'T SAY ANYTHING. THAT
25 WAS THIS MORNING AT 8:00 O'CLOCK.

26 MR. RIGGS: THAT'S NOT --

1 MR. HOUSTON: FOR HIM TO BE OBJECTING NOW
2 IS -- IT -- I DON'T WANT TO SAY PREJUDICIAL, BUT IT'S
3 BORDERLINE THAT. AT MINIMUM, IT'S -- IT'S
4 INCONSIDERATE.

5 MR. RIGGS: WELL, LET ME JUST SAY WHAT YOU
6 JUST SAID IS NOT TRUE. I DID NOT KNOW YOU HAD A
7 POWERPOINT. YOU DIDN'T TELL ME YOU HAD A POWERPOINT. I
8 ALSO DIDN'T GIVE YOU A POWERPOINT. I GAVE YOU A DOC- --
9 ONE-PAGE DOCUMENT. I ASKED IF YOU WOULD AGREE. YOU
10 SAID YOU WEREN'T INCLINED TO. I HAD -- WE HAD NO
11 FURTHER DISCUSSION ABOUT IT. I SAID, OKAY, I
12 UNDERSTAND. THIS GOES WAY BEYOND WHAT I UNDERSTOOD
13 WOULD BE THE -- THE RULES FOR THIS.

14 THE COURT: THE RULE, AS I TOLD YOU BEFORE, IS
15 VERY CLEAR. EXHIBITS, FINE. ANYTHING ELSE REQUIRES
16 PRIOR PERMISSION. I DIDN'T THINK WE WERE GOING TO GO
17 BEYOND THAT FIRST PAGE, WHICH IS WHY I WAS WILLING TO
18 LET THAT GO. NO MORE. THAT HAS TO BE APPROVED IN
19 ADVANCE. NOTHING GOES UP THERE WITHOUT THE APPROVAL IN
20 ADVANCE.

21 MR. HOUSTON: WHAT ABOUT EXHIBITS THAT HAVE
22 BEEN ADMITTED?

23 THE COURT: EXHIBITS IS FINE, BUT I -- NOT THE
24 REST OF THE POWERPOINT.

25 MR. HOUSTON: OKAY.

26 (SIDEBAR CONFERENCE AT THE BENCH CONCLUDED.)

1 THE COURT: YOU MAY PROCEED, MR. HOUSTON.

2 MR. HOUSTON: ALL RIGHT. SOME QUESTIONS YOU
3 HAVE TO ANSWER ARE, DID SUZUKI MOTOR CORP. KNOW THE
4 DEFECTIVE BRAKE WAS SAFETY RELATED? I THINK THE
5 EXHIBITS YOU'VE SEEN -- AND I'LL SHOW YOU AGAIN --
6 INDICATE THEY DID.

7 DID THEY PUT THE PUBLIC AT RISK? NO DOUBT.
8 AGAIN, NOT EVEN A YEAH, PROBABLY STANDARD ON THAT, BUT
9 YEAH, PROBABLY, YOU KNOW.

10 DID THEY HIDE THE DEFECT FROM THE AMERICAN
11 PUBLIC? YEAH, PROBABLY. I THINK IT'S MORE LIKELY TRUE
12 THAN NOT TRUE THAT THEY DID.

13 DID THEY ALLOW A DEFECTIVE BRAKE TO INJURE
14 JOEY? I THINK THEY ALLOWED THAT TO HAPPEN MORE LIKELY
15 TRUE THAN NOT.

16 AND THEN DID THEY CONTINUE TO LIE ABOUT THAT
17 DEFECT TO THIS DAY? MORE LIKELY TRUE THAN NOT TRUE.

18 YEAH, PROBABLY TO ALL OF THOSE, THE BURDEN IS
19 MET. AND I SUBMIT TO YOU THE MOUNTAIN OF EVIDENCE IS
20 CLEAR AND CONVINCING.

21 MAY I HAVE A MINUTE -- OR A SECOND WITH
22 COUNSEL, YOUR HONOR?

23 THE COURT: CERTAINLY.

24 (PAUSE IN PROCEEDINGS.)

25 MR. HOUSTON: OKAY. EXHIBIT 1. YOU SAW THIS.
26 THIS WAS THE BRAKE RESERVOIR PORT FROM 2004. AND AT

1 THAT TIME, THEY HAD DETERMINED THAT -- EXPERIMENTATION
2 HAD DETERMINED THE PROBLEM SEEMS TO BE IN THE FRONT
3 BRAKE MASTER CYLINDER, IN THIS AREA HERE. THEY ALSO
4 DETERMINED IN THIS PART THAT THE ISSUE MUST BE ADDRESSED
5 IN FUTURE MODELS. THAT'S IN 2004, FOLKS. THAT'S WHEN
6 THE CLOCK STARTS TICKING FOR THESE PEOPLE.

7 IF WE GO TO EXHIBIT 23 -- AND THIS IS CALLED
8 MARSHALING THE EVIDENCE, AND WHAT I'M DOING HERE IS I'M
9 PROVIDING A TIMELINE FOR YOU FOLKS SO THAT YOU SORT OF
10 UNDERSTAND A LITTLE BIT MORE WHY ALL THIS CAME IN THE
11 WAY IT DID. ULTIMATELY, WHAT I'M GOING TO RELAY TO YOU
12 ARE DATES AND CONTENT.

13 ON NOVEMBER 5TH, 2012, NOW WE'RE GETTING
14 REALLY CLOSE. WE'RE -- WE'RE PICKING UP. AT THIS
15 POINT, I CAN IMAGINE WHERE JOEY IS WITH HIS -- WITH ONE
16 LUV SALON AND WHERE HE IS. IN 2004, HE WAS A
17 17-YEAR-OLD. BY 2012, HE'S 26. ONE LUV SALON IS JUST
18 GETTING IN FULL FORCE AND EFFECT AND HE'S TAKING OFF
19 WITH IT. AND THIS DOCUMENT EXPLAINED THE HEAD OFFICE'S
20 OPINION THAT IT'S NOT THE SAFETY ISSUE; HOWEVER, LOCAL
21 PERSONNEL POINTED OUT THAT IT IS A SAFETY ISSUE AND THAT
22 PROMPT COUNTERMEASURE ARE NECESSARY. THAT'S IN NOVEMBER
23 2012. THIS IS EXHIBIT 23.

24 IF WE GO TO EXHIBIT 27, THIS IS IN NOVEMBER 6,
25 2012, SOME SIX MONTHS, ALMOST, BEFORE JOEY'S COLLISION,
26 BEFORE HE BUYS THE BIKE AND HIS COLLISION. AND IF WE

1 LOOK, THIS IS FROM MR. KUDO, NOVEMBER 6, 2012,
2 MR. MATSUMOTO, AND WHAT WE SEE HERE -- YOU SAW THIS
3 ALREADY. YOU'VE SEEN ALL OF THESE, BUT I DON'T KNOW
4 THAT YOU HAD A CHANCE TO DIGEST. BUT THIS IS HAPPENING
5 NOT JUST IN OTHER BIKE -- MOTORCYCLES, BUT IN NEW
6 MOTORCYCLES AND NEW VEHICLES, RIGHT HERE, NOVEMBER 2012.
7 SO ANY SUGGESTION THAT IT ONLY HAPPENED IN OLDER BRAKES,
8 IN OLDER DETERIORATED BRAKE FLUID IS CONTRADICTED IN
9 THIS DOCUMENT ALONE. THEY KNEW THIS IN NOVEMBER 2012.

10 EXHIBIT 28 IS THE SPREADSHEET, OKAY? THIS IS
11 A SPREADSHEET THAT MR. MUTHIG SENT OUT -- LET ME DO THAT
12 BETTER FOR YOU. THIS IS A SPREADSHEET THAT MR. MUTHIG
13 SENT OUT TO JAPAN WHEN THE PROPER VEHICLE WAS AN FTIR.
14 OKAY? AN FTIR, A FIELD TECHNICAL INVESTIGATIVE REPORT.
15 JAPAN LIKES THINGS A CERTAIN WAY. BUT MR. MUTHIG AT
16 THAT TIME SAID, NO, I NEED TO GET THIS TO THEM, THEY'RE
17 HAVING A MEETING. AND HE SENDS OVER THIS SPREADSHEET OF
18 ALL OF THESE SR REPORTS AND ALL OF THESE REPORTS GIVING
19 NOTICE TO SUZUKI JAPAN OF EXACTLY WHAT'S GOING ON THAT
20 THEY ARE GETTING REPORTS OF.

21 AND ON THIS DOCUMENT, WHAT'S VERY TELLING TO
22 ME IS AT THE BOTTOM WE SEE PRESSURE -- OR MORE THAN JUST
23 THE BOTTOM, BUT FRONT BRAKE, NO PRESSURE, LOSS OF FRONT
24 BRAKE FOR SECOND TIME, CUSTOMER SAID SHE CRASHED THE
25 MOTORCYCLE BECAUSE FRONT BRAKE LEVER PULLED TO THE GRIP
26 WITHOUT PRESSURE. OKAY?

1 YOU HEARD TESTIMONY FROM MATSUMOTO AND KUDO
2 THAT SAID WHAT? WE WERE NEVER AWARE OF ANYTHING WHILE
3 RIDING. THAT'S SIMPLY NOT TRUE. IN NOVEMBER 2012, THEY
4 HAD ALL OF THIS INFORMATION. THIS IS EXHIBIT 28.

5 AND I TELL YOU THIS SO YOU CAN WRITE IT DOWN
6 IF YOU WANT TO GO SEE AND CHECK MY WORK. AND A -- A LOT
7 OF TIMES I SAY IN THESE SITUATIONS DON'T TAKE MY WORD
8 FOR IT. FOLLOW THE EVIDENCE. DON'T TAKE MY WORD FOR
9 IT. I DON'T WANT YOU TO TAKE MY WORD FOR ANYTHING. I
10 WANT YOU TO BACK -- TO DOUBLE-CHECK WHAT I'M RELAYING TO
11 YOU, THAT I'M NOT MAKING ANYTHING UP.

12 WHAT WERE THEY SAYING WHEN THEY THOUGHT NOBODY
13 WAS LOOKING VERSUS WHAT ARE THEY SAYING NOW; RIGHT? NOW
14 THAT THEY KNOW THE WORLD IS WATCHING, THEY'RE SAYING A
15 DIFFERENT STORY. EXHIBIT 30. WE SEE IN THE CHART THIS
16 IS NOVEMBER 16TH, 2012, AND HERE THEY HAVE AT LEAST FIVE
17 REPORTS OF PRESSURE LOSS DURING A RIDE. OKAY? DOES IT
18 SOUND CREDIBLE THAT THEY'RE SAYING NOW THAT THEY DIDN'T
19 KNOW THAT THESE THINGS HAPPEN WHILE PEOPLE ARE RIDING
20 AND ONLY RESULTS IN A SPONGY BRAKE WHEN SOMEBODY HASN'T
21 RIDDEN THE BIKE FOR TWO WEEKS OR WHAT HAVE YOU? MAKES
22 NO SENSE.

23 EXHIBIT 34. IN DECEMBER OF 2012, THEY HAVE AN
24 UNDERSTANDING ALREADY NOT JUST OF HOW MANY CASES THERE
25 ARE, BUT HOW -- HOW TO FIX THE PROBLEM. COMPLAINTS
26 STOPPED AFTER CHANGING THE MASTER CYLINDER TO BREMBO.

1 WHY? BREMBO'S ALUMINUM. BREMBO'S GOT A DIFFERENT
2 PISTON IN IT. OKAY? SO IN NOVEMBER 2012, THEY ALREADY
3 HAVE A SOLUTION THEY'RE AWARE OF AND STILL DON'T FIX IT.

4 AND IN THIS REPORT, LOOK AT THAT. THERE'S 68
5 REPORTS -- AGAIN, THIS IS EXHIBIT 34. THERE ARE 68
6 REPORTS AT THE TIME. REMEMBER MATSUMOTO SAID THEY ONLY
7 GOT 39? THIS SAYS IN NOVEMBER/DECEMBER 2012 THERE'S 68
8 REPORTS AT THE TIME OF DEPARTURE FROM JAPAN, BUT THE
9 ACTUAL NUMBER OF CASES IS SPECU- -- SPECULATED TO BE
10 SEVERAL HUNDRED.

11 THEIR OWN SPECULATION AT THIS TIME, FOLKS, IS
12 THAT IT FAR EXCEEDS WHAT THEY'RE HEARING BECAUSE THEY
13 KNOW MOST DEALERS WON'T REPORT THIS PROBLEM BECAUSE IT
14 SOUNDS LIKE A BLEEDING ISSUE, LIKE A ROUTINE ISSUE. THE
15 DEALERS, IN A WAY, WOULD BE EMBARRASSED TO REPORT THAT.
16 LIKE, HOW AM I NOT FIGURING OUT HOW TO BLEED A BRAKE
17 APPROPRIATELY; RIGHT? BUT SUZUKI'S OWN ASSUMPTION IS
18 THAT IT'S IN THE HUNDREDS AND THEY'RE JUST NOT HEARING
19 IT ALL. THAT'S THEIR WORDS WHEN THEY THOUGHT NOBODY WAS
20 LISTENING OR LOOKING, THEIR OWN WORDS.

21 EXHIBIT 42. COUPLE DAYS LATER, 405,
22 MR. MATSUMOTO, WHAT DOES HE SAY? MY UNDERSTANDING IS
23 THAT IT IS VERY DANGEROUS. DOES THE TOP MANAGEMENT
24 KNOW? I RESPONDED THAT THEY DO. DUE TO THE NATURE OF
25 ITS CONTENT, IT IS A RECALL MATTER. IT'S A MATTER THAT
26 INVOLVES HUMAN LIVES, PRIORITIZE IT. WHAT'S THE DATE ON

1 IT? DECEMBER 5TH, 2012.

2 WE KNOW THEY EVENTUALLY ANNOUNCED A RECALL,
3 BUT WHEN? TEN MONTHS LATER. TEN MONTHS LATER.

4 MR. MATSUMOTO IN DECEMBER 2012, SIX MONTHS
5 BEFORE JOEY BUYS HIS BIKE, IS ALREADY SAYING, WE KNOW IT
6 INVOLVES HUMAN LIVES, PRIORITIZE IT, AND IT'S A RECALL
7 MATTER, YET THEY DO NOT DO ANYTHING ABOUT IT. NOT TRUE.
8 NOT TRUE. THEY KEEP INVESTIGATING, BUT THEY CERTAINLY
9 HIDE THEIR INVESTIGATIONS FROM THE PUBLIC.

10 SO WHAT DO THEY DO A COUPLE DAYS LATER? LET'S
11 GO TO EXHIBIT 49. THIS IS DECEMBER 14, 2012, MR. KUDO.
12 OKAY? AND ON -- IT SAYS IT'S A BUSINESS TRIP REPORT.
13 AND HE'S REPORTING BACK ABOUT HOW HE WENT TO BERT'S MEGA
14 MALL AND HE CHECKED THE BRAKE PRESSURE ON USED CARS. WE
15 ALL AGREE THAT'S USED MOTORCYCLES. I FOUND TWO VEHICLES
16 WITH SPONGY BRAKES AMONG 20 TO 30 -- 10 PERCENT,
17 FOLKS -- AND REPORTED TO SANI. THAT'S JAPAN. THAT IS
18 NOT ANYBODY IN THE UNITED STATES. THE DEALER IS NOT
19 AWARE OF THIS. WHAT IS HE DOING? HE'S COMING TO BERT'S
20 MEGA MALL AND HE'S NOT EVEN TELLING ANYBODY HE'S THERE
21 OR WHY HE'S THERE, WITH MR. MUTHIG, BY THE WAY, WHO'S
22 HERE IN BREA, AND HE'S JUST COVERTLY CHECKING BRAKES.
23 WHY? BECAUSE HE KNOWS THEY HAVE A PROBLEM AND HE'S
24 TRYING TO FIGURE OUT HOW BIG THE PROBLEM IS. AND HE
25 ACTUALLY FINDS TWO OUT OF 20 TO 30 WITH THIS PROBLEM.

26 MR. SOULLIERE WOULD'VE LOVED TO HAVE KNOWN

1 THAT INFORMATION. HE WOULD'VE LOVED TO KNOW THAT
2 INFORMATION. ISN'T IT A REASONABLE INFERENCE THAT MAYBE
3 HE MIGHT HAVE BASED HIS PURCHASE DECISION ON WHETHER OR
4 NOT TO BUY A GSX-R MOTORCYCLE OR EVEN ONE FROM BERT'S
5 MEGA MALL HAD HE HAD THIS INFORMATION IN TIME?

6 EXHIBIT 50, THE FOLLOW-UP FROM THIS FROM
7 MR. MUTHIG. SO THIS IS AN E-MAIL FROM MUTHIG, AND IF WE
8 LOOK ON THE SECOND PAGE, WHAT'S HE SAYING? YOU FOLKS
9 PROBABLY REMEMBER THIS. THEY WANT TO START COLLECTING
10 THESE PARTS, REMEMBER, BECAUSE IF SOMEBODY STARTS
11 MESSING WITH THESE PARTS BEFORE THEY GET THEM IN WHOLE,
12 THEN THE GAS COMES OUT AND THEY CAN'T REALLY ANALYZE
13 WHAT'S GOING ON. SO THEY WANT TO CAPTURE THESE PARTS
14 FROM THE PUBLIC BEFORE THEY GET MANIPULATED.

15 AND MR. MUTHIG SAYS, I THINK IT WILL BE
16 DIFFICULT TO EXPLAIN TO BERT'S WHY WE NEED THESE PARTS
17 AFTER OUR LAST VISIT, WHICH WAS DECEMBER 14, AND WE TOLD
18 THEM WE WERE NOT HAVING ANY SPECIAL PROBLEMS. SO NOT
19 ONLY DID THEY NOT TELL THEM WHY THEY WERE THERE, BUT
20 THEN HE'S SAYING, WE TOLD THEM WE HAVE -- WE'RE NOT
21 HAVING ANY ISSUES. NO, NO BIG DEAL. ALL RIGHT. WELL,
22 LOOK OVER THERE, DON'T LOOK OVER HERE. EXHIBIT 50.

23 SO THEN WHAT DO THEY DO? THEY GOT TO COME UP
24 WITH A REASON OR A WAY TO GET THESE PARTS BEFORE THEY
25 GET MANIPULATED. SO THEY ANNOUNCE A SPRINGTIME SERVICE
26 PROMOTION, MR. KUDO, JANUARY 7, 2012. AND THIS IS ONE

1 OF MY FAVORITE PARTS OF THIS. IT'S CALLED CAPTURING
2 ACTIVITIES, IN HIS OWN WORDS. CAPTURING ACTIVITIES. WE
3 DECIDED TO CARRY OUT A SPRINGTIME SERVICE PROMOTION
4 ACTIVITY FOR TWO MONTHS. OKAY.

5 AND THEN LOOK DOWN HERE WHAT THIS SAYS,
6 STARTING AT THIS LINE, THIS IS GOING TO BE A FIRST
7 ACTIVITY. AND THEN THE FIRST BULLET POINT UNDERNEATH
8 THAT, FREE INSPECTION. INSTEAD OF TELLING PEOPLE, HEY,
9 BRING YOUR BIKE IN, WE MIGHT HAVE A BRAKE PROBLEM,
10 THEY'RE GOING TO SAY, HEY, BRING YOUR BIKE IN AND WE'LL
11 GIVE YOU A FREE INSPECTION AND WE'LL TRY TO SELL YOU A
12 BUNCH OF STUFF. OKAY? AND THEY'RE GOING TO SQUEEZE
13 THOSE BRAKES AS SOON AS THEY GET THERE.

14 EXHIBIT 52, JANUARY 18, 2013, WHAT DO THEY SAY
15 REGARDING THE PRODUCTION? SO WHAT ARE THEY DOING ON
16 JANUARY 18, 2013? THEY'RE ALREADY SCHEDULING THE
17 PRODUCTION OF A DIFFERENT PRODUCT. REMEMBER, THEY'RE
18 STILL TEN MONTHS AWAY FROM ANNOUNCING A RECALL, BUT
19 THEY'RE GOING TO TELL YOU, WELL, WE NEVER DECIDED TO DO
20 A RECALL. WE NEVER DECIDED TO. WE JUST STARTED
21 ORDERING PARTS, PUTTING THEM ON A NEW MODEL, KEEPING IT
22 FROM THE PUBLIC, KEEPING IT FROM ANYBODY ELSE.

23 EXHIBIT 53. THIS IS A LITTLE BIT SLIGHTLY OFF
24 TOPIC BECAUSE THIS HAS TO DO WITH ZINC, BUT IT'S
25 INTERESTING BECAUSE THEY TALK ABOUT ZINC -- YOU HEARD
26 BREEN YESTERDAY, MR. BREEN, TALK ABOUT ZINC NOT BEING

1 INAPPROPRIATE AS A MATERIAL, EVEN THOUGH HIS LITERATURE
2 SAID DIFFERENT. THEN HE SAID SOMETHING ABOUT DIFFERENT
3 KIND OF BRAKE FLUID. WELL, IN THEIR OWN WORDS, CCI IS
4 THE LAB WHO -- THE -- THE LAB THAT THEY HANDLED BRAKE
5 FLUID WITH, COMING BACK TO THEM SAYING, WE DIDN'T THINK
6 ZINC WAS EVEN USED ANYMORE. AND THIS IS IN DECEMBER --
7 THIS IS JANUARY 2013. OKAY? SO FOR BREEN TO COME IN
8 AND SAY, AH, ZINC'S TOTALLY APPROPRIATE, WELL, THEY
9 DIDN'T THINK SO AND THEY TOLD SUZUKI AS MUCH.

10 EXHIBIT 54, JANUARY 24, 2013. THE PURPOSE OF
11 THE TRIP IS TO CONDUCT AN INVESTIGATION. THE RESULT IS
12 THAT THERE'S A POSSIBILITY OF MOISTURE IN THE BRAKE
13 FLUID, CORRODES ZINC, AND HYDROGEN IS GENERATED.
14 JANUARY 24TH, 2013, CONFIRMED HYDROGEN'S IN THIS SYSTEM.
15 THAT'S A PROBLEM BECAUSE HYDROGEN IS NOT NATURAL. IT'S
16 A CHEMICAL PROCESS. YOU HEARD DR. KAR TALK ABOUT THAT.
17 OKAY?

18 BUT LOOK AT THE BOTTOM THIS. WHAT DOES THAT
19 SAY? AS A PISTON MATERIAL, ANODIZED ALUMINUM NOT EVEN
20 IS ANY BETTER. IT SAYS IT'S RECOMMENDED. OKAY?

21 IN JANUARY 2013, SUZUKI'S ON NOTICE. ITS
22 RECOMMENDATION, TO USE ANODIZED ALUMINUM, GET AWAY FROM
23 ZINC. DO THEY? NO, THEY DO NOT.

24 EXHIBIT 58, FEBRUARY 7, 2013, AND I CAN
25 IMAGINE AT THIS POINT JOEY'S STARTING TO THINK, MAN,
26 IT'D BE PRETTY COOL TO HAVE A BIKE THIS SUMMER AND

1 SPRING. I CAN IMAGINE THAT. I COULD IMAGINE JOEY, HIS
2 SALON IS PROBABLY POPPING, PLENTY OF PEOPLE, YOU KNOW.
3 HE'S LOOKING AT -- I MEAN, HERE IN SEAL BEACH IN
4 FEBRUARY, YEAH, IT'S COLD, BUT, YOU KNOW, SPRING'S RIGHT
5 AROUND THE CORNER. I CAN IMAGINE THE -- THE BUSTLE
6 GOING ON IN -- IN ONE LUV.

7 AND WHAT ARE THEY DOING? WHAT ARE THEY DOING?
8 THEY'RE HAVING A TOUGH TIME BEING HONEST WITH THEIR
9 CLIENTS. STEVE IS A TECHNICAL SERVICE MANAGER. OKAY?
10 HE'S CONCERNED ABOUT FUTURE OCCURRENCES. AND THEN WHAT
11 DOES HE SAY? PARTICULARLY THE POSSIBILITY OF LIABILITY.

12 I'M SORRY, STEVE IS MUTHIG. CHRIS IS THE
13 TECHNICAL SERVICE MANAGER. CHRIS IS THE GUY WHO
14 ACTUALLY GOES TO THESE DEALERS AND TALKS TO DEALERS AND
15 THE -- THE MECHANICS AT THE DEALERS, AND WILL SAY, HEY,
16 MAN, WE'RE SEEING THIS PROBLEM AND IT'S -- WE CAN'T FIX
17 IT.

18 AND WHAT'S INTERESTING ABOUT THIS SLIDE IS
19 REMEMBER BREEN YESTERDAY SAID IF YOU JUST SQUEEZE THE
20 BRAKES SEVEN TIMES, IT WOULD PURGE THE BRAKE AND RETURN
21 TO FULL FUNCTION? WELL, THEY COULDN'T FIGURE THAT OUT,
22 EVIDENTLY, BECAUSE IT'S NOT TRUE.

23 HE HAD CALLS FROM DEALERS INQUIRING THE REPAIR
24 METHOD AND HE HAS A HARD TIME ANSWERING BECAUSE ALTHOUGH
25 HE HAS TOLD THEM TO PERFORM AIR BLEEDING, HE KNOWS THE
26 PROBLEM STILL RECURS. IT STILL COMES BACK. IT DOESN'T

1 FIX THE PROBLEM. AND HE KNOWS THIS.

2 WELL, MR. BREEN WILL HAVE YOU BELIEVE THAT,
3 MAN, ALL YOU HAVE TO DO IS SQUEEZE THAT BRAKE A FEW
4 TIMES, YOU'RE GOLDEN. RIDE IT FOR 2 -- RIDE 2 AND A
5 HALF MILES ON A SPONGY BRAKE AND SQUEEZE IT SEVEN TIMES,
6 YOU GET A FULL FUNCTION.

7 EXHIBIT 60 FROM MR. KUDO, FEBRUARY 20TH, 2013,
8 WHAT DOES HE SAY? LET'S LOOK AT THIS. LOOK AT THE
9 SUBJECT FIRST. THE MATTER OF THE GSX-R FRONT BRAKE.
10 THE FOLLOWING ARE QUICK NOTES THAT CAME TO MY MIND.
11 BECAUSE OF THE LARGE NUMBER OF VEHICLES, WE'RE GOING TO
12 HAVE TO IMPLEMENT THIS IN STAGES, BUT MORE IMPORTANTLY,
13 WE WANT TO AVOID THE SPRING SEASON, MARCH TO MAY --
14 RIGHT THE SAME WINDOW WHERE JOEY BUYS HIS BIKE -- WHEN
15 DEALERS ARE EXTREMELY BUSY, TO START THE FIELD ACTION.
16 FIELD ACTION'S THE RECALL, MAKE NO MISTAKE. WE DON'T
17 WANT TO DO THIS IN MARCH TO MAY WHEN PEOPLE ARE GOING TO
18 START RIDING AGAIN IN THE SPRING. THERE'S A CONCERN IT
19 COULD HAVE A NEGATIVE IMPACT ON RETAIL SALES IF THEY'RE
20 TOO BUSY WITH THE RECALL. ARE YOU KIDDING ME? NO,
21 LET'S PUSH THIS OFF TO THE FALL WHEN PEOPLE BACK EAST
22 START PUTTING THEIR BIKES AWAY AND WINTERIZE THEM.
23 OKAY?

24 EXHIBIT 61, MARCH 5TH, 2013. WHAT'S IT SAY?
25 THE SUBJECT IS THE GSX-R FRONT BRAKE PRESSURE LOSS
26 PROBLEM. ALTHOUGH OCCURRENCE OF ACCIDENTS HAVE NOT BEEN

1 REPORTED SO FAR -- WHICH WE KNOW IS NOT TRUE BECAUSE
2 MUTHIG SENT THAT SPREADSHEET A COUPLE MONTHS AGO. HOW
3 MANY MONTHS AGO? FOUR MONTHS AGO. WE THINK IT'S A
4 SAFETY ISSUE. WHO SAID IT WASN'T A SAFETY ISSUE? YOU
5 REMEMBER THAT TESTIMONY? KUDO? MATSUMOTO? THIS
6 DOCUMENT SAYS THE EXACT OPPOSITE. WE THINK IT IS A
7 SAFETY ISSUE. AND WHO'S HERE? KIRKLAND, MUTHIG, KUDO.
8 OKAY? BECAUSE FOR THE CUST- -- WE THINK IT'S A SAFETY
9 ISSUE BECAUSE FOR THE CUSTOMER, THE PROBLEM IS AN EVENT
10 IN WHICH THE BRAKE DOES NOT WORK. CAN THERE BE ANY
11 DOUBT? DO I HAVE TO ASK YEAH, PROBABLY ABOUT WHETHER OR
12 NOT A BRAKE THAT DOESN'T WORK IS A SAFETY ISSUE? THAT'S
13 RIDICULOUS TO TAKE AN OPPOSITE STANCE TO THAT.

14 LEGALLY TOO WE'RE AT SERIOUS DISADVANTAGE.
15 IT'S A PROBLEM WITH WHERE THE BRAKE DOES NOT WORK. IN A
16 SENSE, WE ARE AWARE THAT THE SITUATION IS FAR MORE
17 SERIOUS THAN A DIFFERENT CAMPAIGN.

18 I THINK IT SAYS IN HERE -- OH, YEAH, SORRY, 76
19 CASES. 76 CASES. THIS IS EXHIBIT 61.

20 EXHIBIT -- EXHIBIT 64, MR. KUDO, MARCH 15,
21 MR. MATSUMOTO. THIS IS A PRETTY DENSE PARAGRAPH, BUT
22 IT'S IMPORTANT TO UNDERSTAND AND THIS IS WHERE WE HAVE
23 THE TIME TO SORT OF PUT IT INTO CONTEXT FOR YOU FOLKS.
24 "WHEN THEY REPORT FROM A DEALER ABOUT THE PROBLEM,
25 SYSTEM RECOVERY IS POSSIBLE IF IT IS DONE PRIOR TO AIR
26 BLEEDING." THAT WHAT I WAS TALKING ABOUT BEFORE.

1 "WHILE IT IS POSSIBLE TO HAVE THE CUSTOMER RETURN TO THE
2 DEALER AND ASK TO REPLACE THE BRAKE SYSTEM AFTER THE
3 MAINTENANCE HAS BEEN PERFORMED, WE HAVE TO TAKE CARE OF
4 THINGS IN A WAY THAT DOES NOT GIVE THE CUSTOMER OR
5 DEALER A SENSE OF DISTRUST. THE RECOVERY RATE WILL
6 INCREASE IF WE ISSUE A BULLETIN ASKING THE DEALER TO
7 CONTACT SMC BEFORE CONDUCTING AIR BLEEDING, BUT WE
8 HAVEN'T ISSUED IT BECAUSE WE HAVE AN OBLIGATION TO
9 SUBMIT THAT BULLETIN TO NHTSA."

10 THEN THEY'LL TELL YOU PEOPLE WILL CHECK THEIR
11 BRAKE BEFORE. IT'S ALWAYS NOTICEABLE BEFORE. YOU
12 REMEMBER THAT TESTIMONY? IF PEOPLE NOTICE A SPONGY
13 BRAKE, THEY WON'T RIDE. ON APRIL -- TWO MONTHS BEFORE
14 JOEY BUYS HIS BIKE, MR. MATSUMOTO SAYS THE EXACT
15 OPPOSITE. HE ASKED AROUND THE STAFF IN A DEPARTMENT AND
16 ONE OUT OF THREE PEOPLE, 33 PERCENT -- MIND YOU, IT'S A
17 SAMPLE OF THREE -- "I'LL CHECK THE ROAD CONDITION, BUT I
18 DO NOT BOTHER CHECKING THE FRONT BRAKE. SOMETIMES
19 DURING TIRE TESTING, TO MY SURPRISE, THE BRAKE LEVER
20 SLIPS RIGHT IN. THEREFORE, I THINK IT IS POSSIBLE THAT
21 BRAKE OPERATION IS NOT CHECKED PRIOR TO DRIVING."

22 THIS IS WHAT THEY'RE SAYING WHEN THEY THINK
23 PEOPLE AREN'T LOOKING, FOLKS. OKAY?

24 ALL RIGHT. EXHIBIT 71, THIS IS THE KUDO MEMO.
25 LET'S TAKE SOME TIME HERE. START AT THE TOP.

26 "CURRENTLY WE'RE NOT IN A SITUATION WHERE DEALERS OR

1 CUSTOMERS SEE THIS MATTER AS A PROBLEM AND THE MARKET IS
2 MAKING NOISE." WHAT'S THAT SAYING? WHAT'S THAT SAYING?
3 WE GOT THEM FOOLED. WE GOT THEM FOOLED. THEY DON'T
4 KNOW IT YET. WE HAVEN'T TOLD THEM, SO WE'RE IN A GOOD
5 SHAPE.

6 THE NEXT LINE, "CUSTOMERS AND DEALERS DON'T
7 THINK THAT THEY ARE PRODUCT DEFECTS. RATHER, THEY THINK
8 THEY ARE MAINTENANCE ISSUES." LOOK OVER THERE, DON'T
9 LOOK OVER HERE. IN THE WEB THEY'RE NOT SEEN AS A
10 PROBLEM EITHER; RIGHT? ALL OF THIS IS GOING TO
11 PROTECTING THEIR OWN IMAGE, MAKING SURE THAT THERE'S NO
12 BUZZ GOING ON AROUND.

13 "WHEN CUSTOMERS NOTICE A REDUCTION OF BRAKE
14 PRESSURE, THEY BRING THEIR VEHICLES TO THE DEALERS,
15 PERFORM AIR BLEEDING WORK, THINK THAT THE PROBLEM HAS
16 BEEN RESOLVED AND RESUME USING THE VEHICLE. THEY DON'T
17 THINK AT ALL THAT THE PROBLEM IS THE STRUCTURE." AGAIN,
18 WE HAVE THEM FOOLED BECAUSE WE HAVEN'T TOLD THEM.

19 MR. KUDO'S OWN WORDS. "SMAI" -- AMERICA --
20 "THINKS THIS IS A SERIOUS SAFETY ISSUE." AND THEY
21 REPORTED THAT TO JAPAN. WE'VE ALREADY SEEN THAT WITH
22 EXHIBIT 28. "IF WE CONSIDER THE SITUATIONS OF
23 OCCURRENCES, THE NUMBER OF OCCURRENCES, THE CAUSE, WHICH
24 IS THE LOCATION IF THE PORT, THE NUMBER OF SUBJECT
25 VEHICLES IN THE STANCE OF NHTSA REGARDING ANOTHER
26 MANUFACTURER'S SUDDEN ACCELERATION PROBLEM, PENALTIES

1 AND SOCIAL IMPACTS AND THE LIKE IN A CASE WHERE WE DON'T
2 CONDUCT RECALL, THERE'S ONLY ONE WAY, WHICH IS TO
3 RESPOND ACTIVELY. IF WE DON'T RESPOND ACTIVELY AND THE
4 PROBLEM COME TO LIGHT, THE COURTS AND NHTSA WILL DEMAND
5 DISCLOSURE OF DOCUMENTS AND WE WILL BE IN A SITUATION
6 WHERE SUZUKI KNEW ABOUT THE PROBLEM AND DID NOTHING TO
7 RESPOND, AND WE WON'T BE ABLE TO DEFEND OURSELVES."

8 THIS IS WHAT THEY SAID WHEN THEY THOUGHT
9 NOBODY WAS LOOKING. IS THIS A YEAH, PROBABLY? THIS IS
10 CLEAR AND CONVINCING, FOLKS.

11 THEN THE NEXT SEC- -- THE NEXT SECTION
12 REGARDING IMPLEMENTATION OF FIELD ACTION, REMEMBER, THIS
13 IS APRIL. HE'S TALKING ABOUT IMPLEMENTING THE RECALL.
14 BUT WHAT DOES HE SAY? "AFTER THE ANNOUNCEMENTS, IT'S
15 POSSIBLE THAT INQUIRIES WILL INCREASE RAPIDLY." AND
16 THEN BELOW THAT, THE NEXT BULLET POINT, "DEMAND FOR
17 BUYBACKS WILL COME UP, BUT SMAI WILL NOT COMPLY WITH
18 ANY. IF WE COMPLY WITH EVEN ONE SUCH DEMAND, IT WILL BE
19 POSTED ON THE WEB IMMEDIATELY."

20 LET'S LOOK AT THE SECOND PAGE. OKAY. THIS IS
21 RISK BENEFIT CHARTING, OKAY? THE BENEFITS AND RISKS.

22 IS THE COURT LOOKING AT ME FOR A BREAK?

23 THE COURT: I THINK RIGHT NOW WOULD BE A GOOD
24 TIME TO TAKE A BREAK.

25 MR. HOUSTON: OKAY. THANK YOU.

26 THE COURT: WE'RE GOING TO TAKE A 15-MINUTE

1 BREAK. COURT'S IN RECESS.

2 (RECESS.)

3 (OUTSIDE THE PRESENCE OF A JURY.)

4 THE COURT: WE'RE BACK ON THE RECORD. WE'RE
5 OUTSIDE THE PRESENCE OF THE JURY.

6 I HAVE A COMMENT THAT I WISH TO MAKE. I'M NOT
7 ASKING FOR INPUT. YOU MAY BE SEATED -- SEATED, COUNSEL.
8 I'M NOT ASKING FOR INPUT. I'M NOT GOING TO ACCEPT
9 INPUT.

10 AT THE BEGINNING OF THE OPENING STATEMENT --
11 OR I'M SORRY, CLOSING ARGUMENT, REFERENCES WERE MADE TO
12 SEND A MESSAGE QUOTING CONSCIOUS OF THE COMMUNITY,
13 ET CETERA. THERE WAS NO IMMEDIATE OBJECTION TO THAT
14 LANGUAGE; HOWEVER, WHEN WE WENT INTO CHAMBERS, THERE WAS
15 A PASSING REFERENCE BY MR. RIGGS TO THE GOLDEN RULE,
16 WHICH YOU'RE ABSOLUTELY CORRECT, THOSE ARE GENERALLY
17 CONSIDERED IMPROPER ARGUMENT.

18 WHAT MAKES THIS CASE A LITTLE BIT DIFFICULT IS
19 THAT PART OF PLAINTIFF'S ARGUMENT IS BASED ON THE
20 EVIDENCE THAT SUZUKI DIDN'T CARE ABOUT THE EFFECTS OF
21 THE DECISIONS ON THE PUBLIC OR ITS BUYERS, IT WAS MORE
22 WORRIED ABOUT LIABILITY ISSUES. SO IN PART, TO SOME
23 EXTENT, THE ARGUMENT IS ESSENTIALLY A REBUTTAL TO THAT.

24 HOWEVER, I THINK UNDER THE CIRCUMSTANCES THAT
25 IT STILL IMPROPER TO USE THAT PARTICULAR LANGUAGE, AND
26 I'M GOING TO INSTRUCT YOU, MR. HOUSTON, NOT TO USE THAT

1 LANGUAGE AGAIN. I'M GOING TO ADMONISH YOU NOT TO USE
2 THAT LANGUAGE AGAIN IN THE LIABILITY PHASE. AND AGAIN,
3 I'M NOT ASKING FOR INPUT.

4 LET'S BRING THE JURY IN.

5 MR. HOUSTON: I NEED TO MAKE A RECORD. I
6 NEVER USED THE TERM "CONSCIOUS OF THE COMMUNITY." I
7 DELIBERATELY DID NOT USE THAT TERM, AND I THINK THE
8 RECORD WILL REFLECT THAT.

9 THE COURT: YOU DID USE THE TERM "SEND A
10 MESSAGE."

11 MR. HOUSTON: I DID USE THAT. THE TERM I USED
12 WAS --

13 THE COURT: MR. HOUSTON, WE'RE FINISHED AT
14 THIS POINT. LET'S BRING THE JURY IN.

15 COURTROOM ATTENDANT: YES, YOUR HONOR.

16 COUNSEL, JURY'S COMING IN.

17 (IN THE PRESENCE OF A JURY.)

18 THE COURT: OKAY. LET THE RECORD REFLECT THE
19 JURY HAS REJOINED US.

20 MR. HOUSTON, YOU MAY CONTINUE.

21 MR. HOUSTON: ALL RIGHT. WE'RE LOOKING AT
22 EXHIBIT 71, THE KUDO MEMO, THE RISKS AND REWARDS OF
23 IMPLEMENTING A RECALL. IF RECALL IS IMPLEMENTED, HERE'S
24 THE BENEFITS. WE CAN PREVENT FUTURE OCCURRENCES. OF
25 COURSE THAT'S WHAT WE WANT. WE ALWAYS WANT FUTURE
26 OCCURRENCE OF THAT EVENT. IF A RECALL IS IMPLEMENTED,

1 THE RISKS ARE LAWSUITS FOR PAST ACCIDENTS WILL INCREASE.
2 THEY'RE FACTORING IN THAT ISSUE, BUT THEY'RE ALSO
3 FACTORING OTHER COMPANIES MAY BE EFFECTED. THEY'RE
4 WORRIED MORE ABOUT THEIR REPUTATION THAN THEY ARE THE
5 SAFETY OF THEIR CUSTOMERS AND THE PEOPLE SURROUNDING --
6 OR THAT MAY BE IMPACTED BY THEIR PRODUCTS. IF A RECALL
7 IS NOT IMPLEMENTED, THE RISKS ARE -- IF THE PROBLEM
8 BECOMES PUBLIC IN THE FUTURE, SUZUKI'S HEAD OFFICE WILL
9 BE HELD TO ACCOUNT FOR ITS RESPONSE OR LACK THEREOF. IN
10 THE CASE OF THE U.S., PENALTIES WILL BE IMPOSED. THIS
11 IS IN APRIL 2013. PENALTIES WILL BE IMPOSED AND
12 OCCURRENCES OF THE PROBLEM CANNOT BE PREVENTED.

13 THIS IS MR. KUDO, AND REMEMBER -- DO YOU
14 REMEMBER WHAT MR. KUDO SAID? HE SAID HE JUST WROTE THAT
15 FOR HIMSELF. REMEMBER THAT? DID THAT MAKE ANY SENSE TO
16 YOU, HE JUST WROTE THIS FOR HIM -- TO -- FOR HIMSELF?
17 WELL, IT SHOULDN'T MAKE SENSE BECAUSE IF WE GO TO THE
18 FIRST PAGE FROM KUDO ON THIS DATE, WHAT'S HE SAY? "I
19 CORRECTED THE MATERIAL WE DISCUSSED EARLIER, SO I'M
20 SENDING IT. I PLAN TO USE IT AT THE MEETING WHICH WILL
21 BEGIN TODAY." DOES THAT SOUND LIKE A GUY WHO'S WRITING
22 THIS MEMO TO BE USED JUST FOR HIMSELF THAT DIDN'T HAVE
23 ANY INTENTION OF SHARING IT WITH ANYBODY?

24 AND KEEP IN MIND, WHEN YOU GUYS GO BACK IN THE
25 DELIBERATION ROOM, YOU CAN ASK THE COURT REPORTER TO
26 READ BACK TESTIMONY. IF YOU WANT TO HEAR WHAT MR. KUDO

1 SAID AND YOU DON'T BELIEVE ME ON HIM SAYING THAT IT WAS
2 FOR HIMSELF, JUST ASK FOR A READ-BACK. THAT'S WHAT
3 SHE'S HERE FOR. DON'T TAKE MY WORD FOR. I DON'T WANT
4 YOU TO TAKE MY WORD FOR. I WANT YOU TO CONFIRM WHAT I'M
5 SAYING. HOLD ME TO MY BURDEN. HOLD ME TO ACCOUNT. BUT
6 HOLD THEM TOO. OKAY?

7 EXHIBIT 78, COUPLE DAYS LATER, 4/11/2013, LIST
8 OF ISSUES FOR WHICH FIELD ACTIONS ARE OF CONCERN. OKAY?
9 CHAIRMAN'S SIGNATURE HERE.

10 I'M SORRY. COUNSEL, CAN YOU READ THE WORDS OR
11 DO YOU NEED ME TO CHANGE THE -- I'M TRYING TO KEEP IT
12 SMALL SO IT -- IS THAT AN OBJECTION?

13 MR. RIGGS: IT'S ACCEPTABLE.

14 MR. HOUSTON: THANK YOU.

15 THE CHAIRMAN'S SIGNATURE IS ON THIS. AND YOU
16 REMEMBER KUDO'S TESTIMONY? HE COULDN'T APPROVE A
17 RECALL. THE CHAIRMAN OF SUZUKI, WHOSE LAST NAME IS
18 SUZUKI, CAN'T APPROVE A RECALL. THAT'S WHAT HE
19 TESTIFIED TO YOU HERE. BUT IN APRIL, THE CHAIRMAN'S
20 ALREADY SIGNED OFF ON A RECALL BEING PERFORMED ON THIS
21 PART.

22 AND THEN MAY 28, 2013, WHAT HAPPENS? JOEY
23 BUYS HIS BIKE WITHOUT ANY OF THIS INFORMATION, WITHOUT
24 ANY OF THIS KNOWLEDGE, WITHOUT ANY OF THE INFORMATION
25 THAT COULD'VE PREVENTED HIM FROM HARM BECAUSE OF THIS
26 PART. HE BUYS THE WHITE ONE. HE BUYS THE WHITE ONE.

1 HE GOES TO BERT'S MEGA MALL AND PICKS THE WHITE ONE.

2 IF WE LOOK AT EXHIBIT 253, THIS IS THE DASH
3 CAM SKID MARKS RIGHT THERE. THIS IS THE STILL PHOTOS OF
4 THE DASH CAM SKID MARKS. YOU SEE ONE FOR SURE, ONE
5 19-FOOT LONG SKID MARK, BUT THEN THERE'S EVIDENTLY ONE
6 HERE -- MR. HOOVER WILL HAVE YOU BELIEVE IT STOPS
7 HERE -- THAT REPRESENTS A FRONT TIRE SKID MARK. DOES
8 THAT MAKE SENSE? LIKE ASK YOURSELF, DOES THAT MAKE
9 SENSE THAT IF -- IF SOMEBODY'S RIDING AND THEY JAM ON
10 BOTH BRAKES AT THE SAME TIME BECAUSE HE NEEDS MAXIMUM
11 BRAKING AT THIS POINT -- HE DOESN'T NEED IT AT FIRST,
12 BUT AT SOME POINT -- AND YOUR HONOR, IS IT OKAY IF I
13 STAND HERE THIS DEEP IN THE WELL? I'M SORRY, I
14 SHOULD'VE ASKED.

15 THE COURT: NO, IT'S NOT. GO AHEAD.

16 MR. HOUSTON: THE PIECE -- THIS -- AT FIRST,
17 REMEMBER, HE DOESN'T HAVE AN EMERGENT SITUATION. HE'S
18 GOT PLENTY OF TIME AND DISTANCE TO STOP. AND IF HE PUTS
19 BOTH BRAKES ON, STARTS -- STARTS LOCKING THEM UP, DOES
20 IT MAKE SENSE THAT THE FRONT BRAKE LOCKS FIRST, STOPS,
21 AND THEN THE REAR BRAKE SKID MARK, THE REAR TIRE SKID
22 MARK GETS THICKER AND DARKER FOR ANOTHER 19 FEET? IT'S
23 REALLY 12 FEET BECAUSE THERE'S SOME OVERLAP; RIGHT?

24 MAY I APPROACH THE SCREEN, YOUR HONOR?

25 THE COURT: YES, YOU MAY.

26 MR. HOUSTON: THANK YOU.

1 RIGHT? DOES IT MAKE SENSE? I MEAN, RIGHT
2 HERE, IF THIS A FRONT TIRE LOCKUP HERE, HIS BACK TIRE'S
3 COMING OFF THE GROUND. HE'S UNLOADING THAT REAR TIRE
4 ALL DAY LONG IF THAT'S A FRONT TIRE SKID MARK, OKAY?
5 THIS DOESN'T GET DARKER AND LIGHTER. AND REMEMBER WHAT
6 MR. HOOVER SAID ABOUT THIS. SORRY, I GET -- I GET -- I
7 GET ENERGETIC AND I KNOW THAT I'M STANDING OVER YOU, SO
8 I'M -- I APOLOGIZE.

9 REMEMBER MR. HOOVER'S TECHNOLOGY? HE HAD 3D
10 SCANNER CAMERAS. HE HAD ALL SORTS OF BEAUTIFUL
11 TECHNOLOGY, BUT HE COULDN'T TELL US IF THIS -- HOW WIDE
12 THIS WAS, THAT THIS WAS GETTING WIDER AND DARKER? HE
13 COULDN'T SAY THAT. HE COULD ONLY TELL US THE CHARACTER
14 OF IT, HE SAID. BUT I'LL SUBMIT TO YOU IF THAT IS
15 WORKING, IF I JUST -- REMEMBER, I ASKED MR. YATES ON
16 THIS CHAIR RIGHT HERE, IF -- IF THAT IS A FRONT TIRE
17 SKID MARK, WHAT DOES IT TELL US? IT TELLS US THE FRONT
18 TIRE DIDN'T WORK, THE FRONT BRAKE DIDN'T WORK BECAUSE IT
19 STOPS WORKING. IT STOPS WORKING AFTER 9 FEET.

20 AND WHAT DID MR. YATES AND MR. HOOVER TELL US?
21 9 FEET IS ABOUT THE EXTENT YOU'RE GOING TO GET A FRONT
22 TIRE SKID MARK BEFORE THE BIKE CAPSIZES, WHICH WOULD
23 MEAN THAT THERE WOULDN'T BE 12 MORE FEET OF REAR BRAKE
24 SKID MARK. THERE WOULDN'T BE. IT WOULDN'T -- IT'D BE
25 IMPOSSIBLE. IF THAT FRONT TIRE'S WORKING, FRONT BRAKE'S
26 WORKING, THAT REAR TIRE'S COMING OFF THE GROUND, UNLESS

1 YOU'RE MR. HOOVER AND YOU'RE GOING TO TOO FAST AND WHEN
2 YOU LOCK IT UP BOTH TIRES STICK TO THE GROUND SOMEHOW.
3 I'M GOING TO GET TO THAT, BUT I THOUGHT SOME OF THE
4 TESTIMONY FROM THEM WAS JUST A LITTLE CRAZY HOW A LOCKED
5 BRAKE CAN MAKE YOU FEEL LIKE YOUR BRAKES AREN'T WORKING.
6 WHAT? WHAT? AND HOW THEIR BRAKES MIGHT FEEL LIKE
7 YOU'RE HYDROPLANING OR YOU'RE ON ICE. WHAT? MADE NO
8 SENSE.

9 ALL RIGHT. SO EXHIBIT 104 -- THAT WAS
10 EXHIBIT 253, IF YOU WANT TO GO TO THAT EXHIBIT, THE DASH
11 CAM.

12 EXHIBIT 104, AUGUST 29TH, NOW WE'RE AFTER JOEY
13 BUYS HIS BIKE AND THEY STILL DON'T WANT TO ISSUE A
14 BULLETIN BECAUSE IT MEANS THAT THE CHANGES ARE
15 OFFICIALLY ISSUED IN WRITING. IT WOULD RAISE
16 DISCUSSIONS ON THE INTERNET AND CREATE OPPORTUNITIES FOR
17 LAWSUITS.

18 AND THEN THE NEXT PAGE, "IF THE BULLETIN IS
19 ISSUED, SMAI WILL ISSUE THE BULLETIN TO DEALERS AND
20 COPIES WILL BE SENT TO NHTSA AND IT WILL BECOME CLEAR
21 THAT THE MASTER CYLINDER STRUCTURE HAS BEEN CHANGED, AND
22 I AM WORRIED ABOUT THE AFFECT IT WILL HAVE TOWARDS THE
23 DELAY IN THE FIELD ACTION."

24 IT'S A COMMON, COMMON, COMMON THEME HERE. AND
25 I'M SORRY I HAVE TO WALK YOU THROUGH ALL OF THESE, BUT I
26 HAVE TO BECAUSE I KNOW THESE DOCUMENTS SO WELL. I DON'T

1 KNOW WHAT YOU WERE ABLE TO PICK UP IN THE TIME WE THREW
2 THESE AT YOU.

3 EXHIBIT 108, ONE OF THE MOST TELLING.
4 SEPTEMBER 25TH. "WE PREPARED THE MATERIALS IN THE
5 DIRECTION OF NOT DISCLOSING DETAILS OF THE MECHANISM AS
6 MUCH AS POSSIBLE." CLEAR AND CONVINCING EVIDENCE OF
7 MALICE, OPPRESSION, AND FRAUD, WHICH WE'LL GET TO. I'M
8 GOING TO ASK YOU FOR THAT. I TOLD YOU I'D ASK -- HAVE
9 TO ASK YOU FOR PERMISSION, AND TODAY'S THAT DAY I ASK
10 YOU FOR PERMISSION AND THIS IS THE CONDUCT I'M TALKING
11 ABOUT, MALICE, OPPRESSION, AND FRAUD. WHEN I GET TO IT,
12 I WANT YOU TO HAVE THOUGHT ABOUT THIS COMMENT WHEN I ASK
13 YOU FOR THAT LATER.

14 EXHIBIT 115, NOW THIS DOCUMENT IS VERY DENSE,
15 OKAY, BUT THIS DOCUMENT TELLS US EVERYTHING WE NEED TO
16 KNOW. REMEMBER, THE CAUSES OF ACTION HERE ARE
17 MANUFACTURING DEFECT, DESIGN DEFECT, FAILURE TO WARN.
18 YOU'VE HEARD THAT. SO WHAT HAPPENS IN THIS DOCUMENT --
19 AND I'M GOING TO WALK YOU THROUGH IT -- HERE IS SOME
20 LANGUAGE, HERE'S THE RESPONSE, AND THEN THIS AREA UP IN
21 THE TOP RIGHT IS A GRAPHICAL RENDITION OF THAT. SO
22 LET'S WALK THROUGH IT, OKAY, AND I'LL TRY TO MAKE IT AS
23 CLEAR AS POSSIBLE. LET'S START AT THE TOP, THOUGH.

24 WHEN WE LOOK AT IT, THE PROBLEM OCCURRENCE
25 DATE IS 2009, OKAY? SO THEY'RE ALREADY ACKNOWLEDGING
26 2009 TO 2013, THERE'S A FIVE-YEAR DELAY, OKAY? TALKS

1 ABOUT THE COST OF IMPLEMENTING THE RECALL, THE TOTAL
2 COST. IT TALKS ABOUT THE CAUSE IN HERE, THE CAUSE OF
3 GAS GENERATION.

4 SORRY, I DIDN'T HIGHLIGHT EVERYTHING I NEEDED
5 TO.

6 CAUSE OF GAS GENERATION. WHAT IS CAUSING THIS
7 PROBLEM? YOU'VE HEARD IT FROM DR. KAR, YOU'VE HEARD IT
8 FROM DR. -- OR YOU HEARD IT FROM DR. KAR. I'LL JUST
9 LEAVE IT AT THAT. AND THE CAUSE, THE PISTON SURFACE
10 TREATMENT DEFECT AND MOISTURE ABSORBED BY THE BRAKE
11 FLUID DUE TO LONG-TIME USAGE CAUSED CONTACT CORROSION
12 BETWEEN DISSIMILAR METALS, ZINC PISTON AND IRON SPRING.
13 THE BRAKE FLUID BECOMES ACIDIC BECAUSE IT REACTS WITH
14 THE ZINC PISTON.

15 NOW, THAT'S THE CAUSE OF THE GAS GENERATION.
16 WHAT'S THE CAUSE OF THE GAS ACCUMULATION? AND THAT IS
17 BECAUSE THE MASTER CYLINDER'S RESERVE TANK ESCAPE HOLE
18 IS SIDEWAYS, THE STRUCTURE THAT MAKES IT EASIER FOR GAS
19 TO -- TO ACCUMULATE. OKAY? SO IT GIVES YOU TWO CAUSES
20 RIGHT THERE, DESIGN AND MANUFACTURING DEFECT, SURFACE
21 SCOPE AND THE DESIGN, OKAY?

22 NOW, WHAT ARE THEY GOING TO DO ABOUT IT?
23 THAT'S WHERE IT SAYS "COUNTERMEASURE" RIGHT HERE ON THE
24 SIDE. WHAT THEY'RE GOING TO DO ABOUT IT, RIGHT HERE,
25 REPLACE THE MASTER CYLINDER IN WHICH THE PISTON OF THE
26 ESCAPE HOLE WAS MADE TO FACE UPWARDS, OKAY? THE GRAPHIC

1 RENDITION OF THIS IS GOING TO BE EASIER TO UNDERSTAND
2 BUT I'M GIVING YOU FOUNDATION FOR IT HERE, OKAY? ALSO
3 DOWN HERE'S THE 1-2-3 RULE YOU HEARD ABOUT. OKAY? THE
4 1-2-3 RULE, ONE MONTH TO DO SOMETHING, TWO MONTHS TO DO
5 SOMETHING ELSE, AND THREE MONTHS TO DO SOMETHING ELSE,
6 INTERNAL SUZUKI POLICY. AND INSTEAD OF 90 DAYS, IT
7 TAKES 1600 DAYS. THIS IS EXHIBIT 115, IF YOU NEED IT.
8 OKAY?

9 LET'S GO TO THE GRAPHICAL RENDITION PART OF
10 THIS, OKAY? SO ON THE TOP RIGHT-HAND CORNER -- SO THIS
11 JUST GIVES US -- IT SAYS THE PROBLEM PART IS THE FRONT
12 BRAKE MASTER CYLINDER. NO CONTEST. THE CAUSE OF THE
13 PROBLEM -- THE CAUSE OF THE GAS GENERATION IS PISTON
14 ZINC AND SPRING IRON, OKAY? THIS IS JUST A GRAPHICAL
15 VERSION OF THE -- OF THE WORDS WE JUST READ.

16 AND THEN THIS PART IS A LITTLE BIT CONFUSING.
17 IT SAYS "ILLUSION OF ZINC DUE TO CONTACT BETWEEN
18 DISSIMILAR METALS." THAT JUST MEANS IT'S THROWING OFF
19 PARTS, BUT THE DISSIMILAR METALS IS THE KEY COMPONENT
20 THERE.

21 THIS IS THE CORROSION BYPRODUCT, AND THIS IS
22 THE HYDROGEN MOLECULE, OKAY? AND I KNOW PEOPLE GET
23 FREAKED OUT WHEN THEY START SEEING SCIENCE, BUT THIS IS
24 SIMPLE STUFF. IT'S HERE FOR US. SO THIS IS THE
25 CORROSION BYPRODUCT, ALL THE GROSS STUFF THAT WE SAW
26 WITH DR. KAR THAT WAS PART OF THE PISTON. THAT'S WHAT

1 THIS IS, ZINC FORMATE. OKAY?

2 AND THEN LET'S GO DOWN. THE CAUSE OF GAS
3 ACCUMULATION, WHAT DO THEY SAY? THE ESCAPE HOLE, RIGHT?
4 SO THE ESCAPE HOLE'S ON THE SIDE, SO THE GAS KIND OF
5 GETS ABOVE THE AREA WHERE IT CAN ESCAPE. YOU CAN SEE
6 WITH MY LASER POINTER. AND THEN, HOW ARE WE GOING TO
7 FIX THE PROBLEM? ARE WE GOING TO STOP THE CORROSION,
8 THE THING THAT CAUSES THE CORROSION? WHY WOULD WE DO
9 THAT? WE CAN JUST MODIFY THE POSITION OF THE ESCAPE
10 HOLE. MAKES NO SENSE. WHY NOT FIX THE THING THAT
11 CAUSES CORROSION TOO? IT'S NO WONDER THEY CONTINUE TO
12 GET CALLS FOR THIS PROBLEM TO THIS DAY. THEY HAVEN'T
13 FIXED THE PROBLEM.

14 WHAT THEY DID DO IS THEY TOOK AWAY THE ONLY
15 OPPORTUNITY FOR THE RIDER TO APPRECIATE THERE'S
16 CORROSION GOING ON IN THERE BECAUSE NOW THIS GAS ESCAPES
17 AND HE'LL NEVER GET A SPONGY BRAKE FIRST. PROBABLY ONLY
18 GET THE SEAL DISRUPTION ISSUE HAPPENING TO HIM, BECAUSE
19 THE CORROSION BYPRODUCT IS STILL HAPPENING. HOW DO WE
20 KNOW THAT? RAMESH KAR TOLD US. HE REVIEWED EXEMPLARS,
21 PRE-REDESIGN/POST-REDESIGN. WHICH JUST MEANS WHAT?
22 PRE-RECALL/POST-RECALL, OKAY? AND HIS EXEMPLARS FOUND
23 THE BYPRODUCT HERE. STILL, AFTER THE RECALL, ALL THEY
24 DID WAS CHANGE THE CHIMNEY, THE ONE OPPORTUNITY RIDERS
25 HAD TO SAY SOMETHING'S WRONG WITH THIS BRAKE BEFORE WE
26 HAVE A SUDDEN UNEXPECTED FAILURE WHILE RIDING, OKAY?

1 THAT'S 115.

2 115B IS THIS SAME DOCUMENT. 115B IS THIS SAME
3 DOCUMENT. IT WAS MODIFIED BETWEEN THIS ONE AND THAT ONE
4 BY ONE DAY. THEY MADE SOME CHANGES. WHAT I WANT YOU TO
5 PAY ATTENTION TO IS RIGHT HERE AT THE TOP. WHOSE NAME
6 IS ON IT? O. SUZUKI. SAME GUY WHO SIGNED THAT OTHER
7 DOCUMENT IN APRIL. AND THIS IS OCTOBER 11TH, 2013, THE
8 DAY BEFORE THEY ANNOUNCED THE RECALL. OKAY? WHAT WERE
9 THEY SAYING WHEN THEY THOUGHT NOBODY WAS LOOKING?

10 OKAY. EXHIBIT 116, THIS ONE JUST TALKS ABOUT
11 HOW BERT'S MEGA MALL IS GOING TO BE AFFECTED. AND I
12 PRESENT THIS TO YOU BECAUSE OF THE CONNECTION BETWEEN
13 JOEY AND BERT'S MEGA MALL. BERT'S MEGA MALL HAS 2 TO
14 3,000 DEFECTIVE. OF ALL THE DEALERS THAT THEY DEAL WITH
15 IN THE UNITED STATES, THEY REFERENCE BERT'S MEGA MALL
16 BECAUSE IT'S ONE OF THEIR LARGEST, WHICH IS WHY THEY
17 WENT TO BERT'S MEGA MALL TO START SQUEEZING BRAKES,
18 WHICH IS WHY JOEY WENT TO BERT'S MEGA MALL TO BUY A
19 BIKE. THEY KNEW BERT'S MEGA MALL WOULD BE WHERE PEOPLE
20 WOULD GO. THEY KNEW BERT'S MEGA MALL WOULD BE SEVERELY
21 AFFECTED BY THIS RECALL. JOEY HAD NO IDEA.

22 EXHIBIT 125. THIS IS THE RECALL ITSELF.
23 OCTOBER 18 -- I'M SORRY, THIS IS THE NOTIFICATION TO
24 NHTSA. SO THEY RECALL THE -- THE PART ON OCTOBER 11TH,
25 AND THEN FIVE DAYS LATER OR SO THEY NOTIFY NHTSA PER
26 WHAT THEY THINK IS PER THEIR REQUIREMENT. AND WHAT DOES

1 IT SAY? MOTORCYCLES THAT ARE RECALLED, NOT FRONT BRAKE
2 MASTER CYLINDERS. THE MOTORCYCLE IS RECALLED. THE
3 FRONT BRAKE MASTER CYLINDER -- CYLINDER IS A COMPONENT
4 OF THE RE- -- OF THE PART.

5 SUZUKI IS RESPONSIBLE FOR THE ENTIRE BIKE.
6 THEY CAN'T AVOID RESPONSIBILITY BY SAYING WE DIDN'T MAKE
7 THE CYLINDER. THAT'S NISSIN. NO, NO, NO, NO. THE
8 RECALL AFFECTS VEHICLES, GSX-R MOTORCYCLES, OKAY?

9 AND WHAT DOES IT SAY? IT SAYS MORE OR LESS
10 WHAT 115 SAID, EXHIBIT 115. "THE BRAKE PISTON INSIDE
11 THE FRONT BRAKE MASTER CYLINDER MAY NOT HAVE UNIFORM
12 SURFACE TREATMENT" -- MANUFACTURING DEFECT RIGHT
13 THERE -- "MAY NOT HAVE UNIFORM SURFACE TREATMENT. THE
14 COMBINATION OF CONDITIONS LEADS TO CORROSION OF THE
15 BRAKE PISTON. CORROSION GENERATES GAS WHICH MAY NOT BE
16 ADEQUATELY PURGED FROM THE MASTER CYLINDER DUE TO SIDE
17 POSITION LOCATION OF RESERVOIR PART." DESIGN DEFECT?
18 OKAY. RIGHT HERE, IT ANNOUNCES BOTH OF THEM. THERE CAN
19 BE NO MISTAKE. "GAS REMAINING CAN AFFECT BRAKING POWER
20 BY REDUCING FLUID PRESSURE. SPONGY FEEL, STOPPING
21 DISTANCES MAY BE EXTENDED, INCREASING RISK OF CRASH."

22 EXHIBIT 128. THIS IS THAT E-MAIL BETWEEN JIM
23 KIRKLAND AND BRYAN MALYSZEK ON NOVEMBER 11TH, A MONTH
24 AFTER THE RECALL WAS ANNOUNCED, AND BRIAN MALYSZEK --
25 THIS IS AN AMAZING QUOTE TO ME. I'M GOING TO READ IT
26 SORT OF QUICKLY AND THEN I'LL COME BACK AND POINT OUT

1 SOMETHING THAT JUMPED OUT TO ME THE OTHER DAY.

2 "OUR AIQ MIGHT HAVE REGAINED SOME OF ITS OLD
3 STRENGTH WARDING OFF FRAUDULENT CLAIMS. AS OF
4 OCTOBER 22ND, WE SENT OUT 15 AIQS FOR ALLEGED FRONT
5 BRAKE MASTER CYLINDER INCIDENTS, AND TO DATE, WE HAVEN'T
6 RECEIVED A SINGLE ONE BACK."

7 OKAY? THAT SOUNDS TO ME THAT HE DOESN'T
8 REALLY WANT THEM BACK, ESPECIALLY SINCE HIS BOSS
9 RESPONDS, THAT'S EXCELLENT, KEEP THAT UP, MY FRIEND.
10 REMEMBER, THIS IS A GUY WHEN THE AIQS -- THEY REQUIRED
11 THEM TO BE NOTARIZED SO THEY WOULD REDUCE THE FRAUDULENT
12 CLAIMS. AND THEY ACTUALLY SAID IN THOSE AIQS, IF YOU'LL
13 REMEMBER -- IT WAS EXHIBIT 206 YOU CAN GO LOOK AT -- THE
14 AIQ SAYS, IF YOU DEFRAUD US, WE WILL PURSUE YOU TO THE
15 GREATEST TO THE LAW. PENALTIES WILL BE ASSESSED OR
16 WE'LL PURSUE THE MAXIMUM PENALTIES WE CAN. OKAY?

17 BUT WHAT GOT ME ON THIS STATEMENT HERE,
18 "REGAINED SOME OF ITS OLD STRENGTH WARDING OFF
19 FRAUDULENT CLAIMS," THIS IS NOT A ONE-TIME IN NOVEMBER
20 2013. THIS IS A PATTERN OF CONDUCT BY SUZUKI TO AVOID
21 PEOPLE MAKING CLAIMS THAT THEN SUZUKI MAY HAVE TO PAY
22 OUT ON, OKAY? REGAINED OLD STRENGTH? THIS IS
23 EXHIBIT 128.

24 ALL RIGHT. OKAY. WE'RE DONE WITH THE
25 EXHIBITS FOR NOW. HOPEFULLY I MOVE A LITTLE FASTER.

26 CACI 430, SUBSTANTIAL FACTOR, OKAY?

1 SUBSTANTIAL FACTOR. I HAVE TO PROVE MY ELEMENTS THAT --
2 WELL, LET'S JUST READ IT.

3 "A SUBSTANTIAL FACTOR IN CAUSING HARM IS A
4 FACTOR THAT A REASONABLE PERSON WOULD CONSIDER TO HAVE
5 CONTRIBUTED TO THE HARM. IT MUST BE MORE THAN REMOTE OR
6 TRIVIAL FACTOR. IT DOES NOT HAVE TO BE THE ONLY CAUSE."

7 SO WHEN PEOPLE HEAR THE WORD "SUBSTANTIAL" --
8 I DON'T KNOW IF YOU REMEMBER DURING VOIR DIRE, JURY
9 SELECTION AT THE BEGINNING, WHERE THE WOMAN SAID WORDS
10 MATTER. REMEMBER WHEN SHE SAID THAT? WORDS MATTER.
11 AND SHE THOUGHT I WAS TRICKING HER. WORDS DO MATTER,
12 BUT THE LAW FOR SUBSTANTIAL FACTOR SAYS THAT A PERSON --
13 A REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED
14 TO THE HARM, OKAY? SO SUBSTANTIAL IN THIS CASE MEANS
15 CONTRIBUTION, CONTRIBUTED, NOT THIS BIG NUMBER OF LIKE
16 90 PERCENT CAUSED IT. IT'S 4- -- CACI 430. THE
17 INSTRUCTION IS 430, IF YOU WANT TO SEE IT. DON'T TAKE
18 MY WORD FOR IT. GO READ IT YOURSELF. IT SAYS TO HAVE
19 CONTRIBUTED, OKAY?

20 SO WHEN I ASKED THE PEOPLE ON THE -- ON THE
21 STAND, DO YOU THINK THAT CAUSED OR CONTRIBUTED OR
22 CONTRIBUTED OR WHATEVER, WAS IT A REMOTE OR TRIVIAL
23 FACTOR? NO. THAT'S WHY. I WAS DOING THAT HERE FOR
24 THIS REASON.

25 AND SUZUKI REPORTS A SAFETY-RELATED DEFECT BY
26 JUNE OR BY MID-2012. JOEY DOESN'T PURCHASE THAT BIKE

1 WITH A DEFECTIVE PART AND HE STOPS IN TIME TO AVOID THE
2 COLLISION. OKAY? THIS BRAKE DEFECT CAUSED OR
3 CONTRIBUTED TO HIS INJURY.

4 CACI 431 TALKS ABOUT MULTIPLE CAUSES. AND YOU
5 HEARD THAT THE JUDGE READ PART OF THAT WHICH SAID A
6 PERSON'S NEGLIGENCE MAY COMBINE WITH ANOTHER TO CAUSE
7 HARM. SUZUKI CANNOT AVOID RESPONSIBILITY JUST BECAUSE
8 SOME OTHER PERSON WAS ALSO RESPONSIBLE. IN THIS CASE,
9 THEY'RE GOING TO POINT AT CONNIE CASTELLOW, THE SUV
10 DRIVER. AND WHERE I THINK THAT GOES WRONG IS THAT
11 EVERYBODY AGREED JOEY COULD'VE STOPPED HAD HE APPLIED
12 THE BRAKES APPROPRIATELY, WHICH THEY'RE NOT BLAMING HIM,
13 AND THAT THE BRAKES OPERATED CORRECTLY. SO I WILL
14 ACKNOWLEDGE THAT SHE MIGHT'VE CAUSED THE EXIGENT
15 CIRCUMSTANCE, BUT SHE DIDN'T CAUSE THE COLLISION, OKAY?
16 SO WHEN THEY COME IN HERE AND TRY TO SAY, WELL, LET'S
17 BLAME CONNIE CASTELLOW, SHE'S THE ONE -- THE CAUSE OF
18 THIS, SUZUKI DOESN'T GET A FREE PASS ON THAT, OKAY?
19 MULTIPLE CAUSES, CACI 431.

20 ULTIMATELY, JUST ASK THE QUESTION: DID JOEY'S
21 BRAKE OPERATE AS HE EXPECTED IT TO DURING THE CRASH?
22 THAT'S THE FIRST QUESTION YOU SHOULD BE THINKING ABOUT
23 WHEN WE GET THERE. AND WOULD IT HAVE HAPPENED IF SUZUKI
24 HAD REVEALED WHAT THEY KNEW WHEN THEY KNEW THE -- WHEN
25 THEY SHOULD HAVE REVEALED IT?

26 STRICT LIABILITY, MANUFACTURING DEFECT. I

1 TALKED ABOUT -- WE SAW 115, AND I SAID THE MANUFACTURING
2 DEFECT IS THE -- THE COATING, INSUFFICIENT SURFACE
3 COATING. 1201, CACI 1201 SAYS I HAVE TO CONFIRM THAT
4 SUZUKI MANUFACTURED THE MOTORCYCLE. NO DOUBT THEY DID.

5 IT HAD A DEFECT WHEN IT LEFT THE SUZUKI'S
6 FACTORY. IT HAD A DESIGN DEFECT AT MINIMUM. THE
7 MANUFACTURING DEFECT IS QUESTIONABLE UNLESS THERE'S
8 EVIDENCE OF CORROSION OR SOMEBODY ELSE SQUEEZING A BRAKE
9 AND IT DOESN'T WORK, WHICH WE HAVE IN COLIN CAMPBELL.
10 TWO IS MET. JOEY WAS HARMED CLEARLY AND THE DEFECT WAS
11 A SUBSTANTIAL FACTOR IN CAUSING THE CRASH. SUBSTANTIAL
12 MEANS CONTRIBUTED. DID THE DEFECT CONTRIBUTE TO THE
13 CRASH? OF COURSE IT DID. MANUFACTURING DEFECT.

14 DESIGN DEFECT, CONSUMER EXPECTATIONS TEST.
15 DID JOEY'S MOTORCY- -- THIS IS 1203. DID JOEY'S
16 MOTORCYCLE PERFORM AS AN ORDINARY CONSUMER WOULD HAVE
17 EXPECTED IT TO. YOU HEARD TESTIMONY FROM JOEY THAT IT
18 DID NOT. THAT IT DID NOT. AND HE WAS HARMED, OF
19 COURSE. AND DID THE FAILURE TO PERFORM CONTRIBUTE? WAS
20 IT A SUBSTANTIAL FACTOR? DID IT CONTRIBUTE TO HIS
21 CRASH? OF COURSE IT DID. MORE LIKELY TRUE THAN NOT
22 TRUE.

23 FAILURE TO WARN, CACI 1205. THE MOTORCYCLE
24 HAD POTENTIAL RISKS. WORDS MATTER. DID THE MICO --
25 MOTORCYCLE HAVE POTENTIAL RISKS THAT WERE KNOWABLE TO
26 SUZUKI WHEN MANUFACTURED? POTENTIAL RISKS. GALVANIC

1 CORROSION, YOU HEARD THAT THAT WAS A KNOWN ISSUE FOR
2 YEARS, AND ALL OF THE NOTICE THEY HAD GOT TO DATE
3 CLEARLY INDICATED THEY HAD POTENTIAL RISKS OF THIS. AND
4 THOSE POTENTIAL RISKS PRESENTED A SUBSTANTIAL DANGER --
5 DANGER BY A RIDER WHEN USED OR MISUSED IN A REASON- --
6 OR IN AN INTENDED OR FORESEEABLE WAY. NOBODY SAID JOEY
7 MISUSED HIS BIKE AT ALL. THAT DOESN'T EVEN APPLY.
8 WOULD CONSUMERS HAVE RECOGNIZED THE RISK? CLEARLY NOT,
9 NOT WITHOUT BEING TOLD. AND SUZUKI FAILED TO WARN OF
10 THE RISK? OF COURSE THEY DID. WE'VE ALREADY SEEN THE
11 DOCUMENTATION. AND DID THE LACK OF WARNING CONTRIBUTE
12 TO JOEY'S HARM? MORE LIKELY TRUE THAN NOT TRUE THAT IT
13 DID.

14 STEVE MUTHIG SAW TRANSFER NINE YEARS. HE
15 REPORTED THOSE TRANSFER VIA EXHIBIT 28, THAT
16 SPREADSHEET, AND HE'S STILL SEEING COMPLAINTS AT LEAST
17 FIVE YEARS LATER WHEN I TOOK HIS DEPOSITION, OKAY?
18 STILL SEEING COMPLAINTS TO THAT DAY.

19 KUDO, SAME THING. MUTHIG BEGGED FOR THE
20 RECALL, DIDN'T GET IT. THEY WERE SEEING COMPLAINTS FROM
21 RIDERS. THEY DISREGARDED THE PLEAS. I -- I DON'T KNOW
22 IF YOU REMEMBER WHEN I ASKED MR. KUDO, THESE PEOPLE ARE
23 SAYING PLEASE, BEGGING YOU, PLEASE CONDUCT A RECALL,
24 TAKE THESE OFF OUR STREETS, HE SAID, YES, BUT WE DIDN'T
25 SEE THAT AS I SAFETY ISSUE.

26 THE SPRINGTIME SERVICE PROMOTION, THE BUSY

1 SALE SEASON, THE KUDO MEMO, THEY BLAME RIDERS. WILL
2 THEY DO IT AGAIN? OF COURSE. THEY KEEP DOING IT.
3 EVERYDAY THEY KEEP DOING IT.

4 THERE'S ALSO AN INSTRUCTION HERE, NEGLIGENT
5 RECALL RETROFIT. SO EVEN IF YOU DON'T BELIEVE -- EVEN
6 IF YOU DON'T BELIEVE THERE WAS A MANUFACTURING DEFECT OR
7 A DESIGN DEFECT, WHICH YOU ALL HAVE YOUR OWN MINDS, I
8 JUST DON'T UNDERSTAND HOW YOU COULD NOT BELIEVE THAT
9 WITH EXHIBIT 115. BUT EVEN IF YOU DECIDE THAT YOU DON'T
10 BELIEVE THAT, WE HAVE A CAUSE OF ACTION FOR NEGLIGENT
11 RECALL RETROFIT, AND THAT REQUIRES SUZ- -- DID SUZUKI
12 BECOME AWARE OF THE DEFECT AFTER THE GSX-R WAS SOLD?
13 LET'S ASSUME THE ANSWER'S YES. OKAY? SUZUKI FAILED TO
14 RETROFIT OR WARN OF THE DANGER? ANSWER OF COURSE IS
15 YES. WE ALREADY KNOW THAT. A REASONABLE MANUFACTURER
16 WOULD'VE RECALLED A RETROFITTED? THAT'S FOR YOU TO
17 DECIDE.

18 I WOULD ARGUE HOW COULD -- HOW -- WAS THIS
19 REASONABLE BEHAVIOR TO HIDE THIS FROM THE PUBLIC? NO
20 CHANCE. WAS JOEY HARMED? YES. AND WAS THERE FAILURE
21 TO RECALL RETROFIT? DID IT CONTRIBUTE TO HIS HARM? WAS
22 IT A SUBSTANTIAL FACTOR? OF COURSE IT WAS. SO EVEN
23 UNDER A NEGLIGENCE STANDARD, MORE LIKELY TRUE THAN NOT
24 TRUE. MORE LIKELY TRUE THAN NOT TRUE. JOEY GETS A
25 BREAK.

26 I'M TRYING NOT TO THE COVER STUFF I'VE ALREADY

1 COVERED.

2 ALL RIGHT. THE EXPERTS WE PRESENTED, THERE
3 WERE EIGHT OF THEM. DID A SINGLE ONE EVER GET
4 IMPEACHED? DID HE HAVE HIS TESTIMONY READ TO HIM AND
5 GIVE A DIFFERENT ANSWER THAN WHAT WAS READ TO HIM BY
6 MR. TABAK ESPECIALLY? RIGHT? I MEAN, ONE OF MY
7 FAVORITE LINES WAS FROM DR. BINDER WHEN THEY -- WHEN
8 MR. TABAK TRIED TO IMPEACH HIM AND DR. BINDER SAID, YES,
9 I AGREE WITH MYSELF. THAT WAS A VERY GOOD OPINION.
10 THAT WAS A VERY GOOD STATEMENT I GAVE. IF YOU REMEMBER
11 THAT. HE IMPEACHED HIM WITH SOMETHING HE AGREED ABOUT
12 ALREADY. NOT A SINGLE ONE OF MY EXPERTS EVER SAID
13 SOMETHING DIFFERENT ON THE STAND THAN THEY HAD SAID
14 PREVIOUSLY. CAN THEY SAY THE SAME THING ABOUT THEIR
15 EXPERTS? NO.

16 SO HERE'S WHAT I WANT TO SUBMIT TO YOU.
17 EVERYTHING I DID HERE IS INTENTIONAL, OKAY? WE'RE --
18 WE -- I -- I MEANT TO DO IT. LET ME JUST SAY IT THAT
19 WAY. I MEANT TO DO IT. DOESN'T ALWAYS WORK OUT
20 PERFECT. WHEN I WALKED TO THE BACK OF THE ROOM, I MEANT
21 TO DO IT. WHEN I'M STANDING HERE IN FRONT OF YOU, I
22 MEAN TO DO IT. GENERALLY, I LIKE TO MOVE MORE. WE
23 DON'T HAVE SPACE HERE. BUT IN GENERAL, I LIKE TO DRAW,
24 BUT I MEAN TO DO THESE THINGS. IT'S INTENTIONAL. I
25 MEAN TO PUT THE WITNESSES ON THE STAND THAT I PUT UP
26 BECAUSE I NEED YOU TO GET THE INFORMATION THAT YOU NEED.

1 OKAY? I MEANT TO DO IT.

2 AND SO DID THEY. THEY MEANT TO PUT UP THOSE
3 TWO WITNESSES THAT YOU SAW, HOOVER AND BREEN, THEIR
4 DREAM TEAM. OKAY? IT'S THEIR DREAM TEAM. HOW MANY
5 TIMES DID I HAVE TO READ FROM A TRANSCRIPT WHERE THEY
6 SAID SOMETHING DIFFERENT TODAY OR THE DAY THEY TESTIFIED
7 THAN WHAT THEY SAID TO ME PREVIOUSLY? MANY TIMES. I
8 WAS HANDING MY COMPUTER OVER TO MR. RIGGS: DO YOU WANT
9 TO READ IT FIRST? IT'S THE SAME THING. WHEN YOU TELL
10 THE TRUTH, YOUR STORY NEVER CHANGES. OKAY? WHEN YOU
11 TELL THE TRUTH, YOUR STORY NEVER CHANGES.

12 WHEN YOU'RE CAUGHT IN LIES -- THAT'S WHY WE
13 TAKE DEPOSITIONS UNDER OATH, TO FIND OUT. WE DON'T LIKE
14 TRIAL BY SURPRISE. ONE PERSON WHO DOES NOT LIKE TRIAL
15 BY SURPRISE IS JUDGE SALTER AND MOST JUDGES. THEY HATE
16 IT. THEY HATE WHEN ATTORNEYS COME IN HERE AND LIKE,
17 WHAT? I DIDN'T KNOW THAT. THAT'S WHY WE DO ALL THE
18 WORKUP FIRST, OKAY? IT'S WHY IT'S CALLED IMPEACHMENT.
19 AND IF YOU'RE GOING TO SAY SOMETHING DIFFERENT ON THAT
20 STAND, YOU'RE GOING TO GET CALLED OUT ON IT. AND YOU
21 FOLKS ARE SUPPOSED TO HOLD THEM ACCOUNTABLE FOR THAT,
22 OKAY? GIVE A DIFFERENT TESTIMONY ON THE STAND FROM WHAT
23 YOU'VE GAVE PREVIOUSLY, THAT'S TRIAL BY SURPRISE.
24 THAT'S WRONG. THAT'S LYING. THAT'S NOT BEING TRUTHFUL,
25 BECAUSE WHEN YOU TELL THE TRUTH, THE STORY NEVER
26 CHANGES.

1 BRIEFLY, REMEMBER, WE WENT THROUGH WHAT YATES
2 TALKS ABOUT ABOUT ACCIDENT RECONSTRUCTION. I DON'T NEED
3 TO GO THROUGH THE RECOLLECTION. YOU GUYS ARE AWARE OF
4 THAT. BUT ULTIMATELY, YATES TELL US IF THAT FRONT BRAKE
5 WORKED, LIKE HOOVER WILL HAVE YOU BELIEVE, THAT BIKE
6 GOES DOWN. IT DOESN'T LEAVE A DARKER SKID MARK. ONE
7 SKID MARK HAPPENED HERE, THE REAR TIRE SKID MARK IN
8 19 FEET, AND EVERYTHING ELSE THEY PRETTY MUCH AGREE ON.
9 THEY DISAGREE ON THE SKID MARK, THE FRONT OF IT.

10 ULTIMATELY, THE PHYSICIAN EXPERTS, WHAT DID
11 DR. WAGNER AND HATCH SAY? IT'S A BAD INJURY. HE'S
12 GOING TO REQUIRE MULTIPLE FUTURE SURGERIES; RIGHT? TWO
13 FOR HIS KNEE -- AT LEAST TWO FOR HIS KNEE, BECAUSE
14 KNEE -- KNEE REPLACEMENTS AREN'T MEANT TO LAST FOREVER,
15 ESPECIALLY NOT FOR YOUNG PERSONS. OKAY? AND WHAT
16 DR. HATCH TOLD US -- IF I CAN GIVE YOU THESE PHOTOS.
17 WHAT DR. HATCH TOLD US WAS HE NEEDS TO WAIT AS LONG AS
18 POSSIBLE, BECAUSE THE SOONER HE GETS A KNEE REPLACEMENT,
19 THE MORE LIKELY HE IS GOING TO HAVE TO GET ANOTHER ONE,
20 AND IF HE GETS IT TOO YOUNG, HE'S GOING TO HAVE TO GET
21 ANOTHER ONE. WE DON'T WANT THAT. WE WANT ONE, MAYBE
22 TWO.

23 SO THE LONGER JOEY GOES BEFORE HE -- THE
24 LONGER HE WAITS BEFORE -- IT'S KIND OF LIKE TIRES ON A
25 CAR, ONLY -- NOT TIRES ON A CAR. IT'S A BAD EXAMPLE, I
26 GUESS. HE'S JUST TRYING TO BUY TIME SO HE DOESN'T HAVE

1 TO INCREASE THE RISK OF GETTING MULTIPLE KNEE SURGERIES
2 HERE OR KNEE PLACEMENTS.

3 NOTABLY, DID SUZUKI PUT ANYBODY UP ON THE
4 STAND THAT HAD AN M.D. BEHIND THEIR NAME? NOT ONE.
5 UNCONTESTED TESTIMONY BY SUZUKI. UNCONTESTED. OKAY?
6 THEY DIDN'T CHALLENGE -- THE ONLY PERSON WHO CHALLENGED
7 ANYTHING THAT HAD TO DO WITH MEDICINE WAS MR. TABAK.
8 OKAY? AND I -- I ASKED THE QUESTION -- I PROBABLY
9 SHOULDN'T HAVE -- DOES MR. TA- -- DO YOU KNOW IF
10 MR. TABAK HAS AN M.D.? THAT'S POKING. THAT WAS CHEEKY
11 OF ME. I SHOULDN'T HAVE DONE IT. OKAY. I ADMIT IT. I
12 APOLOGIZE TO YOU FOLKS, AND SHOULDN'T HAVE DONE THAT TO
13 MR. TABAK. I SHOULDN'T HAVE.

14 BUT IT'S TRUE HE DOESN'T HAVE AN M.D., SO TO
15 COME UP AND QUESTION A DOCTOR WHEN YOU DON'T EVEN HAVE
16 AN EXPERT TO SAY OTHERWISE, YOU CAN'T EVEN PUT TESTIMONY
17 UP -- REMEMBER, WHAT WE SAY IS NOT EVIDENCE. ONLY WHAT
18 THEY SAY IS EVIDENCE. OKAY? SO MR. TABAK'S QUESTIONS,
19 NOT EVIDENCE. ONLY THEIRS IS EVIDENCE. THEY DON'T HAVE
20 ANYBODY TO REFUTE WHAT'S SAID ON THE STAND FROM THE
21 DOCTORS, THE PHYSICIANS IN THIS CASE.

22 REGARDING HOOVER, LET'S TALK ABOUT WHAT HE
23 SAID. HOOVER HAD BEEN RETAINED 5,000 TIMES OVER HIS
24 CAREER. THAT'S ONCE EVERY TWO AND A HALF DAYS, I THINK
25 IS WHAT IT COMES TO. 26 TIMES FOR SUZUKI FRONT BRAKE
26 MASTER CYLINDER INVESTIGATIONS, HE CALLED IT. NEVER

1 FOUND A PRODUCT DEFECT WAS RESPONSIBLE FOR INJURING THE
2 PLAINTIFF. AND IF IT DID, IF THE PRODUCT DID INJURE THE
3 PLAINTIFF, IT WAS BECAUSE OF FAULTY MAINTENANCE.

4 SUZUKI'S PAID HIM OVER \$110,000 ON THIS CASE
5 ALONE AND SOMEWHERE 1 TO \$2 MILLION DEFENDING IT.
6 REMEMBER -- I THINK IT'S EXHIBIT 296. LET'S SEE IF
7 THAT'S IT. I THINK THAT'S IT. REMEMBER HIS HANDWRITTEN
8 NOTES FROM THE INSPECTIONS? REMEMBER WHAT THEY LACKED?
9 YEAH, HERE IT IS. OKAY, THESE ARE HIS HANDWRITTEN NOTES
10 OR THE NOTES THAT HE WAS A PART OF THE INSTRUCTION. AND
11 AT THE BOTTOM, NO REMARKS FOR THE LEFT TIRE, BUT ARE
12 REMARKS FOR ABRASIONS ON THE REAR TIRE. AND LET ME BACK
13 THAT OUT FOR YOU SO YOU KNOW THAT I'M NOT
14 MISREPRESENTING, OKAY. THE FRONT TIRE IS THIS ONE ON
15 THE LEFT WITH NO REMARKS. THE REAR TIRE IS HERE.

16 SO WHAT DOES HE WRITE ON THE DAY THAT HE GOES
17 TO INSPECT THIS BIKE WHEN HE KNOWS WHAT HE'S BEING HIRED
18 FOR TO SAY HERE EVERY TIME, HEY, HOOVER, THIS IS RANDY.
19 HEY, RANDY, WHAT'S UP? GOT ANOTHER ONE. I WANT YOU TO
20 INVESTIGATE IT. GO CHECK IT OUT. OKAY, WHERE IS IT?
21 IT'S IN HUNTINGTON BEACH. SAME DEAL? SAME DEAL. OKAY?
22 YOU KNOW WHAT TO LOOK FOR.

23 WHAT'S HE LOOKING FOR? ABRASIONS ON A FRONT
24 TIRE BECAUSE HE'S GOT TO PROVE THAT THING SKIDDED.
25 DIDN'T SEE ANY. DIDN'T NOTE THAT HE SAW IT, NOT UNTIL
26 HE WENT HOME AND TOOK SOME PHOTOS -- OR TOOK SOME PHOTOS

1 AND THEN WENT HOME AND PRESENTED YOU FOLKS WITH SOME
2 PHOTOS. YOU CAN DECIDE FOR YOURSELF IF YOU THINK THOSE
3 ARE ABRASIONS.

4 AND LET'S STOP FOR A SECOND ON THAT. HOW OLD
5 WAS THAT TIRE? 7,000 MILES OLD IN USAGE AND FROM 2008
6 WHEN THE MOTORCYCLE WAS FIRST BOUGHT. OKAY? THE REAR
7 TIRE, WE KNOW MR. HOOVER'S PROBABLY RIGHT ON THAT. IT'S
8 500 MILES, BRAND-NEW TIRE PUT ON BY BERT'S MEGA MALL.
9 BUT THE FRONT TIRE IS -- HOW IS HE GOING TO COME IN HERE
10 AND TELL YOU WHAT ANY ABRASION WAS CAUSED FROM?
11 FURTHERMORE, HE DIDN'T EVEN NOTE IT IN HIS REPORT.

12 I MEANT TO DO IT. SO DID THEY. OKAY? THEY
13 MEANT TO PUT HIM UP HERE IN FRONT OF YOU. THEY CHOSE
14 THAT. HOLD THEM ACCOUNTABLE FOR IT.

15 THE OSIS, THE VIDEOS YOU SAW WERE OFFERED FOR
16 NOTICE TO SUZUKI. WHAT DID THEY PROVIDE NOTICE TO
17 SUZUKI OF? NONE OF THEM KNEW EACH OTHER, AT LEAST NOT
18 THAT THEY INDICATED IN THEIR VIDEOS; RIGHT? THEY
19 PROVIDED NOTICE OF THE SAME STORY. THEY ALL HAVE THE
20 SAME STORY. DID THEY COORDINATE IT? RIGHT? SUZUKI GOT
21 THE SAME NOTICE FROM THESE PEOPLE ABOUT WHAT WAS GOING
22 ON THROUGHOUT THEIR INVESTIGATION. SUZUKI DENIED THEIR
23 CLAIMS, ALWAYS BLAME THE RIDER.

24 WE ESTABLISHED THROUGH CLEAR AND CONVINCING
25 EVIDENCE THAT THE RECALL CONDITION HAS MANY SYMPTOMS,
26 OKAY, ONE OF WHICH IS SPONGINESS THAT ACCUMULATES OVER

1 TIME. THAT'S WHAT THEY'LL DEFINE THE RECALL CONDITION
2 AS. THAT'S TRUE, THAT'S A SYMPTOM, BUT ONE OF WHICH
3 ALSO IS A SUDDEN UNEXPECTED FAILURE WHILE RIDING.

4 IS IT A HUNDRED PERCENT FAILURE? DOES IT
5 MATTER TO THE RIDER? WHEN THE RIDER NEEDS TO GET ON HIS
6 BRAKE AND IT IS NOT THERE, DOES IT MATTER IF IT'S
7 75 PERCENT FAILURE, 25 PERCENT FAILURE? IF IT'S NOT
8 WHAT YOU'RE EXPECTING RIGHT AWAY, DOES IT MATTER.

9 JOEY GOT UP HERE AND SAID, I COULDN'T TELL YOU
10 IF IT WORKED 75 PERCENT OR 25 PERCENT OR WHATEVER, 50
11 PERCENT. IT JUST DIDN'T WORK AS I -- I EXPECTED IT TO.

12 CIRCUMSTANTIAL EVIDENCE, THERE'S A JURY
13 INSTRUCTION ON THAT, OKAY? AND WHAT YOU NEED TO
14 UNDERSTAND ABOUT CIRCUMSTANTIAL EVIDENCE IS IT SAYS
15 DIRECT EVIDENCE CAN PROVE A FACT BY ITSELF. IF A
16 WITNESS TESTIFIES THEY SAW A JET PLAIN FLYING ACROSS THE
17 SKY, THAT TESTIMONY IS DIRECT EVIDENCE. I SEE THE
18 PLANE. I SAW THE PLANE. BUT IF THE EV- -- IF THE -- IF
19 THE WITNESS TESTIFIES THEY ONLY SAW THE CONTRAIL, THAT'S
20 EVIDENCE THAT A PLANE FLEW ACROSS THE SKY. THAT'S
21 CIRCUMSTANTIAL EVIDENCE. AND UNDER THE LAW IT MAKES NO
22 DIFFERENCE. IN EITHER INSTANCE, THE WITNESS' TESTIMONY
23 IS EVIDENCE THAT A JET PLANE FLEW ACROSS THE SKY, OKAY?

24 WHY IS IT IMPORTANT IN THIS CASE? BECAUSE WE
25 DON'T HAVE A BRAKE TO GIVE YOU. I DON'T HAVE THAT
26 CYLINDER TO GIVE YOU. ALL CAN I GIVE YOU IS JOEY'S

1 TESTIMONY OF WHAT HE FELT AND THEN WHAT HE DESCRIBED AND
2 WHAT SUZUKI KNEW ABOUT IN REGARDS TO THIS BRAKE, OKAY?

3 CIRCUMSTANTIAL EVIDENCE BY ONE WITNESS IS
4 ENOUGH, ONE WITNESS. THE ONLY PERSON THAT WAS ON THAT
5 SEAT THAT DAY WAS MR. SOULLIERE. SO YOU'RE JUDGING HIS
6 CREDIBILITY, BOTTOM LINE. IS HE LYING? IT'S UP TO YOU
7 TO DECIDE. I SUBMIT TO YOU HE'S NOT. HE HAD THIS STORY
8 HE TOLD HIS MOM, THE BRAKE, I COULDN'T STOP.

9 THEN HE DOESN'T BELIEVE IT HIMSELF. DOESN'T
10 BELIEVE IT. WHERE DID YOU HEAR THAT? WHO ELSE SAID
11 THAT? THE OSI SAID THAT TO -- GAVE NOTICE TO SUZUKI
12 THAT THEY DIDN'T BELIEVE IT THEMSELVES. MR. KNEPPER,
13 THE GUY WHO'S WEARING THE -- LOOKED LIKE A RAIDERS
14 SHIRT, BUT IT WASN'T OAKLAND RAIDERS. IT WAS SOMETHING
15 ELSE. SHORT, DARK HAIR. HE SAID, I THOUGHT IT WAS MY
16 FAULT. WHEN HE ENDED UP IN THE BACK OF THE TRUCK, HE
17 SAID, I THOUGHT IT WAS MY FAULT. I THOUGHT I DID
18 SOMETHING WRONG. THEN IT HAPPENED AGAIN. THIS IS
19 NOTICE TO SUZUKI. AND THE NOTICE TO SUZUKI IS ALSO THE
20 RIDERS BLAME THEMSELVES FOR THIS.

21 YOU HEARD TESTIMONY FROM MR. HOOVER ABOUT
22 OVERAPPLICATION OF THE BRAKE. YET THEY DON'T BLAME JOEY
23 FOR NEGLIGENT RIDING; RIGHT? SO I SUBMIT TO YOU, THIS
24 WASN'T AN EXIGENT CIRCUMSTANCE, THAT A RIDER CANNOT BE
25 HELD TO FAULT FOR A NORMAL REACTION IN A SECOND AND A
26 HALF FOR WHAT JOEY DID WHEN AT FIRST HE REALIZES OR

1 BELIEVES HE CAN STOP AND THEN THE BIKE FAILS ON HIM FOR
2 AN OVERAPPLICATION OF BRAKES. HE'S MOVING AT 44 FEET A
3 SECOND, OKAY? AND AT 120 FEET, HE'S GOT PLENTY OF TIME
4 AND DISTANCE TO STOP. AT 60 FEET, HE'S RUN OUT OF TIME
5 AND DISTANCE TO STOP AND HE GETS ON THOSE BRAKES AS
6 QUICKLY AS POSSIBLE. NOTHING JOEY DID WAS WRONG THAT
7 DAY. THE EXPERTS ALL AGREE. SO THEN YOU HAVE TO JUDGE
8 THE CREDIBILITY OF SAYING, WELL, HE OVERAPPLIED THE
9 BRAKES. THAT SOUNDS LIKE YOU'RE BLAMING JOEY, BUT HE'S
10 NOT ON THE VERDICT FORM.

11 ALL RIGHT. I WANT TO TAKE YOU ON A JOURNEY.
12 THIS -- AND THIS IS SORT OF A MAKE-BELIEVE TRIP, OKAY.
13 IT'S THE MAN IN BLACK. AND I WANT YOU TO IMAGINE
14 MAY 28, 2013, TEN YEARS AGO, JOEY GOES AND HE WANTS TO
15 BUY A WHITE MOTORCYCLE AND HE GOES TO BERT'S MEGA MALL.
16 OKAY? AND HE GOES AND THE FIRST BIKE HE SEES IS A BLACK
17 ONE, AND HE KNOWS HE DOESN'T WANT A BLACK ONE. SO HE
18 WANTS TO GET ON THE WHITE ONE. THE WHITE ONE'S RIGHT
19 NEXT TO IT. IT'S A 600. IT'S EXACTLY WHAT HE'S LOOKING
20 FOR.

21 AND JOEY GETS ON THE BIKE AND EVERYTHING'S
22 LIKE -- THE WIND'S BLOWING, SLIGHT BREEZE, CLOUDS ARE
23 ROLLING. THERE'S A FREEWAY IN FRONT OF HIM AND THE CARS
24 ARE MOVING AT FREEWAY SPEEDS AND EVERYTHING'S FINE.
25 IT'S A GREAT DAY. IT'S MAY. AND HE GETS ON THIS BIKE
26 AND GRABS THE HANDLEBARS JUST TO GET A FEEL, AND THEN

1 TIME STOPS AS IF IN A DREAM. OKAY? THE CLOUDS STOPS
2 MOVING, THE WIND STOPS, CARS STOP MIDSTREAM. IT'S A
3 WEIRD DREAM AND A MAN IN BLACK SHOWS UP AND JOEY LOOKS
4 AND HE SAYS, OH, WHAT'S GOING ON?

5 AND THE GUY SAYS, YOU WANT TO GO FOR A RIDE?

6 JOEY'S ALWAYS UP FOR AN ADVENTURE. HE SAYS,
7 YEAH, WHERE WE GOING?

8 HE SAYS, I'M GOING TO TAKE YOU FOR A RIDE
9 YOU'LL NEVER FORGET.

10 HE SAYS, LET'S DO IT.

11 HE GETS ON HIS BIKE, THE MAN IN BLACK GETS ON
12 HIS BIKE AND THEY -- THEY GET -- THEY DON'T EVEN GET OUT
13 OF LIKE FIRST GEAR. THEY DRIVE OUT OF THE PARKING LOT
14 AND THEY DRIVE RIGHT INTO ANOTHER PARKING LOT. AND JOEY
15 THINKS, THIS IS THE WORSE RIDE I'VE EVER BEEN ON MY
16 LIFE. AND THAT OTHER PARKING LOT IS A PLACE 35 MILES
17 AWAY. OKAY? DREAM SEQUENCE HERE. SURPLUS REALITY.

18 JOEY RECOGNIZES WHERE HE IS, BUT IT'S NOT THE
19 SAME. SOMETHING'S DIFFERENT ABOUT IT. HE RECOGNIZES
20 HE'S IN SEAL BEACH NOW. HE'S AT ONE LUV SALON, BUT IT'S
21 NOT ONE LUV ANYMORE. AND JOEY ASKS THE MAN IN BLACK,
22 WHERE AM I?

23 HE'S LIKE, YOU'RE -- YOU'RE IN A DIFFERENT
24 SALON. IT'S CALLED GOOD FOLK NOW. BUT WE'RE IN THE
25 YEAR 2023.

26 SO HE'S LIKE, THIS IS -- WHAT'S HAPPENING?

1 HE'S LIKE, LET ME SHOW YOU SOMETHING. LET ME
2 SHOW YOU SOMETHING. COME ON INSIDE.

3 MAN IN BLACK TAKES HIM INSIDE AND JOEY OPENS
4 THE DOOR AND HE RECOGNIZES THE -- THE BONES OF THE
5 PLACE, BUT IT'S NOT THE SAME PLACE. HIS -- HIS ART ON
6 THE WALL ISN'T IS THERE ANYMORE, THE -- THE CANVAS
7 GRAFFITI ART. THE MUSIC THAT HE'S LISTENED TO ISN'T
8 PLAYING. THERE'S NOT THE BUSTLE OF ONE LUV. AND HE
9 GOES OVER TO HIS -- HIS NORMAL STATION AND HE LOOKS IN
10 THE MIRROR AND HE SEES HIS FACE IN THE MIRROR AND IT'S A
11 LITTLE BIT OLDER. HE LIKE, WHERE ARE WE?

12 HE'S LIKE, WE'RE IN 2023. MAN IN BLACK SAYS,
13 WE'RE IN 2023.

14 AND HE LOOKS DOWN AND THERE'S A PILE. THERE'S
15 A PILE OF \$2 MILLION IN FRONT OF HIM. 2 MILLION BUCKS.
16 AND JOEY'S LIKE, "WHAT IS THIS?"

17 AND THE MAN IN BLACK SAYS, THAT'S FOR YOU.
18 THAT'S FOR YOU.

19 AND JOEY SAYS, WHAT DID I -- WHAT DID I DO TO
20 DESERVE THIS?

21 AND THE MAN IN BLACK SAYS, NOTHING. YOU DID
22 ABSOLUTELY NOTHING TO DESERVE THIS.

23 HE'S LIKE, THEN WHY -- WHY ARE YOU OFFERING
24 THIS TO ME?

25 HE SAID, BECAUSE TEN YEARS AGO IN 2013, YOU'RE
26 GOING TO GET INTO AN ACCIDENT, A COLLISION. YOUR BRAKE

1 IS GOING TO FAIL ON THE BIKE AND YOU'RE GOING TO BREAK
2 YOUR LEG.

3 AND JOEY'S LIKE, 2 MILLION BUCKS FOR A BROKEN
4 LEG? THAT SEEMS RICH.

5 HE SAYS, NO, NO, NO. IT'S WORSE THAN THAT.
6 YOU'RE GOING TO HAVE A TITANIUM ROD IN YOUR LEG FROM HIP
7 TO KNEE.

8 AND JOEY'S LIKE, HMMM.

9 BUT IT'S WORSE THAN THAT. YOUR KNEECAP IS
10 GOING TO BE SHATTERED AND YOUR LEG IS NEVER GOING TO
11 EXTEND AGAIN THE SAME WAY. OKAY? THEN IT GETS WORSE
12 THAN THAT. YOUR LEFT ANKLE IS GOING TO BE MESSED UP AND
13 YOU'RE GOING TO HAVE HARDWARE IN THERE.

14 JOEY SAYS, WELL, I'LL STILL BE ABLE TO WORK;
15 RIGHT? I'M STILL GOING TO BE ABLE TO CUT HAIR.

16 HE SAID, NO, NOT LIKE YOU DO TODAY. NEVER
17 AGAIN. YOU'LL BE ABLE TO CUT FRIENDS' HAIR ONCE OR
18 TWICE A WEEK WHERE YOU'RE STAYING INSIDE OF YOUR GARAGE,
19 BUT YOU'LL NEVER BE HERE.

20 JOEY'S LIKE, BUT THIS IS MY COMMUNITY. THESE
21 ARE MY CLIENTS. THESE ARE MY FRIENDS. THIS IS WHAT
22 I -- THIS IS WHAT I WAS MEANT TO DO.

23 HE'S LIKE, NAH, YOU'RE NOT GOING TO DO THAT
24 ANYMORE.

25 HE'S LIKE, WELL, I'LL STILL HAVE FRIENDS;
26 RIGHT?

1 AND THE MAN IN BLACK SAYS, HUH-UH, NOT LIKE
2 YOU DO NOW, BECAUSE ALL THE STUFF YOU LIKE TO DO WITH
3 YOUR FRIENDS IS REALLY OUTDOOR ACTIVITY STUFF. SO
4 THEY'RE GOING TO LEAVE YOU AND DO STUFF WITHOUT YOU AND
5 THEY'RE NEVER GOING TO CALL YOU ANYMORE BECAUSE THEY
6 FEEL BAD. YOU'RE IN A WHEELCHAIR FOR THE NEXT FIVE
7 YEARS, AND THEY DON'T WANT TO CONTACT YOU BECAUSE THEY
8 FEEL BAD LIVING LIFE WITHOUT YOU.

9 HE'S LIKE, I THOUGHT I'M GOING TO GET TO STAY
10 LIVING IN THE PLACE WHERE I LIVE WITH RYAN ECKLES.

11 NO. YOU'RE GOING TO LIVE IN THE LIVING ROOM
12 AT YOUR MOM'S HOUSE FOR A WHILE AND YOUR 12-YEAR-OLD
13 SISTER IS GOING TO HANDLE YOUR ACTIVITIES OF CARE DAILY
14 AND YOUR MOM IS GOING TO HANDLE YOUR STUFF. THAT'S
15 GOING TO MAKE YOU ABSOLUTELY MORTIFIED.

16 AND HE'S GOING TO SAY, WELL, NO DEAL. NO
17 DEAL.

18 AND HE GOES TO LEAVE; RIGHT? LEAVES. HE GOES
19 TO LEAVE AND BEFORE HE GETS TO THE DOOR, THE MAN IN
20 BLACK SAYS, WAIT, WAIT, HOLD ON, THERE'S MORE. THAT WAS
21 THE FIRST DECADE.

22 JOEY LIKE, SO WHAT?

23 HE'S LIKE, NO, NO. YOU'RE GOING TO LIVE FOR
24 FOUR MORE DECADES INTO THE FUTURE.

25 SO HE PUTS THE SAME THING FOR EACH DECADE IN
26 FRONT OF HIM.

1 JOEY'S LIKE, WHAT THE HECK IS THIS FOR?
2 HE'S LIKE, WELL, THAT WAS THE FIRST DECADE.
3 ALL THAT PAIN THAT YOU HAVE -- THE FIRST FIVE YEARS,
4 YOU'RE GOING TO -- YOU'RE GOING TO THINK ABOUT ENDING
5 YOUR LIFE. OKAY? NOT JUST ONCE, BUT IT'S GOING TO GET
6 VERY DARK FOR YOU. YOU'RE NOT GOING TO WORK FOR FIVE
7 YEARS. BUT ALL THOSE INJURIES ARE GOING TO GET WORSE
8 OVER TIME AS YOU GET OLDER. THE ARTHRITIS IS GOING TO
9 SET IN. YOU'RE GOING TO NEED A KNEE REPLACEMENT AND
10 THEN ANOTHER ONE. OH, AND BY THE WAY, THE FIRST TIME
11 YOU GOT HURT, THEY WANTED TO CUT YOUR LEG OFF, BUT
12 LUCKILY YOU SAVED IT AND THE -- THEY -- BUT IT GOT
13 INFECTED, AND BECAUSE OF THAT, YOU HAVE A CHANCE OF
14 LOSING YOUR LEG IN THE FUTURE.
15 WHAT ABOUT LIKE -- AM I STILL GOING TO BE ABLE
16 TO DO STUFF? LIKE WHAT DO YOU MEAN? CAN I SKATEBOARD
17 STILL?
18 HE'S LIKE, WELL, YOU COULD KIND OF LIKE PUSH.
19 YOU'RE GOING TO BE ABLE TO PUSH AND USE A SKATEBOARD FOR
20 A WHEELCHAIR OR A CRUTCH.
21 AND HE'S LIKE, WAIT, WAIT, BUT I LIKE -- I
22 LIKE DOING STUFF. LIKE, I LIKE BEING OUT THE --
23 OUTDOORS. AM I GOING TO BE ABLE TO SNOWBOARD?
24 HE GOES, I'LL -- THE MAN IN BLACK SAYS, I'LL
25 GIVE THAT BACK TO YOU, BUT IT'S NOT GOING TO BE LIKE
26 THE -- NOT GOING TO BE THE ALPHA MALE LEADING THE PACK

1 ANYMORE. YOU'RE GOING TO BE -- IT'S THE ONLY THING
2 YOU'RE GOING TO BE ABLE TO DO, THE ONLY PASSION I'LL LET
3 YOU HAVE, BUT IT'S NOT GOING TO BE ANYTHING LIKE TODAY.
4 IF YOU NEGOTIATE FOR THIS, YOU CAN HAVE IT.

5 JOEY SAYS, NO DEAL, AND HE WALKS OUT. AND AS
6 SOON AS HE GRABS THAT DOOR TO WALK OUT OF GOOD FOLKS --
7 OR ONE LUV, NOT GOOD FOLKS, HE'S BACK IN BERT'S MEGA --
8 OR HE'S BACK IN THE PARKING LOT OF BERT'S MEGA MALL,
9 OKAY? BACK. AND HE'S LIKE, WHEW. WIND STARTS BLOWING
10 AGAIN, CLOUDS START ROLLING AGAIN, CARS ARE MOVING.
11 HE'S LIKE, WHAT THE HECK JUST HAPPENED? HE'S LIKE,
12 THERE'S NO WAY THAT WOULD EVER HAPPEN TO ME. BECAUSE BY
13 HUMAN NATURE, WE DON'T GET TO PICK THE MOMENT OF OUR
14 MISFORTUNE. AND HE SAYS, I'M A SAFE RIDER. I ASSUME
15 THE RISKS OF RIDING A MOTORCYCLE. I KNOW THE RISKS.
16 I'LL KEEP -- I'M SAFE. I'LL KEEP MY HEAD ON A SWIVEL.
17 I'LL DO THE THINGS I'M SUPPOSED TO DO.

18 BUT HE DOESN'T KNOW THERE'S A FAULTY BRAKE ON
19 THIS, OKAY? AND TEN DAYS LATER WE KNOW EXACTLY WHAT
20 HAPPENS WHEN HE RIDES OFF THAT PARKING LOT. TEN DAYS
21 LATER, WE KNOW EXACTLY WHAT HAPPENS.

22 JOEY IS ENTITLED TO FULL AND FAIR COMPENSATION
23 FOR ALL OF THE HARMS THAT HE HAS IN THIS CASE, OKAY?

24 THE AMOUNT OF DAMAGES, CACI 3900. THE AMOUNT
25 OF DAMAGES MUST INCLUDE AN AWARD FOR EACH ITEM OF HARM
26 THAT WAS CAUSED BY OF THE DEFENDANT'S WRONGFUL CONDUCT,

1 EVEN IF THE PARTICULAR HARM COULD NOT HAVE BEEN
2 ANTICIPATED. THERE SHALL BE NO SOUND DISCOUNT. THAT
3 DOESN'T SAY THAT. THAT'S MY WORD. THERE SHALL BE NO
4 DISCOUNT, OKAY? THEY DON'T GET A DISCOUNT BECAUSE JOEY
5 WORKS HARD TO GET BETTER. THEY DON'T GET A DISCOUNT
6 BECAUSE HIS CHARACTER IS WHAT IT IS AND HIS MORAL
7 COMPASS IS WHAT IT IS. HE GETS BACK TO WORK. HE PICKS
8 HIMSELF UP BY THE BOOT STRAPS. THEY DON'T GET A
9 DISCOUNT FOR THAT. OKAY? THEY OWE HIM FOR WHAT THEY
10 DID TO HIM.

11 AND DAMAGES HAVE THE SAME PREPONDERANCE
12 STANDARD, MEANING MORE LIKELY TRUE THAN NOT TRUE, 40 --
13 50 -- 50.1 PERCENT. YOU CAN BE 49.9 PERCENT UNCERTAIN.
14 IT'S THE SAME BURDEN, YEAH, PROBABLY. IS HE ENTITLED TO
15 THAT AMOUNT OF DAMAGES? YEAH, PROBABLY. IF YOU FEEL
16 IT'S MORE LIKELY TRUE THAN NOT TRUE, HE'S ENTITLED TO
17 THAT, SHOULD AWARD THAT.

18 I LIKE USING MOVIE REFERENCES. I LIKE GAME OF
19 THRONES. ATLANTIS WOULD ALWAYS PAY FOR THE DEBT. THIS
20 LIKE REPREHENSIBLE FAMILY ALWAYS STILL HAVING HONOR
21 SAYING, WE ALWAYS PAY OUR DEBTS, OKAY? NO MATTER HOW
22 BAD THEY ARE, THEY ALWAYS PAY THEIR DEBT. AND ISN'T
23 THAT WHAT WE TEACH OUR KIDS? RIGHT? YOU BREAK A
24 WINDOW, YOU FIX IT. YOU GIVE THEM FULL VALUE FOR THEIR
25 REPLACEMENT WINDOW. YOU DON'T SAY, WELL, THAT WINDOW
26 WAS 80 YEARS OLD. I'LL GIVE YOU 20 BUCKS FOR IT. NO,

1 YOU BROKE IT, YOU FIX IT. NO DISCOUNTS. NO DISCOUNTS.
2 ESPECIALLY NOT WHEN IT COMES TO HUMAN LIFE.

3 HE DOESN'T GET TO NEGOTIATE THE VALUE. HE
4 DIDN'T GET TO NEGOTIATE THIS LIKE THE MAN IN BLACK. HE
5 DIDN'T HAVE THAT OPPORTUNITY. I'LL SUBMIT TO YOU IF HE
6 WAS TIGER WOODS AND SOMEBODY SAID, HEY, TIGER, WE'RE
7 GOING TO TAKE THIS AWAY, YOU'D HAVE NO PROBLEM GIVING
8 TIGER WHATEVER HE WANTED BECAUSE YOU KNOW WHAT THE END
9 RESULT OF TIGER IS. OKAY?

10 I USE TIGER BECAUSE HE'S A COMMON -- CAN USE
11 FLOYD MAYWEATHER, WHOEVER YOU WANT. OKAY?

12 KENDALL WAGNER, TWO KNEE REPLACEMENTS, A
13 HUNDRED THOUSAND DOLLARS EACH. ABOVE-THE-KNEE
14 AMPUTATION A POSSIBILITY, 10 PERCENT CHANCE. NOT MORE
15 LIKELY TRUE THAN NOT TRUE, OKAY, BUT IT'S A POSSIBILITY.
16 THINK ABOUT WHAT THAT WOULD DO TO HIS MIND, OKAY? AND
17 THAT GETS EXPENSIVE.

18 DR. BINDER TESTIFIED HE'LL NEED A BACK
19 SURGERY, COST OVER \$200,000 OVER HIS LIFETIME.

20 ULTIMATELY -- WE TALKED A LOT ABOUT THE
21 SNOWBOARD. I'LL BE HONEST WITH YOU, AT SOME POINT I --
22 I TOLD MR. MUNOZ -- I'M LIKE, WE'RE FOCUSING A LOT ON
23 THE -- ON SNOWBOARDING. AND IT -- IT'S NOT ABOUT THE
24 BOARD, OKAY? IT'S ABOUT THE SYMBOLISM OF WHAT THE BOARD
25 MEANT.

26 JOEY WAS CONFINED TO A HOUSE. THIS IS BEFORE

1 COVID BY THE WAY. WE ALL GO THROUGH COVID AND WE GET
2 ISOLATED IN OUR HOUSES, AND I GOT CRAZY AND IT'S LIKE, I
3 GOT TO GET OUT OF HERE AND DO SOMETHING. HE GOES
4 THROUGH COVID FIVE YEARS BEFORE COVID, AND IT LASTS FOR
5 FIVE YEARS, OKAY?

6 MENTAL HEALTH IS A BIG DEAL IN OUR COUNTRY
7 RIGHT NOW. HE STARTS SPIRALING OUT OF CONTROL AND HE'S
8 STILL DEALING WITH SOME OF THE THINGS.

9 DR. ZAFFARKHAN GAVE US A LIFE EXPECTANCY OF
10 40 YEARS AND GAVE A -- A LIFE CARE PLAN IN THE
11 800,000-DOLLAR RANGE. AND I'LL PUT THE NUMBERS ON IN A
12 SECOND. WHAT DID JOEY SAY ABOUT -- I GO BACK TO IT'S
13 NOT ABOUT THE BOARD. HE SAID, IT'S ALL I HAVE LEFT. IT
14 IS THE ONLY PASSION I HAVE. THAT I CAN DO ANYTHING
15 ABOUT. ALL RIGHT? SOME PEOPLE LIKE GOLF. SOME PEOPLE
16 LIKE SURFING. SOME PEOPLE LIKE BOXING. SOME PEOPLE
17 LIKE JUJITSU. SOME PEOPLE LIKE WHATEVER. THIS IS HIS
18 THING. IT'S ALL I HAVE LEFT THAT THEY HAVEN'T TAKEN
19 FROM ME AND THEY CAN'T TAKE FROM ME. AND FOR --
20 UNFORTUNATELY FOR HIM, IT'S SEASONAL.

21 THERE'S A SPECIAL VERDICT FORM, OKAY? YOU'RE
22 GOING TO GET THIS. IT'S TEN PAGES, VERY SIMPLE
23 QUESTIONS. OKAY?

24 THE FIRST QUESTION IS, DID JOEY -- DID THE
25 FRONT BRAKE OF HIS MOTORCYCLE FAIL TO PERFORM AS SAFELY
26 AS AN ORDINARY CONSUMER WOULD HAVE EXPECTED IT TO? I'M

1 PARAPHRASING. ANSWER, YES.

2 WAS IT A SUBSTANTIAL FACTOR? DID IT CAUSE OR
3 CONTRIBUTE TO HIS HARM? YES.

4 QUESTION NUMBER 3: DID HIS MOTORCYCLE CONTAIN
5 A MANUFACTURING DEFECT WHEN IT LEFT SUZUKI MOTOR CORP.'S
6 POSSESSION? ANSWER, YES. MANUFACTURING, THAT'S THE
7 PALCOAT ISSUE. THE FIRST ONE IS DESIGN DEFECT, THE SIDE
8 PORT.

9 WAS THE MANUFACTURING DEFECT A SUBSTANTIAL
10 FACTOR IN CAUSING HARM? DID IT CAUSE OR CONTRIBUTE?
11 YES.

12 SO FAR EVERYTHING'S YES.

13 FAILURE TO WARN. DID HIS MOTORCYCLE HAVE
14 POTENTIAL RISKS THAT WERE KNOWN OR KNOWABLE IN LIGHT OF
15 THE SCIENTIFIC KNOWLEDGE THAT WAS GENERALLY ACCEPTED IN
16 THE SCIENTIFIC COMMUNITY? WE HEARD GALVANIC CORROSION
17 WAS KNOWN ABOUT FOR 50 YEARS. ANSWER, YES.

18 WE HEARD THAT AIR IN BRAKES WAS KNOWN ABOUT
19 FOR 50 YEARS -- I CAN'T RECALL, BUT WE HEARD ABOUT IT.
20 THEY KNEW ABOUT IT FOR A LONG TIME. YES.

21 DID THE POTENTIAL RISKS PRESENT A SUBSTANTIAL
22 DANGER TO PERSONS USING OR MISUSING IN AN INTENDED OR
23 FORESEEABLE MANNER? YES.

24 WOULD ORDINARY CONSUMERS HAVE RECOGNIZED THE
25 POTENTIAL RISK? NO. NUMBER 7 SHOULD BE NO BECAUSE IT'S
26 A HIDDEN DEFECT. OKAY? IT'S A HIDDEN DEFECT. THEY HID

1 IT FROM THEM AND THEY WANTED HIM TO NOT DISCOVER IT.

2 DID SUZUKI MOTOR CORP. FAIL TO ADEQUATELY WARN
3 OF THE POTENTIAL RISK? ANSWER, YES.

4 WAS THE LACK OF SUFFICIENT WARNINGS A
5 SUBSTANTIAL FACTOR IN CAUSING HIS HARM? YES.

6 SO FAR ONE NO ANSWER TO NUMBER 7.

7 NEGLIGENT RECALL RETROFIT. DID THEY KNOW THAT
8 IT WAS DANGEROUS OR WAS LIKELY TO BE DANGEROUS WHEN USED
9 IN A FORESEEABLE MANNER? YES.

10 DID SUZUKI BECOME AWARE OF THIS AFTER IT WAS
11 SOLD? YES.

12 DID SUZUKI MOTOR CORPORATION FAIL TO RECALL A
13 RETROFIT OR WARN? YES.

14 WOULD A REASONABLE MANUFACTURER HAVE RECALLED
15 AND RETROFITTED? YES.

16 WAS JOEY HARMED? YES.

17 WAS THERE FAILURE TO RECALL, A SUBSTANTIAL
18 FACTOR? DID IT CONTRIBUTE? YES.

19 WHAT ARE HIS DAMAGES? MEDICAL EXPENSES WE
20 HEARD. PAST MEDICAL EXPENSES. HE TESTIFIED THE --
21 DR. WAGNER SAID IT WAS 140,000. JOEY CLEARED THAT UP ON
22 THE STAND. THERE WAS SOMETHING ABOUT HIS SHOULDER THAT
23 SHOULDN'T HAVE BEEN INCLUDED IN THAT. 118,000 PAST
24 MEDICAL EXPENSES. 118,000, HE OWES THAT. NO MATTER
25 WHAT YOU GUYS DO, HE OWES THAT. OKAY? NO MATTER WHAT
26 THE VERDICT IS, HE OWES THAT. IT'S NOT GOING ANYWHERE.

1 HIS LOST EARNINGS FOR THAT FIVE YEARS, FROM
2 2013 TO 2018. LOST EARNINGS FROM MR. ZENGLER, 101,987,
3 101,987. THOSE ARE THE PAST ECONOMIC LOSSES. 118,000
4 AND 101,987.

5 FUTURE ECONOMIC LOSS WAS THE LIFE CARE PLAN
6 THAT ZAFFARKHAN PUT UP, AND THAT CAME TO 784,020.
7 FUTURE NONECONOMIC LOSS, 784,020.

8 PAST NONECONOMIC LOSS, PHYSICAL PAIN, MENTAL
9 SUFFERING, LOSS OF ENJOYMENT OF LIFE. YOU HEARD THE
10 LIST BY JUDGE SALTER. I'LL READ IT ONE TIME AND NOT
11 AGAIN. DISFIGUREMENT, PHYSICAL IMPAIRMENT,
12 INCONVENIENCE, GRIEF, ANXIETY, HUMILIATION, EMOTIONAL
13 DISTRESS, FRIGHT, NERVOUSNESS, WORRY, MORTIFICATION,
14 SHOCK, INDIGNITY, EMBARRASSMENT, APPREHENSION, TERROR
15 AND ORDEAL. ALL OF THOSE APPLY TO JOEY WITHOUT GOING
16 THROUGH EVERY SINGLE -- AND YOU HEARD FROM HIS FAMILY.
17 YOU HEARD FROM HIS FRIEND, COLIN. YOU HEARD FROM HIS
18 MOM. YOU HEARD FROM JOEY HIMSELF. HE SUFFERS FROM ALL
19 OF THOSE.

20 AND IF WE USE THE MAN IN BLACK SCENARIO, I
21 PROPOSE TO YOU FOR HIS PAST NONECONOMIC LOSS FOR THE
22 LAST TEN YEARS, I'M GOING TO ASK YOU FOR \$2 MILLION.
23 I'M ASKING YOU FOR \$2 MILLION. OKAY? AND I'M GOING TO
24 ASK YOU FOR THAT SAME AMOUNT PER DECADE GOING FORWARD.
25 FUTURE NONECONOMIC, FUTURE. 8 PLUS, \$8 MILLION FOR
26 THAT. I'M ASKING FOR THAT.

1 I THINK -- YOU GUYS -- YOU GET TO DECIDE.
2 YOU'RE THE APPRAISER OF LIFE HERE. YOU GET TO DECIDE
3 WHAT IT'S WORTH TO JOEY. WHAT IT'S WORTH TO JOEY.

4 YOU'RE GOING TO BE ASKED ON THE -- ON THIS
5 FORM, WAS CONNIE MAY CASTELLOW NEGLIGENT? YES. OKAY?
6 THAT'S NUMBER 17. WAS SHE NEGLIGENT? YES, SHE WAS.
7 SHE PULLED OUT AND CAUSED AN EXIGENT CIRCUMSTANCE, YES.

8 NUMBER 18 IS, WAS HER NEGLIGENCE A SUBSTANTIAL
9 FACTOR IN CAUSING JOEY SOULLIERE'S HARM? NO. NO,
10 BECAUSE HE WAS ABLE TO STOP. THEY -- HOOVER TESTIFIED
11 ABOUT IT. YATES TESTIFIED ABOUT IT. SHE CAUSED THE
12 EXIGENT CIRCUMSTANCE. SHE DID NOT CAUSE THE COLLISION.
13 THAT'S FOR YOU TO DECIDE, BUT I ASK YOU TO ANSWER NO ON
14 QUESTION 18.

15 AND THEN YOU'LL ASK -- BE ASKED TO GIVE A
16 PERCENTAGE OF FAULT OF RESPONSIBILITY -- SORRY -- FOR
17 HIS HARM, WHO DO YOU -- AND HOW MUCH DO YOU ASSIGN TO
18 CASTELLOW IN THE SUV AND HOW MUCH DO YOU ASSIGN TO
19 SUZUKI CORPORATION? THAT NUMBER HAS TO EQUAL A HUNDRED,
20 HUNDRED PERCENT, OBVIOUS -- SIMPLE MATH.

21 SO HOW MUCH TO CONCAST? WELL, HOW MUCH TO
22 SUZUKI MOTOR CORPORATION? NUMBER 19 ON THE FORM.

23 NUMBER 20, THIS IS WHERE I -- YOU GIVE -- I
24 HAVE -- I HAVE TO ASK YOU FOR PERMISSION. I TOLD YOU
25 THIS WAS COMING. DID SUZUKI MOTOR CORPORATION ENGAGE IN
26 CONDUCT WITH MALICE, OPPRESSION OR FRAUD, OKAY? AND I'M

1 GOING TO READ MALICE, OPPRESSION AND FRAUD AND WHAT THAT
2 MEANS.

3 MALICE: WAS SUZUKI'S CONDUCT DESPICABLE AND
4 DONE WITH WILLFUL DISREGARD OF THE SAFETY OF ANOTHER?
5 THE SUZUKI -- OR SMC WAS AWARE OF THE PROBABLE AND
6 DANGEROUS CONSEQUENCES OF ITS CONDUCT AND DELIBERATELY
7 FAILED TO AVOID THOSE CONSEQUENCES. IF YOU AGREE WITH
8 THAT, THAT'S MALICE, YES.

9 OPPRESSION: SUZUKI'S CONDUCT WAS DESPICABLE
10 AND SUBJECTED JOEY TO CRUEL AND UNJUST HARDSHIP IN
11 KNOWING DISREGARD OF HIS RIGHTS. DESPICABLE CONDUCT IS
12 CONDUCT THAT IS SO VILE BASED ON CONTEMPTIBLE THAT IT
13 WOULD BE LOOKED DOWN ON AND DESPISED BY REASONABLE
14 PEOPLE. THAT'S OPPRESSION.

15 FRAUD, I -- I'LL CONCEDE FRAUD NOW BECAUSE
16 FRAUD WAS AN INTENT TO DEFRAUD JOEY, AND I'LL -- I'LL
17 CONCEDE THAT.

18 BUT MALICE AND OPPRESSION APPLIES, OKAY? AND
19 I NEED YOUR PERMISSION HERE. AND I TOLD YOU AT THE
20 BEGINNING THIS IS A TWO-PHASE TRIAL IF YOU PERMIT IT,
21 BUT I PROMISE YOU, THE SECOND PHASE, I NEED TWO HOURS OF
22 YOUR TIME.

23 AT THIS POINT YOU'RE PROBABLY AT LOOK COMING
24 BACK MONDAY ANYWAY. THAT'S MY GUESS, OKAY? DON'T RUSH
25 THIS. THE FIRST PART IS FOR JOEY. THE SECOND PART,
26 MALICE, OPPRESSION OR FRAUD, GOES TO THE CONDUCT BY THE

1 CORPORATION. I NEED YOUR PERMISSION. I NEED YOU TO SAY
2 YES TO THAT. I'M ASKING YOU TO SAY YES TO THAT.

3 NUMBER 20, YES. IT'S THE LAST QUESTION. AND
4 I SAY I NEED TWO HOURS OF YOUR TIME TO COME BACK FOR
5 PHASE TWO. I PROMISE YOU I WILL DO MY BEST TO KEEP IT
6 SHORTER THAN THAT. I'LL PROBABLY PUT UP ONE WITNESS FOR
7 15 OR 20 MINUTES AND THEN I'LL DO THIS FOR ANOTHER 20
8 MINUTES, THAT'S IT.

9 ALL RIGHT. THIS IS JOEY'S ONLY CHANCE FOR
10 THIS. HE DOESN'T GET TO COME BACK IF THINGS GET WORSE
11 FOR HIM. HE DOESN'T GET TO DO THIS AGAIN. YOU'RE NOT
12 TO MAKE -- YOU'RE THE APPRAISER OF THE VALUE OF THIS
13 CASE. YOU'RE NOT TO MAKE ANY DETERMINATIONS OR MAKE ANY
14 ASSUMPTIONS AS TO HOW IT'S GOING TO GET PAID, WHEN IT'S
15 GOING TO GET PAID, AND TO WHOM. AND KEEP IN MIND, THE
16 MEDICAL EXPENSE POR- -- PAR- -- PORTION DOESN'T GO TO
17 JOEY. IT GOES TO MEDICAL PROVIDERS. LIKE A MECHANIC
18 FIXING A CAR, OKAY, YOU'RE PAYING FOR PAST OR PREPAYING
19 FOR FUTURE MEDICAL CARE. NOT GOING INTO HIS POCKET.

20 THE OTHER PART, THE NONECONOMIC PART, THE
21 HARMS AND LOSSES ISSUE, IS GOING FOR HIS EXPERIENCE THAT
22 HE'S HAD TO DEAL WITH IN THIS FOR TEN YEARS PAST, 40
23 YEARS INTO THE FUTURE. OKAY?

24 EXAMPLES WE LIKE -- I LIKE TO USE ARE THINGS
25 LIKE FIGHTER PILOTS IN THE MILITARY. WHEN THEY'RE
26 FLYING THESE BIG EXPENSIVE JETS, THE MILITARY TELLS THEM

1 IF SOMETHING HAPPENS, JUST EJECT. SACRIFICE THE PLANE.
2 THE BODY IS THE MOST IMPORTANT THING. I CAN'T REPLACE
3 YOU. OKAY? THE HUMAN BEING IS THE MOST IMPORTANT THING
4 HERE.

5 ATHLETES GET TO NEGOTIATE, THEY GET TO BARGAIN
6 TO WHAT THEIR BODY'S GOING TO TAKE AND WHAT THEY'RE
7 WILLING TO PERMIT IT TO TAKE FOR THE REST OF THEIR LIFE
8 AND HOW THEY'RE GOING TO FEEL. JOEY WAS DEPRIVED OF
9 THAT OPPORTUNITY. SUZUKI HAS TO WEAR THE RESPONSIBILITY
10 FOR THAT. THIS IS HIS ONLY CHANCE TO DO IT. IF
11 MEDICINE CHANGES IN THE FUTURE, HE NEEDS THE MONEY TO BE
12 ABLE TO PAY FOR THOSE ADVANCEMENTS.

13 PUT THINGS IN CONTEXT. WHEN YOU GO BACK AND
14 YOU DELIBERATE, IF A JUROR SAYS SOMETHING -- ONE OF YOUR
15 FELLOW JURORS SAYS, I CAN'T -- I'M NOT ABSOLUTELY SURE,
16 I'M NOT -- I CAN'T BE A HUNDRED PERCENT SURE. THE
17 ANSWER IS YOU TELL THEM, YOU DON'T HAVE TO BE A HUNDRED
18 PERCENT SURE. THE BURDEN IS MORE LIKELY TRUE THAN NOT
19 TRUE. OKAY? IF THEY SAY, WE DON'T KNOW FOR SURE IF A
20 BRAKE FAILURE OCCURRED, YOU DON'T HAVE TO BE A HUNDRED
21 PERCENT SURE. WE KNOW THAT SUZUKI TOOK THE PART AS PART
22 OF THE RECALL, AND WE DON'T HAVE THE OPPORTUNITY TO
23 INVESTIGATE IT, BUT JOEY'S TESTIMONY SAYS IT DIDN'T WORK
24 AS HE EXPECTED IT TO. SUZUKI HAD NOTICE OF THESE BRAKES
25 DOING EXACTLY WHAT JOEY TOLD THEM -- OR IS TELLING THEM
26 NOW WHAT HAPPENED. AND EVEN IF YOU DON'T BELIEVE THE

1 MANUFACTURER AND PRODUCT DEFECT AGAIN, GO LOOK AT
2 EXHIBIT 115, BUT THE NEGLIGENT RECALL AND RETROFIT STILL
3 APPLIES.

4 COLIN RODE THE BIKE TEN MONTHS LATER AND IT
5 DIDN'T -- THE BRAKE DIDN'T WORK. YEAH, PROBABLY THAT
6 BRAKE FAILED. I -- I WOULD SUBMIT TO YOU, YEAH,
7 PROBABLY IT FAILED. MORE LIKELY TRUE THAN NOT TRUE,
8 THAT BRAKE FAILED.

9 IF THEY SAY -- IF ANOTHER JUROR GOES BACK AND
10 SAYS SOMETHING LIKE, YOU KNOW, HE NEVER COMPLAINED TO
11 ANYBODY ABOUT THE BRAKE FAILING. HE TOLD HIS MOM. AND
12 HE ALSO DIDN'T BELIEVE IT COULD HAPPEN TO HIM. WE
13 TALKED ABOUT THAT. I TALKED ABOUT THAT A LITTLE WHILE
14 AGO, THAT HE BLAMED HIMSELF. BECAUSE LET'S BE HONEST, I
15 MEAN, BRAKES DON'T GENERALLY JUST FAIL. THEY DON'T.
16 HYDRAULIC SYSTEMS ARE PRETTY FOOLPROOF.

17 IF THEY SAY, YOU KNOW, JOEY MIGHT HAVE
18 OVERAPPLIED HIS BRAKES, WELL, THEY'RE NOT BLAMING JOEY,
19 SO HE'S NOT -- NOWHERE. REMEMBER, WHAT'S THE PERCENTAGE
20 OF FAULT? CONNIE CASTELLOW AND SUZUKI MOTOR
21 CORPORATION. JOEY'S NOT ON HERE ANYWHERE. SO THEY
22 CAN'T BLAME JOEY. THEY CAN'T COME IN HERE AND SAY
23 OVERAPPLIED BRAKES. WELL, HE'S NOT ON THE VERDICT FORM.

24 IF A -- IF ANOTHER JUROR SAYS, YOU KNOW, WE
25 DON'T -- SUZUKI DOESN'T KNOW EXACTLY WHAT THE CAUSE OF
26 THE CORROSION, THEY DIDN'T HAVE TO KNOW EXACTLY WHAT THE

1 CAUSE WAS. THEY HAD TO KNOW THAT A PRODUCT CREATED A
2 PUBLIC -- A RISK OR DANGER TO PUBLIC SAFETY. IT'S A
3 SAFETY-RELATED DEFECT.

4 AGAIN, I'M TRYING NOT TO GO OVER STUFF I
5 ALREADY WENT THROUGH.

6 ALL RIGHT. ULTIMATELY, WHAT DOES IT MEAN,
7 RIGHT, TO BE ALIVE? OUR COMMUNITY? OUR JOB? SOME
8 PEOPLE ARE DEFINED BY THEIR JOB. SOME PEOPLE ARE
9 DEFINED BY WHAT THEY DO AND THE FUN THEY HAVE AND WHAT
10 THEY DO WHEN THEY LEAVE WORK AND THE PEOPLE THEY
11 SURROUND THEMSELVES WITH, THE CONNECTIONS WE MAKE IN
12 LIFE. AND WE ALWAYS TRY TO AND MAKE CONNECTIONS IN LIFE
13 WITH PEOPLE, AND JOEY WAS DEPRIVED OF THAT FOR A LONG
14 TIME. AND HE WAS DEPRIVED OF THAT AND SEPARATED,
15 CLEAVED FROM THAT EXPERIENCE WHEN EVERYTHING IN HIS LIFE
16 WAS GOING JUST FINE. IT WAS ACTUALLY GOING STELLAR FOR
17 A 27-YEAR-OLD IN THE POSITION HE WAS IN, UNTIL THE BRAKE
18 FAILED AND EVERYTHING WAS TAKEN AWAY FROM HIM. FELT A
19 LOSS OF LOVE. WANTED TO END IT FOR HIMSELF. FELT THAT
20 HIS SITUATION WAS SO BAD, HE'D RATHER TERMINATE IT.

21 BUT HE TURNED IT AROUND. HE TURNED IT AROUND.
22 HE GOT BACK TO WORK. HE GOT BACK, FOUND COMMUNITY OF
23 SOME SORT, GOT BACK TO THE SOCIAL LIFE AND THE HOBBIES
24 HE CAN DO WITHIN HIS ABILITIES. BUT THEY DON'T GET TO
25 BENEFIT FROM THAT. THEY TOOK SO MUCH AWAY FROM HIM AND
26 WILL CONTINUE TO DO SO FOR THE NEXT 40 YEARS. AND FOR

1 THE LAST TEN YEARS, HE'S ALREADY DEALT WITH ALL OF IT.

2 I SUSPECT FROM THIS DAY FORWARD YOU'RE GOING
3 TO LOOK AT MOTORCYCLES DIFFERENTLY ON THE ROAD, IF YOU
4 DON'T ALREADY, AND YOU'LL THINK BACK TO THIS AND YOU'LL
5 THINK, WELL, I -- I LEARNED A LOT ABOUT A BRAKE -- FRONT
6 BRAKE MASTER CYLINDER. AND YOU'LL ASK, DID I MAKE THE
7 RIGHT DECISION ON THIS ONE? AND THAT'S ALL YOU'RE GOING
8 TO HAVE LEFT. YOU'RE NOT GOING TO REMEMBER MY NAME.
9 YOU'LL PROBABLY REMEMBER MY ANNOYING VOICE. SUZY DOES.
10 YOU WON'T REMEMBER JUDGE SALTER. YOU WON'T REMEMBER
11 MR. MUNOZ OR, YOU KNOW, SUZUKI'S COUNSEL, BUT YOU'RE
12 GOING TO REMEMBER IF YOU MADE THE RIGHT DECISION AND
13 THAT'S GOING TO STAY WITH YOU. YOU HAVE TO ASK
14 YOURSELF, DID I PROVIDE ENOUGH FOR JOEY FOR HIS
15 EXPERIENCE, FOR THE EXPENSES THAT HE'S OUT IN THE PAST
16 AND WILL BE OUT IN THE FUTURE? IF YOU SEE A MOTORCYCLE
17 WRECK IN THE FUTURE, YOU MIGHT ASK, WAS THAT ONE OF
18 THESE BRAKES? AND YOUR THOUGHT IS, YEAH, PROBABLY. THE
19 ANSWER'S ALREADY MADE.

20 ALL RIGHT. WE TALKED ABOUT THE SUZUKI
21 INVESTIGATION. I'LL FINISH IN FIVE MINUTES.

22 YOU ARE THE MOST IMPORTANT PART OF THIS
23 INVESTIGATION NOW. YOU DETERMINE WHAT THE FACTS ARE AND
24 WHAT ULTIMATELY IS THE RESULT OF THIS, OF ALL OF THIS
25 RIGHT NOW. THE RESULT THAT YOU WILL PROVIDE IS SO
26 IMPORTANT, JUDGE SALTER'S GOING TO ASK EACH ONE OF YOU

1 TO STAND UP AND SAY, YES, I AGREE WITH THAT, OR, NO, I
2 DON'T, WHEN YOU READ A VERDICT. OKAY? WE ALL WANT TO
3 MAKE A RECORD OF IT. AND YOU'RE GOING TO BE ASKED IF
4 YOU AGREE WITH IT, IF IT'S TRUE, IF YOU FEEL THAT IT IS.

5 UNANIMOUS IS NOT REQUIRED. WE NEED NINE OUT
6 OF 12. I'D LIKE TO HAVE 12. I'D LIKE TO HAVE 12, BUT I
7 ONLY NEED NINE OUT OF 12, OKAY? SO ULTIMATELY, MY
8 BURDEN'S THREE-QUARTERS, SO -- AND IT CAN BE ANY NINE.
9 YOU DON'T HAVE TO BE THE SAME NINE ON EVERY QUESTION.
10 BUT ANY NINE OF YOU AGREE, MARK IT AND MOVE ON. OKAY?
11 I WOULD LOVE IT TO BE UNANIMOUS BECAUSE I THINK IT IS
12 SO'S COMPELLING THAT IT IS UNANIMOUS. BUT DON'T -- I
13 DON'T WANT YOU GUYS TO FIGHT IN DELIBERATIONS. AND
14 THESE THINGS GET CONTENTIOUS. THEY GET -- I HEAR IT --
15 WE HEAR IT ALL THE TIME. EVERYBODY'S GOT AN OPINION.
16 BE HUMAN. BE KIND TO EACH OTHER, BUT I NEED NINE. I
17 NEED NINE OF YOU. ANYTHING SHORT OF THAT AND IT'S NOT
18 GOOD ENOUGH.

19 DON'T JUST RUSH THIS. YOU'VE BEEN HERE FOR --
20 YOU'VE INVESTED YOUR TIME AND ENERGY INTO THIS. DON'T
21 JUST RUSH JUST TO GET OUT OF HERE BECAUSE YOU WANT TO
22 GET TO THE WEEKEND. I THINK YOU'RE COMING BACK MONDAY
23 ANYWAY. I THINK SETTLE INTO THAT. BY THE TIME THEY
24 RE- -- THEY DO THIS AND THEN THE JUDGE READS SOME MORE
25 INSTRUCTIONS -- THAT'LL BE QUICK, 15 MINUTES AT MOST.
26 IT WON'T BE LIKE HE JUST GAVE YOU. AND THEN YOU'LL GO

1 BACK AND PICK A FOREPERSON. YOU'RE GOING TO HAVE TO
2 HAVE SOME TIME TO DO THIS, SO DON'T RUSH IT. IF YOU
3 COME BACK MONDAY AND YOU ANSWER YES TO QUESTION 20,
4 WE'LL DO IT ON MONDAY, DEPENDING ON WHEN YOU COME BACK
5 FROM THE BREAK.

6 I HOPE I'VE DONE ENOUGH FOR JOEY. I TRIED TO
7 GIVE HIM A VOICE. I TRIED TO GIVE HIM HOPE. I
8 SHOULD -- SHOULDERED THE ENTIRE BURDEN OF HIM, AND NOW
9 IT'S GOING TO GO ON TO YOU AND YOU'RE GOING TO TAKE THE
10 BURDEN BECAUSE SUZUKI REFUSED TO. THEY'RE HANDING IT TO
11 YOU TO MAKE A DECISION ON WHAT SHOULD HAPPEN HERE. THEY
12 GAMBLERED WITH HIS LIFE. THEY GAMBLERED WITH A -- WITH THIS
13 PRODUCT THAT JEOPARDIZES THEIR CUSTOMERS AND ANYBODY WHO
14 SHARES THE ROAD WITH THIS PRODUCT. THEY CONTINUE TO
15 GAMBLE WITH THIS PRODUCT. THEY HAVEN'T FIXED IT.

16 AND NOW THEY'RE GOING TO ASK YOU TO BE
17 COMPLICIT WITH THEM. THEY'RE GOING TO ASK YOU TO GIVE
18 HIM ZERO. IT'S CALLED A DEFENSE VERDICT. THEY'RE GOING
19 TO ASK YOU TO SAY THE VALUE OF THIS IS ZERO. WE DID
20 NOTHING WRONG. IT'S JUST A MOTORCYCLE WRECK. AND IF
21 YOU BELIEVE THAT, I FAILED. I DIDN'T DO ENOUGH. BUT IF
22 YOU DON'T BELIEVE IT, THEN I'D ASKED HOW I WANT YOU TO
23 FILL OUT THE VERDICT FORM. YOUR VOICE IS THE ONLY ONE
24 THAT MATTERS AT THIS POINT.

25 I TOLD YOU FROM THE BEGINNING THAT SUZY SAID,
26 THIS IS A BREAK FROM YOUR VOICE. THAT STILL GETS ME.

1 AND OVER LUNCH, YOU GET A BREAK FROM MY VOICE.

2 SUZUKI KNEW THIS DAY WAS COMING. PENALTIES
3 WILL BE IMPOSED. OKAY? WE WILL BE HELD TO ACCOUNT
4 THEIR WORDS AND THEIR DOCUMENTS WHEN THEY THOUGHT NOBODY
5 WAS LOOKING. BUT YOU 12 ARE LOOKING NOW. I ASK YOU TO
6 MAKE IT A REALITY. PENALTIES SHOULD BE IMPOSED.

7 THIS IS THE LAST TIME I'M GOING TO -- GOING TO
8 GET TO TALK TO YOU, UNLESS YOU ANSWER YES TO NUMBER 20,
9 MR. MUNOZ WILL DO A REBUTTAL THAT WILL BE MUCH SHORTER.
10 BUT BEFORE THAT, MR. RIGGS WILL TALK TO YOU IN HIS
11 CLOSING ARGUMENT AFTER LUNCH.

12 SINCEREST THANK YOU. SINCEREST THANK YOU,
13 REALLY, REALLY, FOR YOUR EFFORTS.

14 THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU, MR. HOUSTON.

16 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE OUR
17 LUNCH BREAK AT THIS TIME. WE'LL SEE EVERYBODY AT 1:30.

18 COURT'S IN RECESS.

19 (LUNCHEON RECESS.)

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 CASE NUMBER: 30-2015-00790644-CU-PL-CJC
2 CASE NAME: SOULLIERE VS. SUZUKI
3 ORANGE, CALIFORNIA APRIL 21, 2023
4 DEPARTMENT N18 HON. GLENN R. SALTER, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: K. DARLENE LEWIS, CSR NO. 13534
7 TIME: 1:30 P.M.

8
9 (IN OPEN COURT, IN THE PRESENCE
10 OF THE JURY.)
11 THE COURT: LET THE RECORD REFLECT THAT THE
12 JURY HAS REJOINED US. GOOD AFTERNOON, EVERYONE.

13 MR. RIGGS.
14 MR. RIGGS: THANK YOU, YOUR HONOR.

15
16 CLOSING ARGUMENT

17 MR. RIGGS: GOOD AFTERNOON.

18 IN MY OPENING STATEMENT I BEGAN BY TELLING YOU
19 WHAT I EXPECTED THE EVIDENCE TO BE. I TOLD YOU WHAT THE
20 CASE WAS ABOUT, AND I TOLD YOU WHAT I WAS CONFIDENT THE
21 CASE WAS NOT ABOUT.

22 I TOLD YOU THAT YOU WOULD HEAR EVIDENCE OF A
23 MOTORCYCLE/SUV ACCIDENT THAT HAPPENS ALL TOO FREQUENTLY
24 SIMPLY BECAUSE AN INATTENTIVE DRIVER DOES NOT SEE OR
25 NOTICE AN APPROACHING MOTORCYCLIST, AND PULLS OUT IN
26 FRONT OF THAT RIDER, AND CREATES AN EMERGENCY SITUATION

1 FOR THE RIDER THAT REQUIRES NEAR INSTANTANEOUS
2 DECISION-MAKING, AND A RESPONSE BY THAT RIDER.

3 I ALSO TOLD YOU THE EVIDENCE WOULD NOT SUPPORT
4 PLAINTIFF'S CLAIM OF FRONT BRAKE FAILURE, AND IT DOES
5 NOT. PLAINTIFF'S OWN ACCIDENT RECONSTRUCTION EXPERT,
6 MR. YATES, ADMITTED THAT HE IS NOT OFFERING AN OPINION
7 THAT THE FRONT BRAKE FAILED IN THIS ACCIDENT.

8 HE SIMPLY SAID THAT IN HIS OPINION THE
9 PHYSICAL EVIDENCE IS NOT CONSISTENT WITH PROPER FRONT
10 BRAKE APPLICATION BY MR. SOULLIERE -- A RIDER WHOSE
11 EXPERIENCE LEVEL HE CONSIDERED TO BE OF A NOVICE.

12 MR. HOUSTON SAID IN HIS CLOSING REMARKS THAT
13 MR. YATES SAID THE BRAKE FAILED. MR. YATES DID NOT SAY
14 THAT, AND MR. HOUSTON'S ARGUMENT CANNOT FIX THIS HOLE
15 THAT IS IN PLAINTIFF'S CASE.

16 IN AN EFFORT TO DIRECT ATTENTION AWAY FROM THE
17 FACTS OF THE ACCIDENT, PLAINTIFF'S CASE FOCUSED ALMOST
18 EXCLUSIVELY ON THE RECALL INITIATED BY SUZUKI JAPAN IN
19 OCTOBER OF 2013. BY MY WATCH, THE TWO-HOUR OPENING
20 STATEMENT ONLY CONTAINED ABOUT FIVE MINUTES OF
21 DISCUSSION OF THE ACCIDENT.

22 I THINK YOU HAVE TO ASK YOURSELF AS JURORS WHY
23 ISN'T THE PLAINTIFF TALKING ABOUT THE ACCIDENT? BUT AS
24 I SAY, THE ATTENTION OF THE PLAINTIFF'S CASE HAS BEEN
25 ALMOST EXCLUSIVELY ON THE RECALL -- A RECALL THAT WAS TO
26 ADDRESS A SPONGY BRAKE, AND A SPONGY BRAKE CONDITION

1 THAT CAN DEVELOP IF A CERTAIN SET OF CIRCUMSTANCES WOULD
2 COME TOGETHER AND PERMIT HYDROGEN GAS TO GRADUALLY
3 DEVELOP AND ACCUMULATE IN THE FRONT BRAKE MASTER
4 CYLINDER.

5 THE FLAW IN PLAINTIFF'S CASE IS THAT
6 MR. SOULLIERE'S MOTORCYCLE NEVER EXPERIENCED A SPONGY
7 BRAKE BEFORE OR AFTER MR. SOULLIERE'S ACCIDENT ON
8 JUNE 8, 2013.

9 IT WAS ONLY A YEAR AFTER HIS ACCIDENT AND TEN
10 MONTHS AFTER SITTING UNUSED IN MR. SOULLIERE'S GARAGE
11 THAT THIS RECALL CONDITION LIKELY DID FINALLY DEVELOP
12 AND WAS IMMEDIATELY DETECTED BY MR. COLIN CAMPBELL.

13 THE LAW DOES NOT ALLOW THE PLAINTIFF TO ASSESS
14 LIABILITY, FOR YOU TO FIND LIABILITY, OR TO PUNISH
15 SUZUKI FOR A CONDITION THAT WAS NOT THE CAUSE OF THIS
16 UNFORTUNATE ACCIDENT.

17 SO WHAT DID CAUSE THE ACCIDENT? BOTH OF
18 PLAINTIFF'S TWO MOTORCYCLE RIDING EXPERTS ADMIT THE
19 FOLLOWING -- AND I AM TALKING ABOUT MR. NELSON AND
20 MR. YATES.

21 THEY ADMIT THAT THIS ACCIDENT IS THE MOST
22 COMMON ACCIDENT INVOLVING MOTORCYCLES. THEY ADMIT THAT
23 A DRIVER OF A CAR OR SUV OFTEN DOES NOT SEE OR NOTICE AN
24 APPROACHING MOTORCYCLE, AND UNEXPECTEDLY PULLS OUT IN
25 FRONT OF THAT MOTORCYCLE, COMPLETELY BLOCKING THE
26 MOTORCYCLE AND LEAVING THE MOTORCYCLE RIDER WITH FEW

1 OPTIONS, NONE OF THEM GOOD.

2 THEY BOTH AGREE THIS ACCIDENT LIKELY HAPPENS
3 EVERY DAY SOMEWHERE IN THIS COUNTRY, AND THEY AGREE THAT
4 THESE ACCIDENTS, FOR THE MOST PART, OCCUR WITH
5 MOTORCYCLES THAT HAVE PERFECTLY PERFORMING BRAKES.

6 THAT IS EXACTLY WHAT HAPPENED TO MR. SOULLIERE
7 ON THE MORNING OF JUNE 8, 2015. THIS ACCIDENT WAS
8 CAUSED BY MS. CASTELLOW. SHE IS SOLELY RESPONSIBLE FOR
9 THIS CRASH. SHE IS 100 PERCENT AT FAULT FOR THIS CRASH
10 AND FOR MR. SOULLIERE'S INJURIES.

11 THAT IS WHAT HAPPENED, AND THAT IS WHAT THE
12 EVIDENCE PROVES HAPPENED.

13 NOW, PLAINTIFF WANTS YOU TO BELIEVE THAT THE
14 FRONT BRAKE FAILED AND BUT FOR THIS FAILURE, THE
15 ACCIDENT WOULD NEVER HAVE HAPPENED BUT THE FLAW IN THAT
16 CLAIM IS THERE ARE NO FACTS. NO EVIDENCE TO SUPPORT
17 THIS CLAIM. IT'S ONLY A THEORY, A HYPOTHETICAL
18 POSSIBILITY THAT HAS NOT BEEN PROVEN OR EVEN PROPERLY
19 TESTED.

20 MR. SOULLIERE WAS OPERATING HIS MOTORCYCLE
21 REASONABLY, AND HE HAD THE RIGHT OF WAY AS HE RODE SOUTH
22 ON VALLEY VIEW ON JUNE 8. MS. CASTELLOW ON THE OTHER
23 HAND AGGRESSIVELY PULLED OUT FROM THE PARKING LOT TO HIS
24 RIGHT, PEELING OUT TRYING TO BEAT TRAFFIC ON VALLEY VIEW
25 CREATING THIS EMERGENCY SITUATION FOR MR. SOULLIERE.

26 BY THE TIME HE HAD TIME TO PERCEIVE THE DANGER

1 AND TO BEGIN TO REACT BY APPLYING HIS BRAKES, HE WAS
2 ONLY 60 FEET AND 1.50 SECONDS FROM THE IMPACT WITH THE
3 SUV. BOTH MR. YATES AND MR. HOOVER AGREE WITH THAT.

4 BY THE TIME HE BEGAN TO APPLY HIS BRAKES HE
5 HAD ONLY 60 FEET AND 1.5 SECONDS TO APPLY HIS BRAKES AND
6 TRY AND AVOID THE ACCIDENT.

7 AS A NOVICE RIDER AS HE WAS, WITHOUT THE
8 BENEFIT OF FORMAL MOTORCYCLE TRAINING, HE PANICKED BY
9 HIS OWN ADMISSION AND OVER-APPLIED HIS FRONT AND REAR
10 BRAKES.

11 THIS IS UNDERSTANDABLE AND WE DO NOT SUGGEST
12 HE WAS NEGLIGENT OR AT FAULT FOR DOING THIS, BUT IT DOES
13 EXPLAIN FACTUALLY WHY THE BIKE FELL DOWN AND WHY HE AND
14 THE BIKE SLID INTO THE SUV.

15 ONCE THE BRAKES WERE LOCKED AND THE TIRES WERE
16 SKIDDING, HE LOST CONTROL OF THE BIKE AND IT FELL DOWN
17 AND SLID TO THE POINT OF IMPACT. AND, STATING THE
18 OBVIOUS, ONCE DOWN AND SLIDING THE BRAKES WERE NO LONGER
19 ABLE TO PROVIDE ANY DECELERATION.

20 THE PHYSICAL EVIDENCE PROVES THAT THE FRONT
21 BRAKE WAS FULLY FUNCTIONAL AT THE TIME OF THIS ACCIDENT.
22 THERE WERE TWO MOTORCYCLE SKID MARKS ON THE PAVEMENT.
23 THERE WERE LOCKED TIRE ABRASION SKID MARKS ON BOTH THE
24 FRONT AND REAR TIRES.

25 YOU KNOW FROM THE TESTIMONY FROM ALL OF THE
26 EXPERTS THAT SPOKE TO THIS, IF A BRAKE CAN LOCK A TIRE,

1 THE BRAKE IS FULLY FUNCTIONAL. SO THEN THE QUESTION
2 MUST BE: WHY DOES MR. SOULLIERE THINK HIS FRONT BRAKE
3 DIDN'T WORK? YOU HAVE HEARD EVIDENCE OF THIS.

4 WHEN A TIRE IS LOCKED AND SKIDDING IT'S LIKE
5 TRYING TO STOP ON ICE. IT DOESN'T FEEL LIKE THE BRAKE
6 IS WORKING BUT IT IS, BUT IT'S SLIDING BECAUSE IT'S BEEN
7 LOCKED UP.

8 EVEN MR. SOULLIERE HAD DOUBTS ABOUT THIS. AS
9 YOU WILL RECALL, MR. HOUSTON SAID IN HIS OPENING REMARKS
10 THAT MR. SOULLIERE DIDN'T TELL ANYONE THAT HIS BRAKE HAD
11 FAILED UNTIL AFTER HE HAD THE RECALL DONE.

12 NOW THAT IS NOT EVIDENCE BUT THAT IS CERTAINLY
13 WHAT HE EXPECTED THE EVIDENCE TO BE. THE EVIDENCE
14 ACTUALLY SUPPORTS THE INEXPLICABLE ADMISSION SINCE THE
15 TWO PEOPLE YOU WOULD MOST EXPECT TO HAVE HEARD ABOUT A
16 FAILED BRAKE DID NOT HEAR THAT FROM MR. SOULLIERE.

17 MR. SOULLIERE DIDN'T QUESTION MR. VANDERPOOL
18 WHEN MR. VANDERPOOL TOLD HIM THAT GARDEN GROVE HAD ONLY
19 PERFORMED COSMETIC REPAIRS ON HIS MOTORCYCLE AFTER THE
20 ACCIDENT, AND NO BRAKE REPAIR. HE DIDN'T THINK TO ASK:
21 YOU MEAN THEY DIDN'T FIX THE BRAKE THAT DIDN'T WORK?
22 THAT CONVERSATION DIDN'T TAKE PLACE.

23 HE ALSO DIDN'T WARN HIS GOOD FRIEND COLIN
24 CAMPBELL ABOUT ANY POSSIBLE FRONT BRAKE PROBLEM BEFORE
25 COLIN RODE THE MOTORCYCLE TEN MONTHS AFTER THE ACCIDENT
26 AND AFTER SITTING UNUSED IN THE GARAGE FOR ALL THAT

1 PERIOD OF TIME.

2 IN FACT, WHEN COLIN CAME BACK AFTER THAT
3 SAYING, "YOUR BRAKES AREN'T WORKING RIGHT," HE SAID
4 MR. SOULLIERE WAS SURPRISED TO HEAR THAT. IT SUGGESTS
5 THAT MR. SOULLIERE HAD HIS OWN DOUBTS ABOUT THE BRAKE
6 PERFORMANCE.

7 IN FACT, HE TESTIFIED IT WASN'T UNTIL HE
8 LEARNED OF THE RECALL IN JUNE OF 2014, A YEAR AFTER THE
9 ACCIDENT, THAT HE MADE THE CONNECTION.

10 LADIES AND GENTLEMEN, IF THE FRONT BRAKE
11 WORKED AND LAID DOWN THE SKID MARK, IT WAS FULLY
12 FUNCTIONAL. IF THE FRONT BRAKE WAS FULLY FUNCTIONAL,
13 THE RECALL IS IRRELEVANT.

14 THAT CONDITION DID NOT CAUSE A BRAKE FAILURE
15 IN THIS ACCIDENT. AND IF THE BRAKE WAS FULLY FUNCTIONAL
16 AND LAID DOWN A SKID MARK, SUZUKI IS NOT RESPONSIBLE.

17 AS I SAID, MS. CASTELLOW IS 100 PERCENT
18 RESPONSIBLE. SUZUKI HAS NO RESPONSIBILITY AND NEITHER
19 DOES MR. SOULLIERE.

20 NOW, TO BRIEFLY REVIEW WITH YOU THE TIMELINE.
21 AS I THINK YOU HAVE HEARD, THIS MOTORCYCLE WAS
22 MANUFACTURED IN SEPTEMBER 2008, AND IT WAS FIRST SOLD TO
23 THE ORIGINAL PURCHASER IN JANUARY 2009.

24 IT WAS THEN OWNED FOR ABOUT FOUR AND A HALF
25 YEARS, AND THERE WAS ALMOST 7,000 MILES PUT ON THE
26 MOTORCYCLE BY THAT FIRST OWNER WHEN IT WAS SOLD TO

1 BERT'S IN APRIL OF 2013.

2 AS YOU KNOW FROM TESTIMONY -- YOU HAVE HEARD
3 FROM MR. YATES WHO HAD THE INSPECTION REPORT AND THE
4 DELIVERY REPORT, AND ALSO FROM MR. SOULLIERE, BERT'S
5 PERFORMED A COMPLETE INSPECTION ON THAT MOTORCYCLE,
6 INCLUDING THE COMPLETE CHECK OF THE HYDRAULIC BRAKES
7 BEFORE DELIVERING THE MOTORCYCLE TO MR. SOULLIERE.

8 AND THAT EVEN INCLUDED A TEST RIDE AND
9 CONFIRMATION THAT THE BRAKES WERE FULLY FUNCTIONING.

10 MR. HOUSTON: OBJECTION. FACTS NOT IN
11 EVIDENCE, YOUR HONOR.

12 THE COURT: THE JURY WILL DETERMINE WHAT THE
13 FACTS ARE.

14 MR. RIGGS: ON MAY 28, 2013, THE MOTORCYCLE
15 WAS SOLD AND DELIVERED TO MR. SOULLIERE. BY
16 MR. SOULLIERE'S OWN TESTIMONY, THE BRAKES FELT GREAT.
17 IN FACT, THE BRAKES FELT GREAT AND THE FEELING NEVER
18 CHANGED BEFORE HIS ACCIDENT THOSE TEN DAYS THAT HE OWNED
19 THE MOTORCYCLE AND THE 478 MILES HE PUT ON IT.

20 THE ACCIDENT, OF COURSE WE ALL KNOW, HAPPENED
21 ON JUNE 8. ABOUT SIX WEEKS AFTER THAT, MR. VANDERPOOL
22 HAD THE MOTORCYCLE REPAIRED AT GARDEN GROVE -- AS YOU
23 HEARD, COSMETIC REPAIRS ONLY. THEN THE MOTORCYCLE WAS
24 RETURNED TO MR. VANDERPOOL.

25 IN AN ATTEMPT TO HELP OUT HIS SONS FRIEND,
26 MR. VANDERPOOL ROAD THE MOTORCYCLE BACK TO BERT'S TRYING

1 TO RETURN THE MOTORCYCLE TO THEM. THEY DIDN'T TAKE IT
2 BACK. HE THEN BROUGHT IT BACK TO WHERE MR. SOULLIERE
3 WAS LIVING AND PUT IT IN THE GARAGE.

4 THAT ACCOUNTED FOR ABOUT 70 MILES OF RIDING BY
5 MR. VANDERPOOL IN AUGUST OF 2013. NO BRAKE PROBLEMS OF
6 ANY KIND. THE BRAKES FELT FINE. AS I SAY, IT WAS THEN
7 TEN MONTHS LATER WHEN COLIN CAMPBELL VISITED JOEY AND
8 TOOK HIS SHORT RIDE.

9 NOW, YOU HEARD FROM A LOT OF EXPERTS IN THIS
10 CASE -- AND I AM TALKING ABOUT LIABILITY EXPERTS -- FOUR
11 FROM THE PLAINTIFF, AND TWO FROM THE DEFENSE.

12 IN MY OPENING REMARKS I TOLD YOU THAT IT WAS
13 THE PLAINTIFF'S BURDEN TO PROVE TO YOU THAT IT WAS MORE
14 LIKELY THAN NOT THAT A DEFECT IN THE FRONT BRAKE MASTER
15 CYLINDER CAUSED THE FRONT BRAKE TO FAIL AND WAS A
16 SUBSTANTIAL FACTOR IN CAUSING THIS ACCIDENT.

17 I REMINDED YOU AT THAT TIME THAT YOU ARE NOT
18 ALLOWED TO SPECULATE AS TO WHAT COULD HAVE HAPPENED OR
19 WHAT MIGHT HAVE HAPPENED. THERE MUST BE CREDIBLE
20 EVIDENCE OF WHAT DID HAPPEN IN ORDER FOR THE PLAINTIFF
21 TO PROVE HIS CASE, NOT JUST POSSIBILITIES.

22 NOW, PLAINTIFF'S COUNSEL RETAINED SEVERAL
23 EXPERT WITNESSES IN THIS REGARD. THOSE EXPERTS:
24 MR. NELSON, DR. KAR, MR. YATES AND MR. HYATT, THEY WERE
25 ALL COLLECTIVELY ONLY ABLE TO GIVE YOU POSSIBILITIES.

26 NOT ONE OF THEM WAS ABLE TO TELL YOU WHAT DID

1 HAPPEN, WHAT THE CONDITION ACTUALLY WAS IN THE FRONT
2 BRAKE MASTER CYLINDER AT THE TIME OF THE ACCIDENT OR
3 THAT THE FRONT BRAKE ACTUALLY DID FAIL. NOT ONE OF
4 THEM.

5 LET'S TALK ABOUT THEM. RANDY NELSON, HE WAS
6 OUR FIRST WITNESS. HE'S AN EXPERT MOTORCYCLE RIDER. HE
7 DID NOT RECONSTRUCT THE ACCIDENT AND HAD NO OPINIONS ON
8 HOW THE BRAKE PERFORMED. WHAT HE DID SAY, HE JUST CAME
9 TO TALK ABOUT MR. SOULLIERE'S ACTIONS ONCE HE GOT ONTO
10 VALLEY VIEW.

11 MR. NELSON TOLD YOU MS. CASTELLOW VIOLATED
12 SOULLIERE'S RIGHT OF WAY AND WAS AT FAULT FOR BLOCKING
13 HIS LANE OF TRAVEL. HE ALSO SAID ONCE CASTELLOW CREATED
14 THIS EMERGENCY SITUATION, IN HIS OPINION, MR. SOULLIERE
15 WAS LIKELY TERRIFIED AND HAD A COMPRESSED TIMEFRAME
16 WITHIN WHICH TO RESPOND.

17 NELSON AGREED THAT IF A WHEEL IS LOCKED AND
18 SKIDDING, STOPPING DISTANCES WILL INCREASE, AND THE
19 RIDER MAY FEEL LIKE THE BRAKE IS NOT WORKING OR IS
20 WORKING LESS THAN EXPECTED.

21 HE ALSO AGREED THAT IF A WHEEL IS LOCKED AND
22 THE TIRE IS SKIDDING, IF THE BRAKE LEVER IS THEN
23 PUMPED -- AS MR. SOULLIERE SAID HE DID -- THE WHEEL WILL
24 BEGIN TO ROTATE AND THE SKID MARK WILL END.

25 DR. KAR WAS THE NEXT EXPERT TO TESTIFY FOR THE
26 PLAINTIFF, AND HE TALKED ABOUT CORROSION AND HOW IT CAN

1 OCCUR. AND HE SHOWED YOU EXAMPLES OF IT IN EXEMPLAR
2 FRONT BRAKE MASTER CYLINDERS.

3 HE HAD NO IDEA WHERE THESE EXEMPLARS CAME
4 FROM, HOW LONG THEY'D BEEN REMOVED FROM THE MOTORCYCLE,
5 OR HOW MUCH THEY HAD DETERIORATED BY THE TIME HE HAD A
6 CHANCE TO SAMPLE THEM. MORE IMPORTANTLY, HE HAD NO IDEA
7 HOW THEY ACTUALLY PERFORMED WHEN INSTALLED ON
8 MOTORCYCLES.

9 DR. KAR WAS PLAINTIFF'S EXPERT ON CORROSION
10 AND GAS GENERATION, BUT INTERESTINGLY, AND
11 SIGNIFICANTLY, HE COULD NOT SAY AND HAD NO OPINION ON
12 HOW LONG IT WOULD TAKE FOR THE RECALL CONDITION TO
13 DEVELOP.

14 HE HAD NO OPINION ON, AND COULD NOT SAY, HOW
15 HARD A CORROSION PARTICLE WOULD HAVE TO BE IN ORDER TO
16 DISRUPT A SEAL, AND HE HAD NO OPINION ON AND COULD NOT
17 SAY HOW LONG IT WOULD TAKE FOR HYDROGEN GAS TO GENERATE.

18 MOST IMPORTANTLY, DR. KAR COULD NOT SAY THAT
19 EITHER CORROSION OR HYDROGEN GAS EXISTED IN
20 MR. SOULLIERE'S FRONT BRAKE MASTER CYLINDER ON THE DAY
21 OF THE ACCIDENT. HE COULDN'T SAY THAT. DIDN'T BEGIN TO
22 SAY THAT.

23 WITHOUT THIS EVIDENCE, PLAINTIFF CANNOT MAKE
24 HIS CASE. FINALLY, A COMMENT ON DR. KAR. HE SPECULATED
25 THAT CORROSION MIGHT BE ABLE TO DISRUPT A SEAL. BUT IF
26 HE REALLY WANTED TO KNOW IF THAT COULD HAPPEN, IF HE

1 REALLY WANTED TO DO A REAL SCIENTIFIC ANALYSIS WHY
2 DIDN'T HE TAKE THOSE THREE EXEMPLARS THAT HE RECEIVED
3 AND PUT THEM ON MOTORCYCLES AND HAVE SOMEONE RIDE THEM
4 BEFORE HE STARTED TAKING THEM APART AND ANALYZING THEM.

5 THAT COULD HAVE PROVIDED SOME EVIDENCE TO
6 SUPPORT HIS THEORY BUT HE DIDN'T DO IT. HE DIDN'T EVEN
7 TRY.

8 MR. HYATT WAS PLAINTIFF'S OTHER EXPERT OR NEXT
9 EXPERT. MR. HYATT WAS OFFERED TO TELL YOU HOW THE BRAKE
10 COULD HAVE FAILED. HE DID NOT RECONSTRUCT THE ACCIDENT,
11 AND HE ADMITTED THAT THE ONLY EVIDENCE HE HAD THAT THE
12 FRONT BRAKE DID NOT PROPERLY WORK AT THE TIME OF THE
13 ACCIDENT WAS THE TESTIMONY OF MR. SOULLIERE HIMSELF.

14 AND HE UNDERSTOOD. HIS UNDERSTANDING WAS THAT
15 MR. SOULLIERE EXPERIENCED A SUDDEN AND COMPLETE BRAKE
16 FAILURE, NOT JUST A: "IT WASN'T QUITE WHAT I EXPECTED."

17 MR. HYATT TESTIFIED THAT THERE WERE TWO
18 POSSIBLE EXPLANATIONS FOR WHAT MR. SOULLIERE DESCRIBED,
19 AND THAT WAS, SUDDEN ONSET OF GAS FROM A NON-CORROSION
20 SOURCE, OR DISRUPTION OF THE SEAL.

21 AS FOR HIS GAS THEORY, HE ADMITTED IF GAS WAS
22 BEING GENERATED IN THE FRONT BRAKE MASTER CYLINDER AS A
23 RESULT OF THE RECALL CONDITION, THAT GAS WOULD GENERATE
24 SLOWLY. IT WOULD ONLY BUILD UP OVER TIME, AND IT WOULD
25 NOT DIMINISH THE BRAKE PERFORMANCE SUDDENLY.

26 THIS MEANS IT DOES NOT GO FROM A GOOD BRAKE TO

1 NO BRAKE SUDDENLY. HE ALSO ACKNOWLEDGED THAT
2 MR. SOULLIERE HAD NOT EXPERIENCED A SPONGY BRAKE AT ANY
3 TIME PRIOR TO THE ACCIDENT AND THAT HE, MR. HYATT, WAS
4 NOT QUALIFIED TO SAY AND WOULD NOT GIVE AN OPINION ON
5 WHETHER MR. SOULLIERE OR ANY RIDER WOULD NOTICE A SPONGY
6 BRAKE.

7 MR. HYATT IS THE CREATOR OF THE SEAL
8 DISRUPTION THEORY. WHILE HE IS NOT AN EXPERT ON
9 CORROSION, HERE IS HIS THEORY. HIS THEORY IS THAT A
10 CORROSION PARTICLE SOMEHOW DEVELOPS AND ATTACHES ITSELF
11 TO THE LEADING EDGE OF THE PRESSURE SEAL. AND IT
12 REMAINS THERE FOR THE FULL STROKE OF THE BRAKE LEVER AS
13 THE PISTON MOVES FORWARD TO BUILD PRESSURE IN THE FRONT
14 BRAKE MASTER CYLINDER.

15 HE ASSUMES THAT A PARTICLE COULD BE LARGE
16 ENOUGH. HE ASSUMES THAT A PARTICLE COULD BE HARD ENOUGH
17 TO REMAIN ON THE SEAL DURING THE FULL STROKE OF THE
18 PISTON AND DISRUPT THE SEAL, HOLDING IT OPEN SO
19 COMPLETELY SO AS TO CREATE A PATH FOR BRAKE FLUID TO
20 LEAK PAST THE SEAL.

21 BUT HE DID NO HARDNESS TESTING OF ANY
22 CORROSION PARTICLE HIMSELF. HE HYPOTHESIZED THAT AFTER
23 THIS DISRUPTION THE PARTICLE THAT WAS SO FIRMLY ATTACHED
24 TO THE SEAL WOULD NOW SOMEHOW DETACH ITSELF AND FALL OFF
25 THE SEAL SO THAT THE BRAKE WOULD THEN MAGICALLY RETURN
26 TO A PERFECTLY WORKING CONDITION JUST AS IT HAD BEEN

1 BEFORE THE ACCIDENT.

2 HYATT ADMITS THAT THIS THEORY ASSUMES THAT
3 THIS IS A RANDOM, A TRANSIENT EVENT. IT WOULD SO RARELY
4 OCCUR, IN HIS OPINION, THAT HE WAS UNWILLING TO ACTUALLY
5 TEST IT HIMSELF TO SEE IF IT WAS EVEN POSSIBLE.

6 AS YOU HEARD HIM SAY, HE DIDN'T WANT TO WASTE
7 HIS TIME BY ACTUALLY CREATING PARTICLES AND PUTTING THEM
8 INTO A FRONT BRAKE MASTER CYLINDER WITH BRAKE FLUID AND
9 THEN RIDING TO SEE IF HE COULD ACTUALLY DISRUPT THE
10 SEAL.

11 INSTEAD OF DOING REAL TESTING, HE BURNED A
12 LEAK PATH ENTIRELY THROUGH A SEAL, TOP TO BOTTOM,
13 GUARANTEEING THAT THE BRAKE FLUID WOULD FLOW PAST THE
14 SEAL, AND THEN HE DID HIS DEMONSTRATION.

15 LADIES AND GENTLEMEN, THIS IS NOT A TEST OF A
16 PARTICLE DISRUPTING THE SEAL. IN FACT IT IS NOT A TEST
17 AT ALL. THIS DOES NOT PROVE THAT A CORROSION PARTICLE
18 COULD DISRUPT A SEAL, AND IT PROVES NOTHING ABOUT WHAT
19 COULD HAPPEN IN A REAL FRONT BRAKE MASTER CYLINDER ON AN
20 ACTUAL MOTORCYCLE ACTUALLY BEING RIDDEN.

21 FRANKLY, IT PROVES NOTHING ABOUT WHAT HAPPENED
22 IN THIS ACCIDENT.

23 FINALLY, LET ME DISCUSS MR. YATES. MR. YATES
24 WAS OFFERED AS PLAINTIFF'S RECONSTRUCTION EXPERT. HE
25 AGREED WITH MR. HOOVER'S RECONSTRUCTION, AND THAT'S
26 SIGNIFICANT.

1 HE AGREED WITH MR. HOOVER'S RECONSTRUCTION
2 WITH ONE EXCEPTION -- HE DID NOT BELIEVE THAT THERE'S A
3 SECOND FRONT TIRE SKID MARK THAT WAS LAID DOWN BY
4 MR. SOULLIERE'S BIKE.

5 MR. YATES INSTEAD SAYS THAT THIS SECOND TIRE
6 MARK SHOULD BE IGNORED IN CONSIDERING HOW THIS ACCIDENT
7 HAPPENED. THAT IS JUST A STRAY MARK FROM SOME OTHER
8 UNIDENTIFIED EVENT. THE REASON YOU MUST IGNORE THE
9 SECOND TIRE MARK IS BECAUSE, IF IT IS FROM
10 MR. SOULLIERE'S ACCIDENT, IT IS PROOF THAT THE FRONT
11 BRAKE WAS WORKING.

12 MORE IMPORTANTLY, IT IS PROOF THAT THE FRONT
13 BRAKE WAS FULLY FUNCTIONAL AT THE TIME OF THE ACCIDENT
14 SINCE ONLY A FULLY FUNCTIONAL BRAKE COULD PRODUCE A TIRE
15 SKID MARK.

16 NOW, THE ODD THING ABOUT THIS IS THAT
17 MR. YATES ACKNOWLEDGES THAT THE SECOND TIRE SKID MARK IS
18 THERE. THERE'S NO DISPUTE ABOUT THAT. BOTH MR. YATES
19 AND MR. HOOVER AGREE THERE'S TWO MARKS THERE, AND
20 THEY'RE BOTH TIRE MARKS.

21 MR. YATES AGREES WITH THAT. IN FACT, HE
22 DOCUMENTED IT. HE MEASURED IT. HE GOT THE SAME
23 APPROXIMATE DISTANCE OF BOTH TIRE MARKS AS MR. HOOVER.

24 AND BECAUSE HE ACKNOWLEDGED THAT TIRE MARKS
25 DON'T LAST LONG AND SOON DISAPPEAR ON BUSY ROADS LIKE
26 VALLEY VIEW, THIS STRAY MARK THAT HE WANTS TO IGNORE HAD

1 TO HAVE BEEN LAID DOWN CLOSE IN TIME TO MR. SOULLIERE'S
2 ACCIDENT, AND IN EXACTLY THE SAME LOCATION WHERE A
3 LOCKED FRONT TIRE SKID MARK FROM MR. SOULLIERE'S BIKE
4 WOULD HAVE LEFT A MARK. THAT'S SOME COINCIDENCE.

5 IF THAT'S REALLY NOT RELATED TO THIS ACCIDENT,
6 THAT'S SOME COINCIDENCE. THAT IT WOULD BE LAID DOWN
7 RIGHT WHERE YOU WOULD EXPECT MR. SOULLIERE'S FRONT TIRE
8 MARK TO BE LAID DOWN, AND IT'S STILL THERE EVEN THOUGH
9 MARKS LIKE THAT DON'T LAST LONG, THAT WOULD BE AN
10 AMAZING COINCIDENCE.

11 AGAIN, I MUST SAY THAT MR. YATES DID NOT SAY
12 THAT THE FRONT BRAKE FAILED. MR. YATES ALSO EXPRESSED
13 ANOTHER OPINION. THAT OPINION WAS THAT MR. SOULLIERE
14 HAD ENOUGH DISTANCE TO STOP BEFORE IMPACTING CASTELLOW'S
15 SUV. BUT THAT WAS, HE SAID, IF HE HAD A FULLY
16 FUNCTIONAL FRONT AND REAR BRAKE.

17 BUT MR. YATES ALSO ACKNOWLEDGED THAT, IN THAT
18 60 FEET AND 1.50 SECONDS TO STOP, MR. SOULLIERE WOULD
19 ONLY -- IT WOULD ONLY HAVE BEEN POSSIBLE FOR
20 MR. SOULLIERE TO STOP IF THE BRAKES WERE PROPERLY
21 APPLIED. PROPERLY APPLIED.

22 AND HE EXPLAINED WHAT HE MEANT BY THAT.
23 PROPERLY APPLIED TO MR. YATES MEANT FIRMLY AND FULLY
24 APPLIED BUT WITHOUT LOCKING THEM UP. WITHOUT LOCKING UP
25 THE FRONT BRAKE OR THE REAR BRAKE.

26 IN AN EMERGENCY SITUATION LIKE THAT, MR. YATES

1 SAID THAT WOULD REQUIRE A RIDER TO HAVE HAD TRAINING,
2 WHICH MR. SOULLIERE DID NOT HAVE.

3 MR. YATES ALSO GAVE THE OPINION THAT, IN ORDER
4 TO BE ABLE TO PROPERLY APPLY THE BRAKES AND COME TO A
5 FULL STOP IN THAT 1.50 SECONDS AND 60 FEET, YOU WOULD
6 MOST LIKELY HAVE TO BE A SKILLED RIDER, NOT A NOVICE
7 RIDER. AND IT WAS MR. YATES' OPINION -- NOT MINE --
8 THAT MR. SOULLIERE WAS MORE OF A NOVICE.

9 NOW, WE WILL NEVER KNOW IF MR. SOULLIERE COULD
10 HAVE STOPPED BECAUSE ANY POSSIBILITY OF BEING ABLE TO
11 STOP BEFORE IMPACTING THE SUV WOULD HAVE REQUIRED THAT
12 THE MOTORCYCLE REMAIN UPRIGHT ON ITS TWO WHEELS. AS WE
13 KNOW, ONCE THE BRAKES LOCKED UP, THE ABILITY TO STEER
14 WAS LOST, AND THE BIKE PROCEEDED TO FALL DOWN AND SLIDE.

15 NOW AGAIN, THIS IS NOT TO SAY THAT
16 MR. SOULLIERE WAS NEGLIGENT OR OTHERWISE AT FAULT IN A
17 LEGAL SENSE FOR THIS RESPONSE. IN FACT, SUZUKI WOULD
18 AGREE IT IS COMPLETELY UNDERSTANDABLE FOR SOMEONE IN
19 MR. SOULLIERE'S POSITION, WHO WAS PANICKED BY HIS OWN
20 ADMISSION, TO HAVE DONE WHAT HE DID.

21 BUT AT THE SAME TIME, WE SIMPLY BRING THE
22 FACTS TO YOU. IT DOES EXPLAIN WHY THE MOTORCYCLE FELL
23 DOWN.

24 THE POINT THAT I WANT TO MAKE BY REVIEWING
25 PLAINTIFF'S EXPERTS' TESTIMONY WITH YOU IS THAT ALL THE
26 PLAINTIFF'S EXPERTS COULD PROVIDE YOU WERE THEORIES,

1 HYPOTHETICALS, OR POSSIBILITIES. BUT NO ONE, NOT ONE OF
2 THEM WAS ABLE TO TELL YOU THAT THE FRONT BRAKE FAILED
3 AND CAUSED THIS ACCIDENT.

4 THAT'S THE PLAINTIFF'S BURDEN, AND THE
5 PLAINTIFF DID NOT HAVE AN EXPERT TO MAKE THAT POINT FOR
6 THEM. AND MR. HOUSTON'S EFFORT IN CLOSING TO PUT WORDS
7 INTO MR. YATES' MOUTH IS NOT EVIDENCE.

8 IF PLAINTIFF COULD PROVE THE BRAKE FAILED, YOU
9 KNOW THEY WOULD HAVE DONE IT AND WOULD HAVE BEEN OF
10 PRIMARY IMPORTANCE. PLAINTIFF'S KNEW OBVIOUSLY IT WAS A
11 REQUIREMENT IN ORDER TO PREVAIL HERE.

12 THE INABILITY TO HAVE EVEN ONE OF FOUR EXPERTS
13 TO SAY THAT THE BRAKE FAILED SHOULD TELL YOU ALL YOU
14 NEED TO KNOW.

15 NOW LET'S TALK ABOUT THE RECONSTRUCTION. YOU
16 HEARD IN THE CROSS-EXAMINATION BY MR. HOUSTON OF THE
17 DEFENSE EXPERTS THAT HE WAS VERY INTERESTED IN WHETHER
18 OR NOT THEY HAD ACTUALLY ENGAGED IN A SCIENTIFIC METHOD,
19 AS HE DESCRIBED IT, IN ORDER TO DEVELOP THEIR OPINIONS.

20 NOW, THE IRONY OF THIS LINE OF QUESTIONING IS
21 THAT NONE OF PLAINTIFF'S EXPERTS ENGAGED IN SUCH A
22 METHOD. YOU WILL RECALL THAT DR. KAR ACTUALLY TESTIFIED
23 THAT HE DIDN'T HAVE TO DO TESTING TO OFFER HIS OPINIONS.

24 MR. HYATT CHOSE NOT TO DO ANY REAL TESTING AT
25 ALL. IN CONTRAST TO THE PLAINTIFF'S EXPERTS, BOTH
26 MR. HOOVER AND MR. BREEN NOT ONLY OFFERED THEIR OPINIONS

1 BUT EXPLAINED TO YOU HOW THEY ARRIVED AT THEIR OPINIONS
2 AND IDENTIFIED FOR YOU HOW THEY SUPPORTED THE OPINIONS
3 THEY HAD.

4 I WANT TO TALK TO YOU ABOUT MR. HOOVER AND
5 MR. BREEN. BEFORE I DO I WOULD JUST SAY, WHEN YOU CAN'T
6 IMPEACH AN EXPERT'S OPINIONS OR TESTING YOU CALL THEM
7 NAMES.

8 MR. HOUSTON SAID THAT MR. HOOVER AND MR. BREEN
9 WERE LIARS. HE SAID THAT. IS THAT BECAUSE
10 MR. HOOVER -- THE INSPECTION SHEET FROM THE INSPECTION
11 THAT MR. HOOVER DID, AN INSPECTION SHEET HE DID NOT
12 PERSONALLY PREPARE, WHICH HE TESTIFIED TO.

13 MR. HOOVER WAS TAKING THE PHOTOGRAPHS AND
14 DOING THE VIDEOTAPE. SOMEONE ELSE WAS PREPARING THAT
15 INSPECTION REPORT. DOES THAT MAKE MR. HOOVER A LIAR? I
16 THINK NOT.

17 UNLIKE MR. YATES, MR. HOOVER PRESENTED
18 EVIDENCE OF A DETAILED EVIDENCE-BASED RECONSTRUCTION OF
19 THIS ACCIDENT. USING PHYSICAL EVIDENCE HE WALKED YOU
20 THROUGH HOW AND WHY THIS ACCIDENT HAPPENED.

21 THE EVIDENCE HE RELIED ON WERE THE TWO SKID
22 MARKS AND THE GOUGE MARKS ON THE PAVEMENT THAT WAS
23 DOCUMENTED BY THE VIDEO. IF I COULD HAVE 194.

24 (AT THIS TIME, A VIDEOTAPE WAS PLAYED
25 IN OPEN COURT.)

26 MR. RIGGS: AND IF I COULD HAVE 1420.

1 (AT THIS TIME A VIDEOTAPE WAS PLAYED
2 IN OPEN COURT.)

3 MR. RIGGS: THESE WERE THE SKID MARKS AND
4 GOUGE MARKS THAT MR. HOOVER USED IN HIS RECONSTRUCTION.
5 THESE WILL BE AVAILABLE TO YOU IN YOUR DELIBERATION
6 ROOM. I SUGGEST THAT YOU LOOK AT THOSE. I ALSO SUGGEST
7 THAT YOU -- YOU WILL HAVE A BETTER OPPORTUNITY.

8 THE DETAIL YOU ARE ABLE TO SEE ON THE
9 PROJECTION SCREEN AND EVEN ON THIS HIGH DEFINITION AT
10 THE DISTANCE YOU ARE MAY CAUSE SOME OF YOU TO WONDER
11 WHAT IS HE LOOKING AT. I THINK WHEN YOU GET IN THE JURY
12 ROOM YOU WILL BE ABLE TO SEE MORE CLEARLY WHAT
13 MR. HOOVER WAS REFERRING TO AND WHAT MR. YATES WAS
14 DOCUMENTING.

15 MR. HOOVER ALSO RELIED ON ABRASION MARKS THAT
16 HE FOUND ON THE FRONT AND REAR TIRES. HE DISCUSSED AND
17 DOCUMENTED THESE IN EXHIBITS THAT ARE IN EVIDENCE IN
18 THIS RECORD. I WON'T TAKE THE TIME FOR THOSE BUT I WILL
19 TELL YOU IF YOU CHOOSE TO LOOK, THESE ARE 1109-461
20 AND -454 -- AND I AM TALKING ABOUT THE ABRASION MARKS ON
21 THE TIRES. THEY ARE ALSO 1111 OR 1111B-1, -2 AND, -3.

22 NOW, MR. HOOVER CONSIDERED THE TIRE MARKS ON
23 THE ROAD, THE GOUGE MARKS ON THE ROAD THAT WERE IN THE
24 LINE OF THE MOTORCYCLE SLIDING TO THE POINT OF REST, AND
25 THE ABRASION MARKS ON THE TIRE.

26 NOW SIGNIFICANTLY MR. YATES DID NOT EVEN

1 MENTION ANY INSPECTION OF THE TIRES. AND MORE
2 IMPORTANTLY HE NEVER DISPUTED THE TESTIMONY THAT HE KNEW
3 THAT MR. HOOVER WAS GOING TO GIVE ABOUT ABRASIONS ON THE
4 TIRES.

5 THE FACT THAT THE FRONT TIRE SKID MARK WERE
6 SHORTER AND LIGHTER IN COLOR THAN THE REAR TIRE SKID
7 MARK IS BOTH PREDICTABLE AND CONSISTENT WITH BEING
8 DEPOSITED BY MR. SOULLIERE'S MOTORCYCLE.

9 MR. HOOVER EXPLAINED THAT THERE ARE MULTIPLE
10 FACTORS THAT CAUSED THE FRONT AND REAR TIRES TO LEAVE
11 UNIQUE SKID MARKS ON THE PAVEMENT. THOSE FACTORS
12 INCLUDE THE AGE AND HARDNESS OF THE TIRES.

13 AND THERE WAS A SIGNIFICANT DIFFERENCE IN THE
14 AGE AND HARDNESS OF THE FRONT AND REAR TIRE IN THIS
15 ACCIDENT, WHICH HE SAID COULD MAKE A SIGNIFICANT
16 DIFFERENCE IN THE MARK THAT IT WOULD LEAVE, AND IN THE
17 COLOR OF THAT MARK.

18 IT CAN ALSO DEPEND ON THE SIZE OF THE CONTACT
19 PATCH. THE REAR TIRE IS SIGNIFICANTLY LARGER THAN THE
20 FRONT TIRE, WHICH ALSO AFFECTS THE AMOUNT OF TREAD THAT
21 ACTUALLY TOUCHES THE ROADWAY.

22 ANOTHER FACTOR THAT WOULD AFFECT THE
23 APPEARANCE OF THE TIRE MARK IS THE LEAN ANGLE OF THE
24 MOTORCYCLE AT THE TIME THE MARK IS BEING LAID DOWN.

25 MR. HOOVER ALSO EXPLAINED THAT MOTORCYCLE
26 TIRES ARE DESIGNED DIFFERENTLY THAN CAR TIRES. THEY'RE

1 HEMISPHERIC OR HALF CIRCLES, AS HE SAID, BECAUSE
2 OTHERWISE A MOTORCYCLE WOULDN'T TURN.

3 SO WHEN YOU LOCK A TIRE ON A MOTORCYCLE,
4 THERE'S A CONTACT PATTERN LAID DOWN ON THE ROADWAY.
5 WHEN THAT TIRE IS LOCKED, THE RUBBER IS BEING PEELED AND
6 PUT ON THE PAVEMENT, AND SCRATCHES AND ABRASIONS ARE
7 LEFT ON THE TIRE WHERE THAT RUBBER HAS BEEN PEELED OFF.

8 THE DIFFERENCE IN COLOR AND APPEARANCE CAN BE
9 EXPLAINED IN PART BY A DIFFERENCE IN ELASTICITY OR
10 HARDNESS BETWEEN A FIVE-YEAR-OLD TIRE AND A RELATIVELY
11 NEW TIRE. YOU KNOW THE FRONT TIRE WAS FIVE YEARS OLD.
12 IT WAS THE ORIGINAL EQUIPMENT TIRE THAT CAME WITH THE
13 MOTORCYCLE, AND IT HAD LOST SOME OF ITS ELASTICITY OVER
14 TIME AND WAS HARDER.

15 WHEREAS THE REAR TIRE WAS A NEW TIRE THAT HAD
16 BEEN PUT ON BY BERT'S SHORTLY BEFORE THE ACCIDENT. AND
17 AS MR. HOOVER EXPLAINED, LESS RUBBER IS PEELED OFF OF A
18 HARD TIRE THAT IS SKIDDING AS COMPARED TO A NEWER,
19 SOFTER TIRE, LIKE THE ONE ON THE REAR OF THE MOTORCYCLE.

20 MR. HOOVER THEN SUPPLEMENTED THIS EVIDENCE
21 WITH EXPLANATIONS AND ILLUSTRATIONS OF WHY A FULLY
22 FUNCTIONAL FRONT BRAKE IS REQUIRED FOR THE MOTORCYCLE TO
23 FALL DOWN THE WAY IT DID AND AS QUICKLY AS IT DID.

24 LET'S LOOK AT THAT BRIEFLY. EXHIBIT 191,
25 PLEASE.

26 (AT THIS TIME A VIDEOTAPE WAS PLAYED

1 IN OPEN COURT.)

2 MR. RIGGS: THESE WERE RUNS WHERE MR. HOOVER
3 DID FOUR COLLECTIVE RUNS TRYING TO LAY DOWN AN
4 APPROXIMATELY 20-FOOT-LONG SKID MARK IN EVER INCREASING
5 LEAN ANGLES TO SHOW THE REAR TIRE COULD LAY DOWN A
6 20-FOOT SKID MARK AS IT DID.

7 WE ALSO THEN -- COULD I HAVE 1305C. YOU WILL
8 RECALL THAT THIS WAS SHOWING THAT THE SMOKE IS COMING
9 OFF THE REAR TIRE INDICATING THAT THAT TIRE IS IN FACT
10 LOCKED UP. AND IT ALSO SHOWS YOU THAT WHEN YOU LOCK UP
11 THE REAR TIRE AND LEAN TO THE LEFT, AS MR. SOULLIERE
12 SAID HE WAS, THEN YOU SEPARATE THE TIRE MARK THAT THE
13 FRONT TIRE WOULD LEAVE FROM THE REAR TIRE.

14 HERE HE'S APPLYING NO FRONT BRAKE. AS YOU
15 WILL RECALL, THIS PARTICULAR ONE SHOWS HIS FOOT IN THE
16 CORNER OF THIS PHOTO SHOWING HE HAS THE REAR BRAKE FULLY
17 APPLIED.

18 THE OTHER VIDEO THAT YOU WERE SHOWN HAD A
19 DIFFERENT VERSION THAT SHOWED HIS RIGHT HAND, AND IT
20 SHOWED THAT HE WAS APPLYING NO FRONT BRAKE AT ALL DURING
21 THESE DEMONSTRATIONS.

22 IT DOES SHOW YOU THE ORIENTATION IS, ONCE YOU
23 LOCK THE REAR WHEEL AND LEAN, YOU GET THIS SEPARATION.
24 THE TIRE MARK THAT THE FRONT TIRE WOULD LAY DOWN IS TO
25 THE LEFT OF THE REAR TIRE MARK, WHICH IS EXACTLY THE
26 SITUATION THAT WAS DOCUMENTED AT THE ACCIDENT SCENE.

1 MR. HOOVER THEN EXPLAINS WHY HIS
2 RECONSTRUCTION NOT ONLY SUPPORTS A FULLY FUNCTIONAL
3 FRONT BRAKE THAT LOCKED AND DEPOSITED A SKID MARK BUT IS
4 ALSO CONSISTENT WITH MR. SOULLIERE'S ACTIONS AND
5 PERCEPTIONS AS HE RESPONDED TO BEING AGGRESSIVELY CUT
6 OFF BY MR. CASTELLOW.

7 AS YOU'LL RECALL, MR. HOOVER EXPLAINED BASED
8 ON HIS OWN EXPERIENCE THAT, IF A BRAKE IS LOCKED UP AND
9 SKIDDING, THE LOSS OF TRACTION WITH THE PAVEMENT CAN
10 CREATE A FEELING THAT A BRAKE IS NOT WORKING, OR THAT
11 THE MOTORCYCLE IS NOT DECELERATING AS QUICKLY AS THE
12 RIDER EXPECTED.

13 THE EXAMPLE HE RELATED TO YOU WAS THE FEELING
14 A DRIVER OF A CAR MIGHT EXPERIENCE WHEN ATTEMPTING TO
15 BRAKE WHILE ON ICY PAVEMENT. THE BRAKES ARE WORKING BUT
16 THE CAR IS NOT STOPPING OR SLOWING DOWN AS QUICKLY AS
17 THE DRIVER EXPECTED.

18 BASED UPON HIS ANALYSIS OF THE FACTS, HIS
19 RECONSTRUCTION, AND HIS EDUCATION AND EXPERIENCE,
20 MR. HOOVER EXPRESSED TWO OPINIONS CONCERNING THIS
21 ACCIDENT.

22 HIS FIRST OPINION WAS THAT AT THE TIME OF THE
23 CRASH MR. SOULLIERE'S MOTORCYCLE HAD A FULLY FUNCTIONAL
24 FRONT BRAKE THAT DEPOSITED A LOCKED FRONT TIRE MARK.

25 HIS SECOND OPINION WAS THAT THE FRONT BRAKE
26 DID NOT FAIL AND WAS NOT A SUBSTANTIAL FACTOR IN CAUSING

1 THIS CRASH.

2 LET ME NOW REVIEW WITH YOU THE TESTIMONY BY
3 MR. BREEN. AGAIN, HIS CREDIBILITY WAS CHALLENGED IN
4 MR. HOUSTON'S CLOSING REMARKS, AND I CAN'T IMAGINE THAT
5 IT CAME FROM THAT COAST GUARD LETTER.

6 I THINK THE PART THAT I WAS ABLE TO BRING TO
7 YOUR ATTENTION WAS THE FACT THE COAST GUARD WAS QUITE
8 ENAMORED WITH MR. BREEN AND WAS MUCH APPRECIATIVE OF THE
9 WORK HIS SAE COMMITTEE DID WHILE THEY WERE TRYING TO
10 FIGURE OUT PERSONAL WATERCRAFT STEERING OPTIONS.

11 MR. BREEN EXPRESSED THE OPINION THAT
12 MR. HYATT'S SEALED DISRUPTION THEORY WAS JUST THAT --
13 ONLY A THEORY.

14 THROUGH RIGOROUS TESTING, MR. BREEN
15 DEMONSTRATED THAT BY USING HARD METAL PARTICLES AND
16 BRAKE FLUID THAT THEY WILL NOT DISRUPT THE FRONT BRAKE
17 MASTER CYLINDER SEAL OR DIMINISH THE PERFORMANCE OF A
18 FRONT BRAKE MASTER CYLINDER ON A MOTORCYCLE THAT IS
19 ACTUALLY BEING RIDDEN.

20 MR. BREEN DID THIS IN TWO WAYS: THROUGH
21 DYNAMIC TESTING, AND THROUGH LABORATORY TESTING. AND IN
22 BOTH TESTS MR. BREEN USED ACTUAL BRAKE FLUID THAT HE
23 POLLUTED WITH HARD METALLIC PARTICLES CREATED BY HIMSELF
24 FROM GRINDING ZINC AND ALUMINUM COMPONENTS OF A FRONT
25 BRAKE MASTER CYLINDER.

26 CERTAINLY YOU WOULD ASSUME IT WAS AS HARD AS,

1 IF NOT HARDER THAN, ANY POTENTIAL CORROSION PARTICLE.
2 THE DYNAMIC TESTING THAT MR. BREEN DID INCLUDED RIDING
3 GSXR MOTORCYCLES IN EXCESS OF 100 MILES WITH THAT
4 POLLUTED BRAKE FLUID IN THE FRONT BRAKE MASTER CYLINDER,
5 AND WHILE CONSTANTLY MONITORING THE PERFORMANCE OF THE
6 FRONT BRAKE.

7 IN THE LABORATORY TESTING HE DID, MR. BREEN
8 USED A MACHINE THAT APPLIED THE BRAKE LEVER TO A FRONT
9 BRAKE MASTER CYLINDER FILLED WITH THE SAME POLLUTED
10 BRAKE FLUID. THAT MACHINE PULLED THE BRAKE LEVER MORE
11 THAN 100,000 TIMES, INCLUDING 4- TO 6000 BRAKE LEVER
12 APPLICATIONS WHEN HE WAS USING THAT ACRYLIC, THAT
13 SEE-THROUGH MASTER CYLINDER.

14 THE PERFORMANCE DATA RECORDED DURING THE
15 DYNAMIC AND LABORATORY TESTS CONFIRMED THAT THESE HARD
16 METAL PARTICLES NEVER DISRUPTED THE SEAL OR CAUSED ANY
17 DECREASE IN BRAKE PRESSURE OR PERFORMANCE.

18 BASED UPON THIS TESTING, MR. BREEN
19 DEMONSTRATED THAT MR. HYATT'S THEORY IS JUST WRONG, AND
20 ANY CORROSION PARTICLE GENERATED IN THE FRONT BRAKE
21 MASTER CYLINDER WOULD NOT WEDGE ITSELF BETWEEN THE FRONT
22 BRAKE MASTER CYLINDER AND THE SEAL.

23 IT WOULD NOT CREATE A LEAK PATH, AND IT WOULD
24 NOT RESULT IN A SUDDEN BRAKE FAILURE OR EVEN DECREASE
25 BRAKE PERFORMANCE BASED UPON ALL OF THAT TESTING THAT HE
26 DID AND THE CONSTANT MONITORING OF THE BRAKES DURING

1 THOSE TESTS.

2 BASED UPON THIS TESTING, THIS REAL SCIENTIFIC
3 TESTING, MR. BREEN OFFERED THE OPINION THAT MR. HYATT'S
4 SEAL DISRUPTION THEORY ISN'T VALID. IT'S NOT CONSISTENT
5 WITH THE DESIGN OF THE FRONT BRAKE MASTER CYLINDER OR
6 THE MATERIALS USED IN ITS DESIGN, NOR IS IT CONSISTENT
7 WITH THE FACTS OF THIS CASE.

8 MR. BREEN DID OTHER TESTING. HE TESTED TO
9 EVALUATE THE RATE AT WHICH A FRONT BRAKE MASTER CYLINDER
10 SIDE PORT LOCATION COULD PURGE GAS THAT COULD
11 POTENTIALLY ACCUMULATE AS A RESULT OF THE RECALL
12 CONDITION.

13 BEGINNING WITH AN EXTREME CASE, MR. BREEN AND
14 HIS TEAM ROAD A MOTORCYCLE EQUIPPED WITH A FRONT BRAKE
15 MASTER CYLINDER THAT HE FILLED WITH 3 MILLILITERS OF AIR
16 FOR APPROXIMATELY 30 TO 40 MILES, WHILE CONSTANTLY
17 MONITORING THE PERFORMANCE OF THE FRONT BRAKE.

18 THE DATA THAT WAS CAPTURED WAS DISPLAYED TO
19 YOU IN A CHART THAT HE BROUGHT TO YOU -- A CHART THAT HE
20 HAD TO REVERSE THE NEXT DAY, REALIZING IT HAD
21 ADMINISTRATIVELY BEEN INCORRECTLY LABELED.

22 BUT THAT DATA THAT HE DISPLAYED TO YOU, AND
23 HIS TESTIMONY, WAS THAT IN ONLY A SHORT DISTANCE OF
24 ACTUAL DRIVING AND A FEW BRAKE APPLICATIONS ENOUGH GAS
25 WOULD BE PURGED FROM THE FRONT BRAKE MASTER CYLINDER TO
26 RESTORE THE FRONT BRAKE TO A CONDITION IN WHICH IT WAS

1 FULLY FUNCTIONAL AND CAPABLE OF LOCKING THE FRONT WHEEL.

2 NOW, THE FIVE, OR SIX, OR SEVEN BRAKE
3 APPLICATIONS THAT HAVE BEEN MADE REFERENCE TO IN
4 CONNECTION WITH MR. BREEN, THOSE WERE NOT BRAKE
5 APPLICATIONS THAT MR. BREEN WAS TALKING ABOUT WHILE THE
6 MOTORCYCLE IS TURNED OFF SITTING ON ITS SIDE STAND.

7 MR. BREEN'S TESTING WAS A DYNAMIC TEST WHILE,
8 WHEN THE MOTORCYCLE IS BEING RIDDEN AND THE BRAKE FLUID
9 INSIDE THE MASTER CYLINDER IS BEING AGITATED FROM THE
10 VIBRATION OF THE ROAD AND THE MOTORCYCLE ENGINE, AND
11 THEN THE BRAKE IS USED ON MULTIPLE OCCASIONS, THAT IS
12 THE PURGING THAT MR. BREEN TESTED AND DOCUMENTED WOULD
13 OCCUR.

14 MR. BREEN ALSO TESTIFIED THAT IF A RIDER WERE
15 TO ENCOUNTER A FRONT BRAKE MASTER CYLINDER IN SUCH AN
16 EXTREME CONDITION; THAT IS, FULL OF GAS OR AIR, THAT
17 RIDER WOULD BE IMMEDIATELY ABLE TO RECOGNIZE THE BRAKE
18 AS BEING SPONGY.

19 BASED UPON THIS TESTING, AS WELL AS HIS
20 EDUCATION AND EXPERIENCE, IT WAS MR. BREEN'S OPINION
21 THAT THERE IS NO EVIDENCE THAT GASES HAD ACCUMULATED AND
22 WERE PRESENT IN MR. SOUILLERE'S FRONT BRAKE MASTER
23 CYLINDER TO THE EXTENT THEY HAD ANY EFFECT ON THE
24 PERFORMANCE OF HIS FRONT BRAKE ON THE DAY OF THE CRASH.

25 NOW I WANT TO TALK TO YOU FOR A MINUTE ABOUT
26 ZINC. YOU HAVE HEARD ABOUT ZINC. IT WAS A MATERIAL

1 USED IN THE FRONT BRAKE MASTER CYLINDER. IT WAS THE
2 MATERIAL THAT THE PISTON WAS MADE OF, ZINC ALLOY, IN
3 FACT.

4 I REVIEWED WITH YOU AND PROVED WRONG
5 PLAINTIFF'S THEORY THAT THE FRONT BRAKE MASTER CYLINDER
6 SIDE PORT WAS A DEFECT OR PARTICIPATED IN ANY WAY IN
7 THIS ACCIDENT.

8 BUT THE THEORY THAT THE ZINC PLAYED SOME ROLE
9 IS ALSO SIMPLY NOT TRUE. YOU HEARD TESTIMONY FROM
10 MR. MATSUMOTO THAT DURING SUZUKI'S INVESTIGATION THEY
11 EVALUATED AND COMPARED THE DURABILITY, SUSCEPTIBILITY TO
12 CORROSION, AND PERFORMANCE CHARACTERISTICS OF BOTH ZINC
13 AND ALUMINUM.

14 AS A RESULT OF SUZUKI'S TESTING, AND AFTER
15 CONSULTATION WITH UNIVERSITY PROFESSORS, CCI, WHO WAS
16 THE BRAKE FLUID SUPPLIER, NISSIN KOGYO, THE SUPPLIER OF
17 THE FRONT BRAKE MASTER CYLINDER, SUZUKI CONCLUDED THAT
18 THE BENEFITS OF ZINC, WHICH INCLUDED SUPERIOR
19 DURABILITY, AND THE ABILITY TO RESIST CORROSION IN A
20 PROPERLY MAINTAINED BRAKE SYSTEM, OUTWEIGHED THE RISK OF
21 USING ALUMINUM.

22 SIGNIFICANT TO THEIR ANALYSIS WAS THE FACT
23 THAT BOTH ZINC AND ALUMINUM CAN CORRODE IF THE BRAKE
24 FLUID IS NOT PROPERLY MAINTAINED. AND THEY ALSO
25 DISCOVERED THAT ALUMINUM SINCE IT IS A HARDER METAL
26 COULD BOTH INCREASE AND ACCELERATE THE WEAR ON THE

1 MASTER CYLINDER.

2 MR. BREEN ALSO TESTIFIED THAT THE SUPPLIER OF
3 THE FRONT BRAKE MASTER CYLINDER, MYSANCOVIO HAS MADE
4 14 MILLION MASTER CYLINDERS USING ZINC PISTONS EACH YEAR
5 FOR DECADES, AND SUPPLIED THEM TO SUZUKI AND OTHER
6 MOTORCYCLE MANUFACTURERS, INCLUDING DURING THE TIME
7 PERIOD IN WHICH MR. SOULLIERE'S MOTORCYCLE WAS DESIGNED,
8 MANUFACTURED, AND SOLD.

9 SIMILAR TO THAT, MR. BREEN ALSO STATED THAT
10 THE USE OF A ZINC ALLOY PISTON IN THIS APPLICATION WAS
11 STATE OF THE ART AND STATE OF THE ART WHEN THE
12 MOTORCYCLE WAS MANUFACTURED AND SOLD.

13 HE WAS ABLE TO REFERENCE INFORMATION
14 CONSISTENT WITH THAT OPINION FROM ONE OF SUZUKI'S OWN
15 INVESTIGATION DOCUMENTS.

16 COULD I HAVE EXHIBIT 57, PLEASE. YOU MAY
17 REMEMBER THAT MR. HOUSTON USED THIS DOCUMENT INITIALLY
18 WITH DR. KAR. WHEN THAT DISCUSSION WITH DR. KAR TOOK
19 PLACE, ONLY THE PARAGRAPH THAT TALKS ABOUT ALUMINUM WAS
20 DISCUSSED WITH DR. KAR.

21 BUT WHEN MR. BREEN WAS ON THE STAND, I WAS
22 ABLE TO HAVE HIM EXPLAIN TO YOU THAT THE IMMEDIATELY
23 PRECEDING PARAGRAPH WAS TALKING ABOUT ZINC, AND NOTED
24 THAT -- MY EYES ARE NOT THAT GREAT -- THE USE OF ZINC
25 FOR PISTON MATERIAL IS DOMINANT FOR THE MOTORCYCLE
26 BECAUSE OF THE AGGRESSIVENESS OF ZINC WHILE IN THE

1 ALUMINUM CYLINDER. IN OTHER WORDS, IT IS SOFTER AND
2 DOES NOT WEAR AS QUICKLY AS ALUMINUM WOULD IN THAT
3 APPLICATION.

4 NOW, DR. KAR SUGGESTED TO YOU, I BELIEVE,
5 DURING HIS TESTIMONY THAT ONLY ALUMINUM WAS APPROPRIATE
6 FOR THIS APPLICATION. BUT AS MR. BREEN EXPLAINED, AND
7 AS WAS OBVIOUS THAT SUZUKI WAS CONSIDERING IN 2013
8 DURING ITS INVESTIGATION, THERE ARE RISKS AND BENEFITS
9 FROM BOTH ALUMINUM AND ZINC.

10 THE USE OF ZINC BY SUZUKI IN MR. BREEN'S
11 OPINION WAS COMPLETELY APPROPRIATE. BASED UPON THIS
12 ANALYSIS, MR. BREEN WAS ABLE TO EXPRESS THE OPINION THAT
13 THE FRONT BRAKE MASTER CYLINDER IS NOT DEFECTIVE JUST
14 BECAUSE SUZUKI USED A ZINC PISTON IN THIS DESIGN.

15 WELL, NOW LET'S TALK ABOUT A RECALL AND THE
16 INVESTIGATION THAT LED UP TO IT. PLAINTIFF HAS MADE
17 THIS CASE ABOUT THE RECALL BECAUSE MR. SOULLIERE'S
18 MOTORCYCLE WAS INCLUDED IN THE RECALL POPULATION, AND
19 BECAUSE HE WANTS YOU TO FOCUS ON THE RECALL AND THAT
20 INVESTIGATION INSTEAD OF ON THE FACTS OF THE ACCIDENT.

21 I WILL REMIND YOU THAT JUST BECAUSE THE
22 MOTORCYCLE IS INCLUDED IN THE POPULATION OF MOTORCYCLES
23 THAT WERE RECALLED, THAT, IN AND OF ITSELF, IS NOT
24 EVIDENCE OF DEFECT OR OF BRAKE FAILURE.

25 AS I HAVE ALREADY DISCUSSED WITH YOU, THE
26 TIMING OF THE RECALL AND THE RECALL CONDITION DID NOT

1 CAUSE MR. SOULLIERE'S ACCIDENT.

2 BECAUSE OF THIS, THE SPEED OF THE
3 INVESTIGATION AND THE TIMING OF THE RECALL ARE
4 IRRELEVANT TO THIS CASE.

5 IN OTHER WORDS, SINCE THE EVIDENCE CLEARLY
6 SHOWS THAT THE FRONT BRAKE DID NOT FAIL AND DID NOT
7 CAUSE MR. SOULLIERE'S CRASH, YOU CANNOT ASSESS LIABILITY
8 TO SUZUKI EVEN IF YOU THINK THE INVESTIGATION SHOULD
9 HAVE BEEN DONE DIFFERENTLY.

10 IF YOU THINK IT SHOULD HAVE RESULTED IN AN
11 EARLIER RECALL OR THERE SHOULD HAVE BEEN AN EARLIER
12 RECOGNITION OF THE FIX, IF THE BRAKE DIDN'T FAIL, THOSE
13 FACTS ARE IRRELEVANT AND THE INVESTIGATION AND RECALL
14 ARE IRRELEVANT.

15 NOW, I WILL REMIND YOU DURING JURY SELECTION
16 WE TALKED ABOUT THIS ISSUE AS A POSSIBILITY OF COMING
17 UP. WE TALKED ABOUT SKINNY POP POPCORN AS AN EXAMPLE I
18 USED FOR A RECALL.

19 AND AT THAT TIME ALL OF YOU AGREED THAT JUST
20 BECAUSE SKINNY POP DID A RECALL THAT DID NOT MEAN THAT
21 EVERY BAG OF POPCORN WAS DEFECTIVE. EVERYONE ALSO
22 AGREED IF ANYONE BROKE A TOOTH WHILE EATING SKINNY POP
23 THAT ALONE WAS NOT EVIDENCE OF WHAT CAUSED THE TOOTH TO
24 BREAK.

25 YOU WOULD STILL WANT TO HAVE EVIDENCE, PROOF
26 OF THE CAUSE. THE SAME IS TRUE HERE. THERE IS NO

1 EVIDENCE THAT THE RECALL CONDITION EXISTED IN
2 MR. SOULLIERE'S FRONT BRAKE MASTER CYLINDER ON THE DAY
3 OF THE ACCIDENT, AND THERE IS NO EVIDENCE THAT THE
4 RECALL CONDITION CAUSED THIS ACCIDENT.

5 MR. BREEN REVIEWED THE RECALL NOTICE THAT
6 SUZUKI PROVIDED TO NHTSA WHEN IT ANNOUNCED THE RECALL IN
7 OCTOBER OF 2013, AND HE EXPLAINED WHAT THE RECALL
8 CONDITION WAS.

9 HE EXPLAINED THAT IT'S THE GRADUAL GENERATION
10 AND ACCUMULATION OF HYDROGEN GAS THAT COULD PRODUCE A
11 SPONGY FEELING IN THE BRAKE LEVER.

12 YOU HAVE HEARD ARGUMENT FROM PLAINTIFF'S
13 COUNSEL THAT THE PRESENCE OF GAS IN THE MASTER CYLINDER
14 -- A SPONGY BRAKE -- MAY ONLY BE NOTICEABLE IN AN
15 EMERGENCY OR A HARD BRAKING SITUATION, AND THAT IT COULD
16 GO UNNOTICED DURING NORMAL BRAKING.

17 THERE IS NO SUPPORT FOR THAT FROM ANY OF
18 PLAINTIFF'S EXPERTS. NO SUPPORT FOR THAT IDEA, THAT IT
19 COULD GO UNNOTICED. EVEN THOUGH MR. HYATT TRIED TO
20 EXPRESS THAT OPINION, HE IMMEDIATELY CONCEDED THAT HE
21 WASN'T QUALIFIED TO OFFER AN OPINION LIKE THAT, AND HE
22 AGREED THAT FOR HIM TO SAY THAT WAS PURE SPECULATION.

23 AS YOU HEARD, A SPONGY BRAKE IS A RANGE OF
24 FEELING THAT CAN ALSO BE DESCRIBED AS A SOFT BRAKE. AS
25 MR. BREEN EXPLAINED, IT'S NOTICEABLE IN ALL TYPES OF
26 BRAKE APPLICATIONS, NOT JUST IN HARD BRAKING OR

1 EMERGENCY BRAKING. BUT EVEN ROUTINE, NORMAL BRAKING, IF
2 THE BRAKE IS SPONGY, IT WOULD BE NOTICEABLE IN ALL KINDS
3 OF BRAKING SITUATIONS.

4 MOREOVER, IF THE BRAKE IS SPONGY, IT'S
5 ENCOUNTERED AND NOTICED AT THE BEGINNING OF THE BRAKE
6 LEVER STROKE, NOT THE END. IF THE RIDER PULLS THROUGH
7 THE SPONGY PART OF A SPONGY BRAKE, THE BRAKE THEN BUILDS
8 PRESSURE AND ACHIEVES NORMAL BRAKING PERFORMANCE.

9 THE RECALL CONDITION DOES NOT MANIFEST ITSELF.
10 ANOTHER FACT THAT MR. BREEN BROUGHT TO YOUR ATTENTION
11 WAS THE FACT THAT THE RECALL CONDITION DOES NOT MANIFEST
12 ITSELF IN ALL FRONT BRAKE MASTER CYLINDERS.

13 AS YOU HEARD, THERE WERE OVER 200,000 OF THEM
14 SOLD IN THE UNITED STATES.

15 IT ACTUALLY HAS SHOWN UP IN VERY FEW. THERE'S
16 A SEQUENCE OF EVENTS THEN THAT HAS TO OCCUR IN ORDER FOR
17 THE RECALL CONDITION TO MANIFEST ITSELF, WHICH IS THE
18 DEVELOPMENT OF CORROSION, AND THEN THE GENERATION OF GAS
19 WHICH PRODUCES A SPONGY BRAKE.

20 THE FIRST REQUIREMENT IS AGED BRAKE FLUID, AND
21 A FRONT BRAKE MASTER CYLINDER THAT HAS DETERIORATED.
22 THERE IS NO EVIDENCE THAT MR. SOULLIERE'S BRAKE FLUID
23 WAS IN THAT AGE-DETERIORATED CONDITION ON JUNE 8, 2013.

24 THE SECOND REQUIREMENT IN THE SEQUENCE IS
25 THERE MUST BE CORROSION IN THE BRAKE PISTON. THERE'S NO
26 EVIDENCE OF ANY CORROSION IN MR. SOULLIERE'S FRONT BRAKE

1 MASTER CYLINDER ON THE DAY OF THE CRASH. DR. KAR WAS
2 CLEAR THAT HE COULD NOT SAY, ONE WAY OR THE OTHER, IF
3 CORROSION EXISTED ON THAT DAY.

4 THE THIRD REQUIREMENT IN THE SEQUENCE IS THE
5 GENERATION OF HYDROGEN GAS THAT HAD ACCUMULATED AND HAD
6 NOT ADEQUATELY BEEN PURGED. AGAIN THERE IS NO EVIDENCE
7 OF GAS BEING PRESENT ON THE DAY OF THE CRASH.

8 MR. SOULLIERE HAS BEEN QUITE CLEAR -- HE NEVER
9 EXPERIENCED A SPONGY BRAKE AT ANY TIME BEFORE THE CRASH.
10 HE DIDN'T JUST SAY IT THAT WAY. AS YOU WILL RECALL, HE
11 SAID WHEN HE FIRST PICKED UP THE MOTORCYCLE AT BERT'S,
12 THE BRAKE FELT GREAT.

13 HE SAID IT FELT GREAT THE ENTIRE TIME HE HAD
14 IT, AND THE FEEL OF THE BRAKE LEVER NEVER CHANGED. IT
15 WASN'T SPONGY. DR. KAR COULD NOT SAY, ONE WAY OR THE
16 OTHER, WHETHER GAS WAS PRESENT ON THE DAY OF THE
17 ACCIDENT.

18 MR. BREEN TESTIFIED THAT ALL OF THESE
19 REQUIREMENTS MUST EXIST FOR THE RECALL CONDITION TO
20 OCCUR. WHAT THE EVIDENCE HAS SHOWN IS THAT NONE OF
21 THESE REQUIREMENTS WAS PRESENT ON THE DAY OF THE
22 ACCIDENT.

23 MR. BREEN ALSO STATED THAT, IF THE BRAKE FLUID
24 IS CHANGED REGULARLY, THE RECALL CONDITION WILL NEVER
25 ARISE. HE POINTED OUT TO YOU THE FACT THAT THE OWNER'S
26 MANUAL FOR MR. SOULLIERE'S MOTORCYCLE SPECIFICALLY

1 ADVISED THE OWNER TO CHANGE THE BRAKE FLUID AT LEAST
2 EVERY TWO YEARS. A WARNING THAT, IF FOLLOWED, WOULD
3 HAVE PREVENTED THIS CONDITION FROM EVER OCCURRING.

4 DESPITE THE PLAIN MEANING OF THE RECALL AS
5 EXPLAINED TO YOU BY MR. BREEN, PLAINTIFF'S COUNSEL AND
6 WITNESSES WANT YOU TO BELIEVE THAT THE REAL RECALL
7 CONDITION IS CORROSION, AND THAT IT'S CORROSION THAT
8 RESULTS IN BRAKE FAILURE.

9 THE EVIDENCE IS THAT DOES NOT HAPPEN THAT WAY.
10 YOU HEARD MR. MATSUMOTO'S TESTIMONY THAT WHEN SUZUKI
11 OPENED AND INSPECTED, AND TURNED THE FRONT BRAKE MASTER
12 CYLINDERS, IF THERE WAS CORROSION PRESENT, IT WAS ALWAYS
13 JUST A GEL. NOT SOLID. CERTAINLY NOT HARD.

14 IN ADDITION, SUZUKI NEVER INSPECTED A FRONT
15 BRAKE MASTER CYLINDER WHERE THERE WAS ANY BASIS TO SAY
16 THAT THE SEAL WAS DISRUPTED BY CORROSION.

17 LET ME SPEND A FEW MINUTES WITH YOU TALKING
18 ABOUT THE INVESTIGATION. AS YOU KNOW, THE MAJORITY OF
19 THE EVIDENCE PRESENTED TO YOU BY THE PLAINTIFF IS NOT
20 ABOUT THE ACCIDENT. INSTEAD, IT IS ABOUT THE
21 INVESTIGATION THAT LED TO THE RECALL.

22 YOU HEARD TESTIMONY FROM MR. KUDO THAT, IN HIS
23 30 YEARS OF EXPERIENCE AT SUZUKI, THIS WAS THE MOST
24 DIFFICULT AND CHALLENGING INVESTIGATION THAT HAD EVER
25 BEEN UNDERTAKEN.

26 THE PROBLEM PRESENTED HERE WAS THAT THE

1 CONDITION OCCURRED SO INFREQUENTLY AND MANIFESTED ITSELF
2 AS A SPONGY BRAKE, WHICH HAPPENED TO BE A WELL-KNOWN
3 CONDITION THAT HAD HISTORICALLY BEEN EXPLAINED BY
4 SOMEONE DOING IMPROPER MAINTENANCE ON THE MOTORCYCLE
5 BRAKE SYSTEM FOLLOWING CHANGING OF THE BRAKE FLUID.

6 THAT CONDITION WAS EASILY REMEDIED BY JUST
7 BLEEDING THE SYSTEM. IT'S BECAUSE OF THOSE MIXED
8 SIGNALS AND INFREQUENT OPPORTUNITIES TO INSPECT THAT IT
9 WAS SO CHALLENGING.

10 AND DESPITE SUGGESTIONS OR ACCUSATIONS THAT
11 SUZUKI IGNORED THIS PROBLEM AND DISCOUNTED THE
12 INFORMATION COMING FROM AMERICAN SUZUKI, SUZUKI JAPAN
13 TOOK THE UNUSUAL STEP OF ASSIGNING MR. MATSUMOTO THE
14 RESPONSIBILITY OF TO FORM A SPECIAL INVESTIGATION TEAM
15 IN OCTOBER OF 2012.

16 SUZUKI WAS FOCUSED ON FULLY UNDERSTANDING THE
17 ROOT CAUSE OF THESE COMPLAINTS. AND TO ASSIST IN THAT
18 EFFORT, SUZUKI ENGINEERS WERE SENT FROM JAPAN TO THE
19 UNITED STATES ON NUMEROUS OCCASIONS TO INSPECT
20 MOTORCYCLES AND OBTAIN PARTS FOR EVALUATION.

21 QUITE UNEXPECTEDLY, HYDROGEN GAS WAS
22 IDENTIFIED AS SOMEHOW BEING INVOLVED IN JANUARY 2013.
23 IT TOOK SOME TIME BEFORE SUZUKI WAS ABLE TO IDENTIFY THE
24 ROOT CAUSE AND CONFIRM THE REMEDY.

25 AS YOU KNOW, PLAINTIFF IS EXTREMELY CRITICAL
26 OF SUZUKI'S INVESTIGATION EFFORTS AND SUGGESTS THAT

1 SUZUKI HAD ENOUGH EVIDENCE TO HAVE INITIATED THE RECALL
2 AT AN EARLIER DATE.

3 HOWEVER, PLAINTIFF'S EVIDENCE ON THIS IS
4 ALMOST EXCLUSIVELY BASED UPON UNVERIFIED REPORTS FROM
5 CUSTOMERS WHO USED DIFFERENT TERMS IN EXPRESSING THE
6 BRAKE ISSUES THAT THEY WERE EXPERIENCING.

7 YOU WILL RECALL THIS EVIDENCE, WHICH INCLUDES
8 THE SRS, THE SERVICE REQUESTS, THE FTIRS, WHICH ARE
9 FIELD TECHNICAL INFORMATION REPORTS, AND THE
10 SPREADSHEETS WHICH WERE SUMMARIES OF SRS, ARE ONLY TO BE
11 USED BY YOU IN THIS CASE OF WHAT WAS REPORTED TO
12 AMERICAN SUZUKI'S DISTRIBUTOR AND CANNOT BE USED FOR ANY
13 OTHER PURPOSE.

14 THEY'RE SIMPLY TO BE USED FOR PURPOSES OF
15 NOTICE. IN OTHER WORDS, THESE SRS FTIRS, AND THE
16 SPREADSHEETS THAT SUMMARIZE SOME OF THEM ARE NOT PROOF
17 OF DEFECT.

18 THEY ARE NOT EVEN PROOF THAT THESE CUSTOMERS
19 ACTUALLY EXPERIENCED A BRAKE FAILURE OR A BRAKE PROBLEM.
20 CERTAINLY NOTHING CAUSED BY THE FRONT BRAKE MASTER
21 CYLINDER. IT'S SIMPLY NOTICE OF SOME TYPE OF ISSUE WITH
22 THE BRAKE.

23 IN FACT, I WILL REMIND YOU OF THE INSTRUCTION
24 GIVEN TO YOU BY THE JUDGE AT THE TIME THIS INFORMATION
25 WAS FIRST INTRODUCED. THE COURT HAS ALLOWED YOU TO SEE
26 AND HEAR EVIDENCE OF CERTAIN CUSTOMER COMPLAINTS

1 DOCUMENTING REPORTS MADE TO AMERICAN SUZUKI MOTOR
2 CORPORATION AND/OR SUZUKI MOTOR OF AMERICA, INC.

3 THE COURT IS ALSO GOING TO ALLOW YOU TO SEE
4 AND HEAR THE TESTIMONY OF FOUR INDIVIDUALS ABOUT THEIR
5 EXPERIENCES AND THEIR MOTORCYCLES.

6 THIS EVIDENCE IS BEING OFFERED FOR THE LIMITED
7 PURPOSE OF WHAT NOTICE THE DEFENDANT MAY HAVE HAD ABOUT
8 ALLEGED DEFECTIVE BRAKE SYSTEMS. YOU MAY CONSIDER THAT
9 EVIDENCE ONLY FOR THAT PURPOSE AND FOR NO OTHER.

10 EVEN IF YOU WERE TO CONSIDER THAT EVIDENCE FOR
11 THE PURPOSE OF NOTICE, AS MR. KUDO TESTIFIED, THERE WERE
12 VERY FEW OF THESE PRIOR TO THE DATE THAT MR. SOULLIERE'S
13 MOTORCYCLES WAS MANUFACTURED AND ONLY A FEW MORE BY THE
14 TIME OF HIS ACCIDENT.

15 AN EXCEEDINGLY SMALL PERCENTAGE WHEN COMPARED
16 TO THE NUMBER OF GSXRS SOLD IN THE UNITED STATES. YOU
17 MAY RECALL IN MR. KUDO'S TESTIMONY HE SHARED WITH YOU
18 THE NUMBER OF SRS THAT THE AMERICAN DISTRIBUTOR HAD
19 RECEIVED IN COMPARISON TO THE TOTAL NUMBER OF GSXRS SOLD
20 IN THE UNITED STATES ON A YEAR-BY-YEAR BASIS.

21 AS OF THE DATE OF MR. SOULLIERE'S MOTORCYCLE
22 BEING MANUFACTURED, THERE WERE ONLY 11 SERVICE REQUESTS,
23 SRS, AS COMPARED TO 161,789 UNITS SOLD IN THE UNITED
24 STATES. THAT IS 11 OVER 161,789.

25 AS OF THE DATE OF MR. SOUILLIERE'S ACCIDENT
26 THERE WERE ONLY 98 SERVICE REQUESTS, SRS, AS COMPARED TO

1 197,291 UNITS SOLD IN THE UNITED STATES.

2 AND I WILL REMIND YOU THESE SERVICE REQUESTS
3 ARE UNVERIFIED. THEY'RE NONTECHNICAL DESCRIPTIONS OF
4 EVENTS RELATED IN SOME WAY TO BRAKES. AND USUALLY THE
5 FRONT BRAKE MASTER CYLINDER WAS NOT EVEN MADE AVAILABLE
6 FOR INSPECTION.

7 TYPICALLY NUMBERS LIKE THESE WOULD NOT BE
8 INDICATIVE OF A DEVELOPING TREND THAT WOULD BE
9 INDICATIVE OF A DESIGN DEFECT. IT IS ALSO WORTH NOTING
10 THAT THERE WERE SIGNIFICANT DIFFERENCES OF OPINION
11 EXPRESSED BETWEEN THE AMERICAN DISTRIBUTOR AND SUZUKI
12 JAPAN DURING THE COURSE OF THIS INVESTIGATION.

13 AS EXPLAINED BY THE SUZUKI WITNESSES, IT WAS
14 OF THE ROLE OF THE AMERICAN DISTRIBUTOR TO GATHER
15 INFORMATION, BUT IT WAS SUZUKI JAPAN'S RESPONSIBILITY TO
16 DO THE INVESTIGATION BECAUSE IT WAS SUZUKI MOTOR
17 CORPORATION THAT HAD THE ENGINEERS AND THE EXPERTISE.

18 YOU HAVE SEEN SOME E-MAILS AND MEMOS THAT
19 DOCUMENT WHAT I CALL UNBIASED EXCHANGES, AND CONCERNS,
20 AND OPINIONS BETWEEN THE AMERICAN DISTRIBUTOR AND SUZUKI
21 OF JAPAN.

22 BUT THOSE EXCHANGES IN NO WAY SUPPORT
23 PLAINTIFF'S CLAIM THAT SUZUKI WAS IGNORING THIS
24 DEVELOPING PROBLEM. IN FACT, THESE ARE EVIDENCE OF A
25 COMPANY, SUZUKI JAPAN, THAT ENCOURAGED THE FREE EXCHANGE
26 OF INFORMATION AND CONCERNS SO THAT ALL OPTIONS COULD BE

1 PUT ON THE TABLE, AND CONSIDERED, AND RUN TO GROUND.

2 PLAINTIFF SUGGESTS THAT SUZUKI WAS HIDING THIS
3 ISSUE AND THAT IT IS STILL HIDING IT. BUT SUZUKI
4 PRODUCED ALL OF THESE DOCUMENTS. IF SUZUKI WAS
5 INTERESTED IN HIDING THIS INFORMATION, WOULD IT HAVE
6 EVEN ALLOWED DOCUMENTS LIKE THIS TO BE CREATED IN THE
7 FIRST PLACE?

8 I THINK NOT. I THINK COMMON SENSE TELLS YOU
9 THAT. IN FACT, WHILE THEY'RE DIFFICULT TO READ -- AND
10 CERTAINLY THERE WAS A STRONG DIFFERENCE OF OPINION -- NO
11 ONE CAN SUGGEST THAT THESE ARE EVIDENCE OF SOMEBODY
12 TRYING TO HIDE INFORMATION OR TO NOT MOVE AS QUICKLY AS
13 THEY CAN TO IDENTIFY THE PROBLEM.

14 THEY HAD STRONG DIFFERENCES OF OPINION, AND
15 AMERICAN SUZUKI KNEW IT WAS OKAY TO SAY THAT BECAUSE
16 JAPAN WANTED TO HEAR IT ALL AND WANTED TO DO THE BEST
17 THEY COULD.

18 SO I HAVE TALKED ABOUT THE SRS, AND THE FTIRS,
19 AND THE SPREADSHEETS. BUT THERE'S OTHER INFORMATION
20 THAT YOU HAVE HEARD. IT'S THE TESTIMONY OR THE VIDEO
21 DEPOSITIONS OF THE FOUR INDIVIDUALS THAT ALSO HAD SOME
22 BRAKE PROBLEMS.

23 THIS EVIDENCE, JUST LIKE THE SRS, IS ONLY TO
24 BE CONSIDERED FOR WHAT WAS REPORTED TO THE AMERICAN
25 DISTRIBUTOR, THE SAME LIMITING INSTRUCTION THAT THE
26 JUDGE GAVE YOU APPLIES TO THESE VIDEOTAPED DEPOSITIONS

1 OF THESE FOUR INDIVIDUALS.

2 WHAT THEY SAY IS NOT PROOF OF DEFECT, OR
3 CAUSATION, OR BRAKE FAILURE. I WILL JUST BRIEFLY REVIEW
4 WITH YOU WHAT THEY SAID.

5 MR. KNEPPER. MR. KNEPPER WAS AN INDIVIDUAL
6 WHO HAD NOT ONE BUT TWO REAR-END COLLISIONS ON HIS
7 MOTORCYCLE. BOTH TIMES, BY HIS OWN ADMISSION, HE WAS
8 TAILGATING A PICKUP TRUCK THAT WAS IN FRONT OF HIM.

9 THE FIRST ACCIDENT HE HAD HE SAID HE WAS GOING
10 45 MILES AN HOUR BUT ONLY TWO TO THREE CAR LENGTHS
11 BEHIND THE PICKUP TRUCK. THE PICKUP TRUCK IN FRONT OF
12 HIM WAS RUBBERNECKING.

13 IN OTHER WORDS, THEY'RE GOING THIS DIRECTION
14 BUT THERE'S AN ACCIDENT OVER HERE GOING THE OTHER
15 DIRECTION. APPARENTLY THE PICKUP TRUCK DRIVER WAS
16 PAYING ATTENTION OVER HERE AND SUDDENLY STOPPED WHEN
17 MR. KNEPPER -- SO MR. KNEPPER NEVER SAW A TAILLIGHT.

18 ALL OF A SUDDEN THE VEHICLE IN FRONT OF HIM
19 STOPS, HE RUNS INTO THE BACK OF IT -- MR. NEPER DID AND
20 ENDED UP IN THE BED OF THE PICKUP TRUCK.

21 MR. KNEPPER SAID HE GRABBED THE BRAKES AND DID
22 SLOW DOWN FROM 45 MILES PER HOUR TO 15 TO 20 MILES PER
23 HOUR. BUT NEVERTHELESS, HE CRASHED INTO THE REAR OF THE
24 PICKUP TRUCK AND ENDED UP IN THE BACK IN THE BED.

25 ABOUT A YEAR LATER HE HAD ANOTHER ACCIDENT
26 ALMOST THE SAME AS THE FIRST ACCIDENT. THIS TIME HE WAS

1 FOLLOWING A PICKUP TRUCK TWO TO THREE CAR LENGTHS BEHIND
2 AT 50 TO 55 MILES PER HOUR, WHEN THAT PICKUP CAME TO AN
3 ABRUPT STOP WITH NO TURN SIGNALS.

4 AGAIN, MR. KNEPPER SAID HIS BRAKES DID WORK
5 AND SLOWED DOWN TO 15 TO 20 MILES PER HOUR BUT
6 NEVERTHELESS HE CRASHED INTO THE PICKUP AGAIN.

7 I SUGGEST TO YOU THERE'S NO BASIS TO BELIEVE
8 THAT THESE TWO CRASHES WERE ABSOLUTELY CAUSED BY BRAKE
9 FAILURE. AT THE VERY LEAST, IT'S LIKELY THERE'S SOME
10 OTHER EXPLANATION FOR HIS ACCIDENTS.

11 MR. NICOLS WAS ANOTHER INDIVIDUAL YOU HEARD
12 FROM. HE TESTIFIED THAT HE HAD RIDDEN HIS BIKE. I
13 THINK HE WAS IN HUNTSVILLE.

14 HE TESTIFIED HE HAD RIDDEN HIS BIKE ALL DAY AT
15 SOME KIND OF A MOTORCYCLE EVENT THAT WAS KIND OF A
16 MOVING EVENT AROUND HUNTSVILLE, AND HE HAD NO BRAKE
17 PROBLEMS AT ALL.

18 LATE THAT NIGHT OR EARLY THE NEXT MORNING AS
19 HE WAS LEAVING A GENTLEMEN'S CLUB, AT AROUND 1:00 A.M.,
20 BEING FOLLOWED BY TWO LADIES HE HAD MET AT THE CLUB --
21 THEY WERE GOING TO GO SWIMMING, HE SAID.

22 WHILE HE'S TRAVELING 30 TO 45 MILES PER HOUR
23 ON A SLIGHT CURVE, WITH A 35-MILE-PER-HOUR ADVISORY SIGN
24 ON A CURVE WHERE HE TECHNICALLY, THEORETICALLY WOULD NOT
25 NEED TO USE HIS BRAKE, HE SAID HIS BRAKE FAILED AND HE
26 HIT GRAVEL AND WENT INTO THE DITCH.

1 THE GIRLS THAT WERE FOLLOWING HIM RAN OVER HIS
2 MOTORCYCLE. HE DIDN'T REPORT IT TO SUZUKI UNTIL HE
3 HEARD ABOUT THE RECALL. AS HE WAS ASKED ABOUT WHAT HE
4 REPORTED, WHAT HE SAID HAPPENED DIDN'T MATCH VERY
5 CLOSELY WITH WHAT HE HAD REPORTED TO SUZUKI.

6 YOU ALSO HEARD FROM MR. GERARD. THIS WAS AN
7 INDIVIDUAL WHO WAS COMING OUT OF HIS APARTMENT COMPLEX
8 AND SAID HE WAS GOING ONLY 4 OR 5 MILES PER HOUR WHEN
9 HIS BRAKES FAILED BECAUSE HE THOUGHT THE CAR COMING DOWN
10 THE MAIN ROAD WASN'T GOING TO STOP IN TIME.

11 MR. GERARD CLAIMS HE ACTUALLY LAID THE
12 MOTORCYCLE DOWN, WHICH AS MR. HOOVER HAS TOLD YOU,
13 REQUIRES SOME INPUT OF THE FRONT BRAKE. WHAT IS ODD
14 ABOUT MR. GERARD'S TESTIMONY IS THAT HE SAID THE
15 MOTORCYCLE ONLY SLID 4- OR 5 FEET BEFORE GOING INTO A
16 DITCH.

17 HE ALSO ACKNOWLEDGED THAT THE SLIDING ACTUALLY
18 GROUND A HOLE THROUGH HIS CRANK CASE SO THAT OIL WAS
19 LEAKING OUT OF HIS CRANK CASE. THAT SEEMS UNUSUAL TO
20 HAVE BEEN ABLE TO ACHIEVE THAT MUCH DAMAGE IN 4- OR
21 5 FEET OF SLIDING, AND IT SUGGESTS THERE MUST BE SOME
22 OTHER EXPLANATION AS TO WHAT WAS GOING ON.

23 AS TO MS. TRUJILLO, THE FINAL OTHER EVENT YOU
24 HEARD ABOUT, HER ONLY MOTORCYCLE EXPERIENCE BEFORE
25 BUYING HER MOTORCYCLE WAS AS A PASSENGER.

26 UNLIKE MR. SOULLIERE, MS. TRUJILLO SAID SHE

1 HAD HAD MULTIPLE SPONGY BRAKE EPISODES DURING THE COURSE
2 OF HER OWNERSHIP, WHICH I THINK YOU SHOULD CONSIDER AS
3 BEING AN INTERESTING FACT.

4 AFTER EACH AND EVERY ONE OF THESE -- THE
5 OCTOBER 2011, THE MARCH 2012, AND THE MAY 2013 EVENTS --
6 ON THOSE THREE OCCASIONS SHE SAID SHE HAD SPONGY BRAKES.
7 BUT AFTER EACH EVENT SHE RODE THE MOTORCYCLE BACK TO THE
8 DEALERSHIP WITHOUT HAVING ANY WORK OR REPAIR DONE TO THE
9 FRONT BRAKE AT ALL, APPARENTLY, WITHOUT ANY PROBLEM.

10 THE ACCIDENT SHE CLAIMED SHE HAD, THAT HAD
11 HAPPENED IN OCTOBER 2011, WAS NOT AN EMERGENCY BRAKE
12 APPLICATION. IN FACT, SHE SAID SHE WAS ONLY GOING
13 10 MILES AN HOUR AND WAS SIMPLY SLOWING DOWN FOR TRAFFIC
14 AT A STOP SIGNAL, AT A TRAFFIC LIGHT.

15 MOST UNUSUAL ABOUT HER CLAIM WAS THAT SHE
16 CLAIMED THAT, WHEN SHE HAD THIS ACCIDENT IT WASN'T OF
17 JUST A FRONT BRAKE THAT FAILED, HER REAR BRAKE FAILED,
18 WHICH HAS NEVER BEEN CONSISTENT WITH ANY OF THE OTHER
19 OSIS.

20 AND SHE SAID SHE DIDN'T HIT ANYTHING. THE
21 BIKE JUST FELL OVER. SHE ALSO SAID WHEN SHE APPLIED HER
22 REAR BRAKES SHE USED HER LEFT FOOT TO APPLY THE REAR
23 BRAKE. I KNOW THAT YOU-ALL KNOW BY NOW THAT THE REAR
24 BRAKE PEDAL IS ON THE RIGHT SIDE OF THE MOTORCYCLE.

25 I'M NOT SUGGESTING FOR A MINUTE THAT THESE
26 PEOPLE ARE NOT ATTEMPTING TO BE TRUTHFUL. I AM SURE

1 THEY ARE EXPLAINING WHAT HAPPENED TO THEM TO THE BEST OF
2 THEIR UNDERSTANDING AND KNOWLEDGE. SOME OF THEM ARE NOT
3 VERY EXPERIENCED MOTORCYCLE PEOPLE.

4 THE POINT I WANT TO MAKE IS, IN ADDITION TO
5 THE JUDGE'S LIMITATION ON THIS EVIDENCE THAT IS MERELY
6 FOR NOTICE, THERE ARE AMPLE REASONS TO QUESTION WHETHER
7 THEY WERE ACTUALLY EXPERIENCING A SUDDEN BRAKE FAILURE,
8 AND TO QUESTION WHETHER IT HAD ANYTHING AT ALL TO DO
9 WITH THE FRONT BRAKE MASTER CYLINDER, OR THE RECALL
10 CONDITION.

11 AS YOU KNOW THE PLAINTIFF HAS MADE A CLAIM FOR
12 FAILURE TO WARN AGAINST SUZUKI. A CENTRAL FOCUS OF THAT
13 CLAIM IS, AS THEY SAY, MORE INFORMATION SHOULD HAVE BEEN
14 PROVIDED.

15 PLAINTIFF CLAIMS THAT SUZUKI IS LIABLE IN
16 FAILING TO GIVE MR. SOULLIERE A WARNING ABOUT THE RISK
17 OF BRAKE FAILURE. TO PREVAIL ON THIS CLAIM PLAINTIFF
18 HAS TO PROVE THAT THE ALLEGED FAILURE TO WARN CAUSED THE
19 ACCIDENT.

20 AND THERE IS NO PROOF THAT A FAILURE TO WARN
21 CAUSED THE ACCIDENT. TO BEGIN WITH, PLAINTIFF HAS NOT
22 TOLD YOU WHAT THAT WARNING SHOULD HAVE BEEN, WITHOUT ANY
23 EXPLANATION AS TO WHAT THE WARNING SHOULD HAVE BEEN.

24 AND IT'S TOO LATE TO PROVIDE IT. THAT HAS TO
25 BE EVIDENCE THAT'S PRESENTED TO YOU THROUGH THE WITNESS
26 STAND. SO THE PLAINTIFF HAS NOT GIVEN YOU ANY

1 INFORMATION OR ANY EVIDENCE AS TO WHAT THAT WARNING
2 SHOULD HAVE BEEN.

3 WITHOUT THAT, HOW CAN YOU DECIDE IF IT WOULD
4 HAVE MADE A DIFFERENCE? ANY SUGGESTION IN CLOSING
5 ARGUMENT, AS I SAY, IS NOT EVIDENCE.

6 YOU HAVE ALSO BEEN INSTRUCTED BY THE JUDGE
7 WHAT THE LEGAL STANDARD IS FOR FAILURE TO WARN. THAT
8 INSTRUCTION TELLS YOU THAT WARNING SHOULD WARN ABOUT
9 POTENTIAL RISKS ASSOCIATED WITH THE MOTORCYCLE. RISKS.

10 AND SO THE INSTRUCTION TELLS YOU:

11 THE WARNING SHOULD WARN ABOUT
12 POTENTIAL RISKS THAT SUZUKI KNEW OR SHOULD
13 HAVE KNOWN PRESENTED A SUBSTANTIAL DANGER
14 WHEN THE PRODUCT WAS USED IN A REASONABLE
15 FORESEEABLE WAY.

16 IT'S SIGNIFICANT. AND THE REASON I SAID
17 "RISK," IT'S SIGNIFICANT THAT THE INSTRUCTION FOCUSES ON
18 THE WARNING ABOUT RISK, NOT ABOUT THE CAUSE OF THE RISK.

19 THE EVIDENCE PRESENTED BY PLAINTIFF SUGGESTS
20 THAT THE RISK THAT SHOULD HAVE BEEN WARNED ABOUT WAS THE
21 RISK OF THE FRONT BRAKE COULD BECOME SPONGY, OR THAT THE
22 BRAKE COULD SUDDENLY FAIL.

23 EVEN IF WE GIVE THEM THE BENEFIT OF THE DOUBT
24 THAT THAT'S WHAT SHOULD HAVE BEEN WARNED ABOUT, LET'S
25 LOOK AT THAT FOR A MINUTE. IN ORDER FOR A FAILURE TO
26 WARN TO SUPPORT LIABILITY AGAINST SUZUKI, THAT FAILURE

1 TO WARN MUST HAVE BEEN A SUBSTANTIAL FACTOR IN CAUSING
2 THE CRASH.

3 THERE IS NO EVIDENCE THAT A WARNING ABOUT
4 SPONGY BRAKES WOULD HAVE PREVENTED THIS ACCIDENT. AS
5 YOU-ALL KNOW, MR. SOULLIERE NEVER HAD A SPONGY BRAKE.
6 SO A WARNING ABOUT A SPONGY BRAKE WOULD HAVE HAD NO
7 EFFECT ON HIM.

8 IT COULD NOT HAVE PREVENTED HIS ACCIDENT, OR
9 PUT HIM ON NOTICE OF ANYTHING THAT WOULD HAVE PREVENTED
10 THE ACCIDENT.

11 WELL, WHAT ABOUT THE ALLEGATION THAT SUZUKI
12 FAILED TO WARN ABOUT A SUDDEN LOSS OF BRAKE PRESSURE, OR
13 A SUDDEN BRAKE FAILURE? IN ORDER TO PROVE THAT, THE
14 EVIDENCE MUST SUPPORT THE FACT THAT SUZUKI KNEW, OR
15 SHOULD HAVE KNOWN, THAT SUDDEN LOSS OF BRAKE PRESSURE OR
16 BRAKE FAILURE WAS A POTENTIAL RISK THAT PRESENTED A
17 SUBSTANTIAL DANGER TO THE RIDER.

18 SUZUKI DID NOT KNOW THAT. SUZUKI DID NOT KNOW
19 OR THINK THAT SUDDEN BRAKE FAILURE WAS A POTENTIAL RISK
20 THAT COULD RESULT FROM THE RECALL CONDITION.

21 AS YOU'VE HEARD THE EVIDENCE FROM SUZUKI, IT
22 HAD NOT CONFIRMED ANY CASE OF BRAKE FAILURE WHILE THE
23 MOTORCYCLE WAS BEING RIDDEN. NOW PLAINTIFF'S COUNSEL
24 HAS TAKEN ONE OF THOSE SPREADSHEETS AND HIGHLIGHTED FOR
25 YOU FIVE REPORTS, 5 SRS, LISTED ON THAT SPREADSHEET THAT
26 TALK ABOUT A BRAKE FAILURE WHILE RIDING, OR A SUDDEN

1 FAILURE.

2 BUT IT'S IMPORTANT FOR YOU TO RECALL WHEN YOU
3 THINK ABOUT THIS, MR. KUDO ADDRESSED THAT IN HIS
4 TESTIMONY. MR. KUDO EXPLAINED THAT THOSE FIVE REPORTS
5 WERE SPECIFICALLY INVESTIGATED BECAUSE THAT WAS
6 INCONSISTENT WITH ALL OF THE OTHER SPONGY BRAKE
7 COMPLAINTS THEY WERE GETTING.

8 THAT WAS NOT WHAT THEY WERE HEARING FROM THE
9 AMERICAN DISTRIBUTOR. THESE WERE DIFFERENT. MR. KUDO
10 SAID HE LOOKED AT ALL OF THOSE FIVE REPORTS THAT WERE
11 OUTLIERS, AND HE WAS ABLE TO DETERMINE THAT THEY WERE
12 COMPLETELY UNRELATED TO THE FRONT BRAKE MASTER CYLINDER.

13 THEY WERE UNRELATED TO SPONGY BRAKES. THEY
14 HAD NOTHING TO DO WITH WHAT CAME TO BE "THE RECALL
15 CONDITION." IN FACT, HE SPECIFICALLY SAID: ONE OF
16 THOSE FIVE WAS ACTUALLY A REAR BRAKE. IT WASN'T EVEN A
17 FRONT BRAKE.

18 THREE OF THEM INVOLVED SOME PROBLEM DOWN AT
19 THE CALIPERS, WHICH IS DOWN ON THE WHEEL HUB. THE FIFTH
20 ONE WAS NOTHING MORE THAN A BENT ROTOR THAT WAS CAUSING
21 THIS CONDITION.

22 THE POINT IS SUZUKI CANNOT BE LIABLE FOR
23 FAILING TO WARN ABOUT A RISK THAT IT DID NOT BELIEVE
24 EXISTED.

25 IN ADDITION, SUZUKI DID PROVIDE INSTRUCTIONS
26 AND WARNINGS IN THE OWNER'S MANUAL THAT, IF FOLLOWED,

1 WOULD HAVE PREVENTED A RECALL CONDITION FROM OCCURRING.

2 FINALLY, ON THE TOPIC OF FAILURE TO WARN. TO
3 SUCCEED ON A FAILURE TO WARN CLAIM, PLAINTIFF MUST ALSO
4 PROVE THAT THE FAILURE TO WARN WAS A CAUSE OF THE CRASH.

5 SINCE THE OVERWHELMING EVIDENCE IS THE FRONT
6 BRAKE DID NOT FAIL, DID NOT CAUSE THIS CRASH, THERE IS
7 NO BASIS FOR YOU TO ASSESS LIABILITY TO SUZUKI ON A
8 FAILURE TO WARN CLAIM.

9 EVEN IF YOU THINK A WARNING SHOULD HAVE BEEN
10 GIVEN, IF IT DIDN'T ACTUALLY RESULT IN THIS ACCIDENT
11 BEING A SUBSTANTIAL FACTOR IN CAUSING THIS ACCIDENT,
12 THERE IS NO BASIS TO ASSESS LIABILITY.

13 SO LET ME TURN TO THE TOPIC VERY MUCH OF
14 INTEREST TO THE PLAINTIFF, THAT OF PUNITIVE DAMAGES.
15 PLAINTIFF WANTS YOU TO PUNISH SUZUKI. THE COURT HAS
16 INSTRUCTED YOU ON PUNITIVE DAMAGES, AND THERE ARE
17 SEVERAL PARTS OF THAT INSTRUCTION THAT MAKE CLEAR
18 PUNITIVE DAMAGES ARE NOT APPROPRIATE IN THIS CASE.

19 FIRST AND FOREMOST YOU CANNOT AWARD PUNITIVE
20 DAMAGES IF YOU DO NOT FIND SUZUKI AT FAULT FOR THE
21 CRASH. IN OTHER WORDS, YOU CAN'T EVEN CONSIDER
22 PUNISHING SUZUKI IF THE CRASH ITSELF WAS NOT CAUSED IN A
23 SUBSTANTIAL WAY BY SUZUKI.

24 YOU CAN BE ANGRY WITH SUZUKI. YOU CAN BE
25 UNHAPPY WITH THEM. YOU CAN HAVE ANY FEELINGS YOU WANT.
26 BUT IF THE UNDERLYING CRASH WASN'T CAUSED BY THE BRAKE

1 FAILING IN SOME RESPECT, YOU CAN'T PUNISH SUZUKI. AND
2 AS I SAY, IT'S CLEAR THE BRAKE DID NOT FAIL.

3 THE SECOND POINT I WANT TO BRING TO YOUR
4 ATTENTION IS THAT PUNITIVE DAMAGES ARE ONLY AVAILABLE
5 FOR CONDUCT BY SUZUKI THAT CAUSED HARM TO MR. SOULLIERE,
6 AND THAT RISES TO THE LEVEL OF MALICE, OPPRESSION, OR
7 FRAUD.

8 OF COURSE YOU HEARD WHAT MR. HOUSTON SAID.
9 OBVIOUSLY, THERE IS NO FRAUD HERE. SO WE'RE TALKING
10 ABOUT MALICE OR OPPRESSION. THERE ARE TWO IMPORTANT
11 POINTS THERE.

12 SUZUKI CANNOT BE PUNISHED JUST FOR ANY
13 CONDUCT. THE CONDUCT MUST BE HARM THAT CAUSED HARM TO
14 MR. SOULLIERE. IT CAN'T BE HARM TO SOMEBODY ELSE.
15 SUZUKI CAN'T BE PUNISHED EVEN IF YOU BELIEVE THE CONDUCT
16 MAY HARM SOMEBODY ELSE.

17 IF YOU FIND THE CONDUCT OF SUZUKI DID NOT
18 CAUSE MR. SOULLIERE'S CRASH, PUNITIVE DAMAGES CANNOT BE
19 AWARDED, PERIOD.

20 SECOND, THE CONDUCT MUST RISE TO THE LEVEL OF
21 MALICE OR OPPRESSION. THE COURT GAVE YOU SOME
22 INSTRUCTIONS, AND MR. HOUSTON REVIEWED WITH YOU WHAT
23 SOME OF THOSE ARE: DESPICABLE CONDUCT; WILFUL AND
24 KNOWING DISREGARD OF THE RIGHTS OR SAFETY OF ANOTHER;
25 CRUEL OR -- THERE IS NO EVIDENCE THAT WOULD RISE TO THAT
26 LEVEL.

1 THERE'S NO EVIDENCE THAT SUZUKI KNEW OR
2 BELIEVED ANYTHING TO BE WRONG WITH THE MOTORCYCLE WHEN
3 IT WAS ORIGINALLY SOLD IN 2008. THERE'S NO EVIDENCE
4 THAT SUZUKI COMMITTED MALICE, OR OPPRESSION, OR FRAUD IN
5 DECIDING ANYTHING ABOUT THE RECALL.

6 THE TIME TO ISSUE A RECALL IS WHEN A COMPANY
7 LEARNS OF A SAFETY-RELATED DEFECT. AND SUZUKI HAS
8 CONSISTENTLY MAINTAINED THE RECALL CONDITION WAS NOT A
9 SAFETY-RELATED DEFECT BECAUSE A SPONGY BRAKE IS
10 SOMETHING THAT CAN EASILY AND IMMEDIATELY BE RECOGNIZED
11 BY THE RIDER.

12 MORE IMPORTANTLY, EVEN A SPONGY BRAKE CAN BE
13 FULLY FUNCTIONAL. TO SAY A BRAKE IS SPONGY DOESN'T TELL
14 YOU THE BRAKE DOESN'T WORK. SPONGINESS IS A RANGE, AND
15 MOST OF THAT RANGE IS A FULLY FUNCTIONAL BRAKE.

16 IT'S ONLY WHEN IT BECOMES EXTREMELY SPONGY
17 THAT YOU EVEN BEGIN TO EXTEND STOPPING DISTANCES.

18 WE KNOW FROM MR. BREEN THAT GAS IN THE SPONGY
19 BRAKE WILL PURGE AFTER A HANDFUL OF PULLS IF THE
20 MOTORCYCLE IS BEING RIDDEN.

21 THE EVIDENCE HAS ALSO SHOWN THAT A SPONGY
22 BRAKE CAN LOCK A FRONT WHEEL. AND THE PLAINTIFF'S OWN
23 EXPERTS HAVE AGREED THAT A BRAKE THAT LOCKS A WHEEL IS A
24 100 PERCENT PERFORMING BRAKE.

25 THIRD, THE MALICIOUS OR OPPRESSIVE CONDUCT
26 THAT HARMED MR. SOULLIERE MUST HAVE BEEN COMMITTED BY,

1 OR AUTHORIZED BY, OR ADOPTED BY AN OFFICER, DIRECTOR, OR
2 MANAGING AGENT OF SUZUKI.

3 THOSE ARE TERMS THAT HAVE THEIR OWN
4 DEFINITIONS. FROM THE TESTIMONY OF MR. KUDO, IT WAS
5 ONLY THE QUALITY COUNTERMEASURE COMMITTEE THAT COULD
6 MAKE THE DECISION ON BEHALF OF SUZUKI TO ISSUE A RECALL.

7 WHAT THAT MEANS IS THAT, TO THE EXTENT ANYONE
8 ELSE THOUGHT A RECALL SHOULD BE DONE SOONER, THOSE
9 INDIVIDUALS DID NOT HAVE THE AUTHORITY TO MAKE FORMAL
10 CORPORATE POLICY DECISIONS REGARDING THE RECALL.

11 THEIR OPINIONS OR BELIEFS CANNOT SERVE AS A
12 BASIS FOR AN AWARD OF PUNITIVE DAMAGES. MOREOVER,
13 PLAINTIFF DID NOT OFFER EVIDENCE THAT THE QUALITY
14 COUNTERMEASURE COMMITTEE KNEW OF THE RECALL CONDITION OR
15 CONSIDERED IT A SAFETY-RELATED DEFECT AND INTENTIONALLY
16 IGNORED THAT INFORMATION.

17 THE FACT THAT PLAINTIFF HAS SHOWN YOU
18 DOCUMENTS WITH MR. O. SUZUKI'S SIGNATURE ON IT, AS
19 MR. KUDO STATED, THAT WAS A RECOGNITION BY HIM ON THE
20 FIRST DOCUMENT THAT HE HAD SEEN THE DOCUMENT -- THAT HE
21 WAS NOT APPROVING ANYTHING, HE HAD SEEN IT.

22 THE SECOND DOCUMENT WAS A DOCUMENT APPROVING
23 THE RECALL, IN OCTOBER 2013, IN THE SENSE OF APPROVING
24 THAT HE HAD SEEN IT. BUT AGAIN, THE DOCUMENT ITSELF WAS
25 A DOCUMENT PRESENTED TO THE QUALITY COUNTERMEASURE
26 COMMITTEE -- THE COMMITTEE THAT WAS TASKED WITH MAKING

1 THAT DECISION.

2 SO HIS EVIDENCE, AS I SAY, DOESN'T SUPPORT THE
3 REQUIREMENTS IN ORDER TO ASSESS PUNITIVE DAMAGES.

4 FINALLY, PUNITIVE DAMAGES CAN ONLY BE ASSESSED
5 IF YOU FIND BY CLEAR AND CONVINCING EVIDENCE THAT
6 THEY'RE APPROPRIATE. THAT BURDEN IS SIGNIFICANTLY
7 HIGHER THAN THE STANDARD FOR THE REST OF THIS CASE: A
8 MORE LIKELY TRUE THAN NOT.

9 CLEAR AND CONVINCING EVIDENCE REQUIRES PROOF
10 THAT MUST PERSUADE YOU THAT IT'S HIGHLY PROBABLE THAT A
11 FACT IS TRUE. ANYTHING LESS IS INSUFFICIENT.

12 NOW, I THINK IT'S IMPORTANT TO REMIND YOU IN
13 THIS CONTEXT. YOU WILL RECALL THE CONTINUOUS BADGERING
14 BY MR. HOUSTON OF MR. MUTHIG INSISTING THAT AN E-MAIL
15 WRITTEN IN 2004, AND THAT WAS COPIED TO MR. MUTHIG, WAS
16 EVIDENCE OF THE FIRST NOTICE OF THE RECALL CONDITION.

17 IN FACT, IN HIS CLOSING STATEMENT MR. HOUSTON
18 SAID: THAT STARTED THE CLOCK TICKING. I'M SURE YOU
19 HAVE CONCLUDED ON YOUR OWN BY NOW. NOTHING COULD BE
20 FURTHER FROM THE TRUTH.

21 AS MR. MUTHIG REPEATEDLY TESTIFIED, AND
22 CORRECTED MR. HOUSTON DURING THE QUESTIONING, THIS WAS
23 AN ISSUE REPORTED BY THE RACE TEAM AND WAS OCCURRING ON
24 RACE-MODIFIED MOTORCYCLES THAT WERE BEING OPERATED IN
25 EXTREME RACING CONDITIONS.

26 AS A RESULT OF MAXIMUM REPEATED DECELERATIONS

1 AS RACING MOTORCYCLES ENTERED AND EXISTED CURVES ON A
2 RACETRACK, HEAT BUILDS UP AND PRODUCES A CONDITION
3 COMMONLY KNOWN AS BRAKE FADE.

4 AS MR. MUTHIG REPEATED EXPLAINED TO MR.
5 HOUSTON, BRAKE FADE IS COMPLETELY DIFFERENT FROM A
6 SPONGY BRAKE AND HAS NOTHING TO DO WITH CORROSION OR
7 HYDROGEN GAS GENERATION.

8 PLAINTIFF'S CONTINUOUS, DISINGENUOUS FOCUS ON
9 THE UNRELATED AND ISOLATED RACE TEAM RELATED ISSUE IN
10 2004 IS INDICATIVE OF THE LENGTHS TO WHICH PLAINTIFF
11 WILL GO IN AN ATTEMPT TO MANIPULATE THE EVIDENCE AND
12 CREATE A NARRATIVE THAT WILL MOTIVATE YOU TO PUNISH
13 SUZUKI. DON'T FALL FOR IT.

14 AND CONSIDER THIS: HOW COULD YOU PUNISH
15 SUZUKI FOR FAILING TO WARN OR OTHERWISE TAKE ACTION TO
16 PREVENT A SUDDEN BRAKE FAILURE ALLEGEDLY CAUSED BY SEAL
17 DISRUPTION WHEN THE CREATOR OF THAT THEORY, MR. HYATT,
18 SAID IT WAS SO RARE, THAT IT WOULD OCCUR SO RANDOMLY,
19 THAT HE WOULD NOT EVEN WASTE HIS TIME TRYING TO RECREATE
20 IT.

21 YOU CAN'T PUNISH SUZUKI FOR NOT WARNING ABOUT
22 SOMETHING THAT THE CREATOR OF THIS THEORY, THIS UNPROVEN
23 THEORY, WOULDN'T EVEN TEST. I SUBMIT TO YOU THAT THE
24 EVIDENCE IN THIS CASE DOES NOT COME CLOSE TO RISING TO
25 THE LEVEL OF CLEAR AND CONVINCING EVIDENCE OF MALICE OR
26 OPPRESSION.

1 I CAN'T CONCLUDE WITHOUT TALKING ABOUT
2 MS. CASTELLOW. WE KNOW FROM MR. SOULLIERE'S OWN
3 TESTIMONY THAT AS HE DROVE SOUTH ON VALLEY VIEW,
4 MS. CASTELLOW SUDDENLY PEELED OUT OF THE SHOPPING CENTER
5 DRIVEWAY, SQUEALING HER TIRES, AND AGGRESSIVELY TRYING
6 TO BEAT MR. SOULLIERE, AND THE OTHER TRAFFIC PROCEEDING
7 SOUTH ON VALLEY VIEW.

8 AND MR. HOUSTON'S ALREADY ACTUALLY ADMITTED
9 MS. CASTELLOW WAS NEGLIGENT. NO QUESTION ABOUT IT. NO
10 ONE COULD QUESTION THAT. STRANGELY ENOUGH HE SAYS,
11 THOUGH -- MR. HOUSTON SAYS: BUT SHE HAS NO
12 RESPONSIBILITY. HER ACTIONS WERE NOT A SUBSTANTIAL
13 FACTOR.

14 REALLY? WE KNOW FROM MR. CASTANEDA, THE
15 EYEWITNESS TO THE ACCIDENT, THAT MS. CASTELLOW DID NOT
16 APPEAR TO BE PAYING ANY ATTENTION TO TRAFFIC TRAVELING
17 SOUTH ON VALLEY VIEW BEFORE SHE SUDDENLY GASSED IT --
18 THAT WAS MR. CASTANEDA'S WORD.

19 MS. CASTELLOW SUDDENLY GASSED IT AND CUT
20 MR. SOULLIERE OFF, LEAVING MR. SOULLIERE WITH NO
21 POSSIBILITY OF AVOIDING A COLLISION. THAT WAS
22 MR. CASTANEDA'S EYEWITNESS OPINION.

23 WE KNOW FROM MS. CASTELLOW'S OWN TESTIMONY
24 THAT HER VERSION OF THE ACCIDENT IS INCONSISTENT WITH
25 THE FACTS AS TESTIFIED TO BY MR. SOULLIERE, HIMSELF, BY
26 MR. CASTANEDA, AND CONTRADICTED BY THE RECONSTRUCTIONS

1 PERFORMED BY MR. YATES AND MR. HOOVER.

2 THERE CAN BE NO QUESTION THAT MS. CASTELLOW
3 WAS NEGLIGENT IN THE OPERATION OF HER VEHICLE. ALL OF
4 THE EXPERTS YOU HEARD HAVE AGREED THAT SHE VIOLATED HIS
5 PATH OF TRAVEL, AND THAT BY SUDDENLY PULLING INTO VALLEY
6 VIEW, SHE CREATED AN EMERGENCY SITUATION THAT CAUSED
7 THIS CRASH AND MR. SOULLIERE'S INJURIES.

8 SHE BEARS SOLE RESPONSIBILITY FOR THIS
9 ACCIDENT AND ITS CONSEQUENCES. DON'T LET PLAINTIFF'S
10 SUGGESTION THAT SHE HAS NO RESPONSIBILITY CAUSE YOU TO
11 NOT USE YOUR OWN COMMON SENSE.

12 YES, OF COURSE, SHE HAS RESPONSIBILITIES. SHE
13 WAS NEGLIGENT, AND SHE WAS 100 PERCENT AT FAULT.

14 I AM REQUIRED TO DISCUSS DAMAGES BRIEFLY
15 BEFORE I SIT DOWN. I WILL DO THAT JUST TO MAKE SOME
16 OBSERVATIONS.

17 FIRST OF ALL, I WILL REMIND YOU THERE IS NO
18 CLAIM FOR ANY LOST INCOME AFTER 2018. THE LIFECARE PLAN
19 THAT WAS PRESENTED TO YOU INCLUDES MULTIPLE EXAMPLES OF
20 ASSISTANCE OR OF DEVICES THAT MR. SOULLIERE HAS NEVER
21 USED OR HAS PREVIOUSLY REJECTED.

22 IT SIGNIFICANTLY OVERREACHES. NOW, DON'T
23 MISUNDERSTAND. THERE IS NO DISPUTE THAT MR. SOULLIERE
24 SUFFERED SERIOUS INJURIES IN THIS ACCIDENT. NOR CAN
25 THERE BE ANY DISPUTE THAT OVER TIME, BECAUSE OF HIS
26 COMMITMENT TO HIS OWN PERSONAL REHABILITATION REGIMEN,

1 HE HAS MADE A REMARKABLE RECOVERY.

2 HE HAS BEEN ABLE TO RESUME AN ACTIVE AND IN
3 MOST RESPECTS A NORMAL LIFE. HE GOES TO WORK EVERY DAY
4 AND DOES SOMETHING. ALTHOUGH IT'S NOT CLEAR WHAT IT IS
5 THAT HE DOES, HE'S MAKING NO CLAIM FOR LOST INCOME SINCE
6 2018.

7 HIS RIGHT KNEE IS MOSTLY THE SAME SINCE IT WAS
8 IN 2018. HE DOESN'T TAKE ANY PRESCRIPTION MEDICATIONS
9 FOR PAIN, AND ONLY AN OCCASIONAL IBUPROFEN. NO DOCTOR
10 HAS IMPOSED ANY PHYSICAL LIMITATIONS ON HIS ACTIVITIES,
11 AND HE HAS NO PHYSICAL THERAPIES OR SURGERIES SCHEDULED.

12 HE GO GOES TO A GYM EVERY DAY, AND HAS RESUMED
13 MANY OF HIS PRE-ACCIDENT ACTIVITIES: SKATEBOARDING,
14 PADDLE BOARDING, AND MOST SIGNIFICANTLY, SNOWBOARDING.

15 HE HAS HAD SEASON PASSES AT MAMMOTH SINCE
16 2021. HE GOES THERE AT LEAST TEN TIMES A SEASON. WHILE
17 HE SAYS HE'S NOT THE SNOWBOARDER HE ONCE WAS, HE'S STILL
18 CAPABLE OF BOARDING DOWN DOUBLE-BLACK DIAMONDS.

19 THE MAJORITY OF THE MEDICAL DAMAGES IN THE
20 FUTURE ARE BASED UPON THE LIFECARE PLAN BY
21 DR. ZAFFARKHAN. THIS IS A PROJECTION OF POSSIBLE FUTURE
22 MEDICAL OR REHABILITATION EXPENSES. BUT AS YOU HEARD,
23 IT IS COMPRISED OF THINGS THAT MR. SOULLIERE HAS NOT
24 DONE, DOES NOT WANT, AND MAY NEVER NEED.

25 IT GROSSLY OVERSTATES ANY REASONABLE
26 PROTECTION OF FUTURE MEDICAL OR REHABILITATION EXPENSES,

1 AND ITS BIG EXPENSE ITEMS ARE RELATED TO HIS RIGHT KNEE
2 AND BACK.

3 DR. WAGNER IS HIS KNEE DOCTOR, AND HE SAYS
4 THAT MR. SOULLIERE MAY NEED ONE OR PERHAPS TWO KNEE
5 REPLACEMENTS IN THE FUTURE. DR. WAGNER EXPRESSED THAT
6 SAME OPINION IN 2018, AND PROJECTED HE WOULD HAVE HAD
7 THE FIRST OF THOSE BY NOW. AND HE ADMITTED HE WAS WRONG
8 ABOUT THAT.

9 THE LARGEST EXPENSE PROJECTED IN THE FUTURE
10 ARE INJECTIONS AND SPINAL SURGERIES IN MR. SOULLIERE'S
11 BACK.

12 FOLLOWING THIS IN ACCIDENT IN 2013,
13 MR. SOULLIERE NEITHER COMPLAINED OF NOR RECEIVED ANY
14 TREATMENT FOR A BACK INJURY. IN FACT THE FIRST MRIS
15 USED TO DIAGNOSE A BACK PROBLEM WERE NOT DONE UNTIL THIS
16 YEAR.

17 AND DR. BENDER ADMITTED HE COULD NOT MAKE A
18 JUDGMENT ABOUT MR. SOULLIERE'S CURRENT BACK COMPLAINTS,
19 OR SAY THAT THEY WERE IN ANY WAY RELATED TO THE CRASH IN
20 2013.

21 IN ANY CASE, MR. SOULLIERE IS NOT A CURRENT
22 CANDIDATE FOR SPINAL BACK SURGERY, AND HE MAY NEVER BE
23 SINCE MULTIPLE OTHER THERAPIES WOULD HAVE TO FIRST BE
24 TRIED BEFORE SURGERY WOULD BE CONSIDERED.

25 AS I CONCLUDE, I JUST WANT TO REMIND YOU ABOUT
26 SYMPATHY. WE TALKED ABOUT THAT IN VOIR DIRE. I WANT TO

1 REMIND YOU OF THOSE DISCUSSIONS. SYMPATHY FOR
2 MR. SOUILLIERE'S PRESENT CONDITION IS UNDERSTANDABLE AND
3 PROBABLY APPROPRIATE BUT YOU HAVE TO DIVORCE YOURSELF
4 FROM THAT. IT SHOULD PLAY NO ROLE IN YOUR DELIBERATIONS
5 OR IN YOUR VERDICT.

6 ALL SUZUKI HAS ASKED FOR IN THIS CASE IS A
7 LEVEL PLAYING FIELD AND A VERDICT BASED ON THE EVIDENCE
8 PRESENTED TO YOU AND THE LAW AS GIVEN TO YOU BY THE
9 JUDGE.

10 IF YOU DO THAT, I BELIEVE THE EVIDENCE WILL
11 COMPEL YOU TO RETURN A VERDICT IN FAVOR OF SUZUKI. IF
12 YOU KNOW THAT SUZUKI IS NOT RESPONSIBLE FROM THE
13 EVIDENCE, NO MATTER HOW MUCH SYMPATHY OR ADMIRATION YOU
14 MAY HAVE FOR MR. SOULLIERE, DON'T GIVE IN. FOLLOW THE
15 LAW.

16 FOLLOW THE INSTRUCTIONS. FOLLOW THE EVIDENCE
17 AND THE FACTS ABOUT WHAT REALLY CAUSED THIS ACCIDENT.

18 ON THE VERDICT FORM, MR. HOUSTON HAS REVIEWED
19 THAT FOR YOU. I WON'T TAKE YOUR TIME TO DO THAT. I
20 WOULD SUGGEST TO YOU THAT EACH AND EVERY CLAIM REQUIRES
21 A FINDING OF CAUSATION.

22 AS I HAVE SAID MANY TIMES, NOTHING SUZUKI DID,
23 THIS MOTORCYCLE, ITS BRAKE DID NOT FAIL. IT DID NOT
24 CAUSE THE ACCIDENT. IF THERE IS NO CAUSATION HERE,
25 THERE CAN BE NO RECOVERY.

26 AS TO THE PUNITIVE DAMAGES I WILL SIMPLY SAY,

1 AGAIN, THERE IS SIMPLY NO BASIS TO FIND THAT SUZUKI HAD
2 ANY MALICE OR OPPRESSION OR ILL-WILL DIRECTED AT
3 MR. SOULLIERE, OR THAT ANY OF THAT RESULTED IN HIS
4 ACCIDENT OR INJURIES.

5 I DO ASK THAT YOU RETURN A VERDICT FOR SUZUKI.
6 THANK YOU VERY MUCH.

7 THE COURT: THANK YOU, MR. RIGGS. WE WILL
8 TAKE OUR AFTERNOON BREAK, AND WE WILL SEE YOU IN 15
9 MINUTES.

10 THE COURT IS IN RECESS.

11 (RECESS.)

12 (IN OPEN COURT, IN THE PRESENCE
13 OF THE JURY.)

14 THE COURT: THE RECORD WILL REFLECT THAT THE
15 JURY HAS REJOINED US.

16 MR. MUNOZ, DID YOU WISH TO GIVE THE
17 PLAINTIFF'S REBUTTAL?

18 MR. MUNOZ: YES, YOUR HONOR. THANK YOU.

19

20 REBUTTAL ARGUMENT

21 MR. MUNOZ: GOOD AFTERNOON. THIS IS THE FIRST
22 TIME I HAVE HAD A CHANCE TO SPEAK DIRECTLY WITH YOU. I
23 WANT TO START OFF BY THANKING EACH AND EVERY ONE OF YOU
24 FOR BEING HERE. THANK YOU ON BEHALF OF MY CO-COUNSEL,
25 MR. HOUSTON, AND ON BEHALF OF MR. SOULLIERE, JOEY.

26 FROM THE BOTTOM OF OUR HEARTS, WE SINCERELY

1 APPRECIATE YOUR COMMITMENT, AND WE HAVE SEEN THAT
2 THROUGHOUT THIS TRIAL.

3 I ALSO WANT TO SAY THAT I HOPE YOU DON'T
4 PENALIZE JOEY FOR NOT BEING HERE EVERY DAY. HE WAS
5 ASKED NOT TO BE HERE, AND I HOPE YOU DON'T TAKE THAT OUT
6 ON HIM.

7 WE THANK YOU FOR BEING HERE, AND I AM JUST
8 GOING TO TAKE A FEW MORE MINUTES OF YOUR TIME BEFORE WE
9 FINISH.

10 I WANT TO TOUCH ON ONE OF THE LAST THINGS THAT
11 MR. RIGGS SPOKE ABOUT, AND IT WAS ABOUT PUNITIVE
12 DAMAGES. HE SPOKE ABOUT PUNITIVE DAMAGES, AND HE WAS
13 TALKING ABOUT MALICE, OPPRESSION, OR FRAUD.

14 I WANT YOU TO KEEP THIS IN MIND WHEN YOU ARE
15 DELIBERATING. BECAUSE I BELIEVE THAT THERE WAS SOME
16 KIND OF INSINUATION THAT THERE WASN'T KNOWLEDGE AND THEY
17 DIDN'T KNOW.

18 THIS EXHIBIT SHOWS THAT MR. MATSUMOTO -- THE
19 HIGHLIGHTED PORTION THERE AT THE BOTTOM -- HE WAS THE
20 PERSON RESPONSIBLE FOR THIS DOCUMENT AND THIS
21 INVESTIGATION. THEY KNEW. THEY KNEW.

22 I ALSO WANT TO TALK ABOUT SOME OTHER THINGS
23 THAT I HEARD IN MR. RIGGS' CLOSING THAT I THINK ARE
24 IMPORTANT.

25 THROUGHOUT THIS TRIAL IT HAS BEEN IMPOSSIBLE
26 NOT TO HEAR THIS SORT OF DEFLECTION, AND I WANT TO TALK

1 A LITTLE BIT ABOUT THAT. FIRST AND FOREMOST, WE HEARD
2 THAT THE CRASH ISN'T MR. SOULLIERE'S FAULT. IT'S NOT
3 JOEY'S FAULT, BUT HE OVERAPPLIED HIS BRAKE. THAT'S WHAT
4 WE HEARD FIRST.

5 AND THEN WE HEARD: WELL, IT'S NOT ABOUT JOEY,
6 IT'S MS. CASTELLOW'S -- EXCUSE ME, MS. CASTELLOW'S
7 FAULT. SHE'S THE REASON THAT THIS ALL HAPPENED. YET WE
8 KNOW, THROUGH ALL OF THE EVIDENCE AND ALL OF THE
9 TESTIMONY, BOTH EXPERTS AGREED THERE WAS 120 FEET WHEN
10 JOEY FIRST SAW HER SUBURBAN.

11 PLENTY OF TIME FOR HER TO STOP -- PLENTY OF
12 TIME FOR HIM TO STOP, RATHER. THAT'S WHERE THEY MOVED
13 NEXT. MS. CASTELLOW. FOR THE FIRST TIME TODAY, I HEARD
14 ABOUT SOME BLAME BEING PUT ON MR. YATES BECAUSE
15 MR. YATES COULDN'T SAY THAT THE BRAKE FAILED.

16 MR. YATES IS AN ACCIDENT RECONSTRUCTIONIST.
17 THAT'S HIS JOB. IT'S NOT HIS JOB TO RECONSTRUCT THE
18 FAILURE OF A FRONT BRAKE MASTER CYLINDER. THAT'S NOT
19 WHAT HE WAS TASKED WITH DOING. THAT'S NOT HIS
20 RESPONSIBILITY.

21 SO WE HAVE SEEN THIS PATTERN. WE HAVE SEEN
22 THIS DEFLECTION THROUGHOUT, AND YOU HEARD IT AT THE VERY
23 END BECAUSE THAT'S IMPORTANT TO THEM.

24 I BELIEVE THAT THIS PATTERN STARTED IN JAPAN,
25 IN HAMAMATSU, AT THE HEADQUARTERS. AND I THINK IT'S
26 MADE ITS WAY ALL THE WAY TO THIS COURTROOM.

1 SOME QUESTIONS THAT I THINK ARE IMPORTANT TO
2 CONTEMPLATE THROUGHOUT DELIBERATIONS. IF NOT BLAMING
3 JOEY, WHY SAY THAT HE OVERAPPLIED HIS BRAKE? WHY TRY TO
4 INSINUATE THAT THERE WAS SOME FAULT?

5 SECOND, HOW IS A DEFECTIVE BRAKE NOT A SAFETY
6 ISSUE? THAT'S ANOTHER IMPORTANT QUESTION. THE LAST
7 QUESTION IS: WHEN WILL SUZUKI TAKE RESPONSIBILITY?

8 YOU SEE, I THINK A BIG ISSUE THAT WE'RE FACING
9 HERE IS SUZUKI DOESN'T KNOW JOEY. THEY DON'T KNOW HIM.
10 THEY MAY THINK THEY DO BUT THEY DON'T.

11 THAT BECAME REALLY, REALLY APPARENT TO ME AT
12 ONE VERY PARTICULAR MOMENT IN THIS TRIAL, AND IT WAS
13 DURING CROSS-EXAMINATION OF JOEY'S MOM. THERE WAS SOME
14 QUESTIONS ASKED OF JOEY'S MOM.

15 SHE WAS ASKED ABOUT HIS SNOWBOARDING AGAIN.
16 MS. CARRINGTON ASKED: ISN'T THAT JUST SO GREAT, AND
17 AREN'T YOU JUST SO PROUD?

18 THEN THE SAME QUESTION WAS ASKED ABOUT HIS
19 CUTTING HAIR. WE KNOW THAT HE CUTS HAIR A FEW TIMES A
20 WEEK. IT'S NOT THE SAME AS IT WAS BEFORE. AND THE SAME
21 QUESTIONS FOLLOWED UP. ISN'T THAT JUST GREAT? AREN'T
22 YOU JUST SO PROUD?

23 IT WAS IN THAT MOMENT THAT I REALIZED THEY
24 DON'T KNOW JOEY. THEY DON'T KNOW THE LEVELS OF HARM
25 THAT HE SUFFERED, THE DEPTHS OF HIS DARKNESS. THEY
26 DON'T KNOW THE EXTENT OF HIS PAIN. THEY DON'T KNOW HIM.

1 LET'S TALK ABOUT SOME PEOPLE WHO DO. LET'S
2 START WITH DR. HATCH, HIS TREATING PHYSICIAN. DR. HATCH
3 GAVE JOEY A SECOND CHANCE, AND HE IS GOING TO BE FOREVER
4 GRATEFUL FOR THAT.

5 DR. HATCH KNOWS JOEY. DR. HATCH, YOU HEARD
6 THROUGH THE TESTIMONY. HE SAID: I CAN'T MAKE YOU ANY
7 WORSE BUT WE CAN GIVE THIS A TRY. AND HE GAVE THAT
8 OPPORTUNITY TO JOEY, AND IT HAS BEEN JOEY'S WORK AND
9 EFFORT THAT MADE ALL THE DIFFERENCE SINCE THEN.

10 GOING TO JOEY'S FAMILY. WE HEARD TESTIMONY
11 FROM HIS LITTLE SISTER, MELISSA. IT WAS ONE OF OUR
12 FIRST WITNESSES. SHE TALKED ABOUT HOW JOEY WAS HER
13 HERO. SHE TALKED ABOUT HOW JOEY WAS INCREDIBLY CARING.
14 SHE TALKED ABOUT HOW MUCH SHE LOOKED UP TO HIM.

15 THEN WE HEARD FROM HIS MOM, AND HIS MOM TALKED
16 ABOUT HOW RESILIENT HE IS. SHE TALKED ABOUT HOW HARD HE
17 HAS HAD TO WORK TO OVERCOME THIS. THEN WE HEARD FROM --
18 THERE IS SOMETHING ABOUT -- I WILL COME BACK TO THAT.

19 THEN WE HEARD FROM HIS BROTHER, ZACK. AND WE
20 HEARD HOW HE LOOKED AT JOEY AS BEING STRONG BECAUSE JOEY
21 IN THE DARKEST DAYS IN HIS LIFE DIDN'T GIVE UP. HE
22 DIDN'T SUCCUMB TO THAT DARKNESS WHEN HE QUESTIONED
23 WHETHER OR NOT HE SHOULD EVEN BE HERE.

24 WOULD IT HAVE JUST BEEN EASIER HAD THIS CRASH
25 JUST ENDED HIS LIFE, OR WOULD IT HAVE BEEN EASIER IF
26 THEY JUST AMPUTATED HIS LEG. AND ZACK TALKED ABOUT HOW

1 HE DIDN'T SUCCUMB TO THAT DARKNESS, AND HE'S STILL HERE.
2 AND HE STILL GETS TO SPEND TIME WITH HIS KIDS, AND WHAT
3 THAT MEANS TO HIM, AND HOW MUCH HE ADMIRES THAT
4 STRENGTH.

5 THEN WE HEARD FROM TARYN. TARYN SPOKE HERE IN
6 THIS COURTROOM ON THE STAND, AND SHE SPOKE ABOUT HOW
7 KIND HEARTED JOEY WAS. SHE TALKED ABOUT HOW SHE
8 COULDN'T BELIEVE SOMEONE WHO REALLY DIDN'T KNOW HER
9 WOULD GO OUT OF HIS WAY TO BE SO INVITING, AND WARM, AND
10 WELCOMING LIKE HE WAS.

11 THEN SHE ALSO REMINDED US THAT IT HAS BEEN A
12 LONG TIME SINCE SHE HAS SEEN THAT JOEY. IT'S IMPORTANT
13 TO TALK ABOUT THE DIFFERENCE BETWEEN LISTENING AND
14 HEARING. PEOPLE CAN HEAR THINGS, CAN AUDIBLY HEAR
15 THINGS IN PASSING BUT LISTENING TAKES EFFORT.

16 LISTENING MEANS YOU ARE ACTUALLY SEEING THAT
17 PERSON. YOU'RE ACTUALLY PAYING ATTENTION TO THAT
18 PERSON. SUZUKI MAY HAVE HEARD. THEY MAY HAVE HEARD
19 JOEY BUT THEY HAVE NEVER LISTENED.

20 WE KNOW THAT ABOUT THE NOTICE THAT WAS GIVEN
21 TO THEM IN THOSE OSIS. THEY HEARD HIM BUT THEY DIDN'T
22 LISTEN. THERE'S A DIFFERENCE BETWEEN THE TWO. THIS IS
23 A WORD THAT I THINK IS REALLY IMPORTANT BECAUSE IT CAME
24 UP A LITTLE BIT IN MR. RIGGS' CLOSING WHEN HE WAS
25 TALKING ABOUT HIS EXPERTS AND WHAT MY CO-COUNSEL HAD
26 SAID IN HIS CLOSING ARGUMENTS, AND HE USED THE WORD

1 "LYING."

2 CREDIBILITY IS IMPORTANT. CREDIBILITY IS
3 REALLY IMPORTANT. IN THIS COURTROOM, AND IN ANY
4 COURTROOM, CREDIBILITY IS PARAMOUNT. WHAT MY CO-COUNSEL
5 WAS HIGHLIGHTING WAS THE INCONSISTENCIES IN CREDIBILITY.
6 THAT IS IMPORTANT FOR THE FACT-FINDER. THAT IS
7 IMPORTANT.

8 THAT TAKES ME BACK TO THIS WORD "TRUTH." WE
9 HEARD IN JURY SELECTION THAT IT'S THE FRENCH WORD FOR
10 VOIR DIRE, RIGHT? WE'RE SEEKING THE TRUTH. SPEAKING
11 THE TRUTH. TRUTH IS IMPORTANT. TRUTH IS ANCHOR THAT
12 GUIDES ALL OF US. TRUTH GOVERNS SOCIETY. TRUTH SETS US
13 FREE.

14 AND THERE HAS BEEN MANY TRUTHS IN THIS TRIAL.
15 THERE HAVE BEEN. IT IS TRUE JOEY SUFFERED CATASTROPHIC
16 HARM AND WAS INVOLVED IN A HORRIBLE CRASH. THAT IS
17 TRUE. JOEY SPENT A LOT OF TIME RECOVERING, AND WE HEARD
18 ALL ABOUT THAT. I AM NOT GOING TO REHASH IT ALL.

19 HE SPENT A LOT OF TIME RECOVERING, AND A LOT
20 OF TIME IN DARKNESS. THAT IS TRUE TOO. HE HAD TO
21 STRUGGLE WITH LOSING A SENSE OF INDEPENDENCE, WITH
22 LOSING A SENSE OF BEING A HUMAN BEING, SUFFERING
23 INDIGNITY. THAT IS TRUE.

24 JOEY PICKED HIMSELF UP. JOEY DECIDED HE
25 DIDN'T WANT HIS LIFE TO BE CONFINED TO A WHEELCHAIR.
26 EVEN THOUGH PEOPLE SAID HE WAS NEVER GOING TO WALK

1 AGAIN, HE DECIDED THAT HE WAS GOING TO DO SOMETHING
2 DIFFERENT WITH HIS LIFE.

3 HE DECIDED THAT HE WASN'T GOING TO LIVE THE
4 REST OF HIS LIFE IN A WHEELCHAIR. THAT IS TRUE TOO.
5 THERE WAS A LOT OF PAIN IN THAT RECOVERY. THAT IS TRUE.
6 THERE WAS A LOT OF DARKNESS, AND A LOT OF SUFFERING.
7 THAT IS TRUE.

8 AND THEY DON'T GET TO TAKE AWAY ANY OF THOSE
9 TRUTHS. THEY ALSO DON'T GET TO DETERMINE THE VALUE OF
10 WHAT WAS TAKEN AWAY FROM HIM. THE JURY DOES.

11 WE HEARD AT THE END THAT -- WELL, FIRST, MY
12 CO-COUNSEL WALKED US THROUGH WHAT HE BELIEVED WAS FAIR.
13 I NEVER REALLY HEARD A SPECIFIC NUMBER FROM MR. RIGGS.
14 SO I AM GOING TO TAKE IT AS ZERO AS TO WHAT THEY BELIEVE
15 IS FAIR.

16 BUT WE KNOW THAT JOEY HAS 40 YEARS LEFT WITH
17 CHRONIC PAIN. WE KNOW THAT HE HAS HAD TEN YEARS WITH
18 CHRONIC PAIN ALREADY IN HIS LIFE. WE KNOW THAT HE HAS
19 HAD SIX SURGERIES -- FIVE ON HIS KNEE, ONE ON HIS ANKLE.

20 WE KNOW THAT EACH AND EVERY TIME HE HAD A
21 SURGERY THEY HAD TO OPEN UP HIS KNEE ENTIRELY. I DON'T
22 THINK I NEED TO WALK YOU THROUGH EACH ONE OF THOSE. I
23 THINK HOPEFULLY YOU REMEMBER EACH ONE OF THOSE
24 SURGERIES.

25 WE KNOW THAT HE HAS TWO MORE KNEE SURGERIES ON
26 THE HORIZON -- A LUMBAR FUSION AND A POTENTIAL

1 AMPUTATION. YOU HEARD DR. WAGNER TESTIFY THERE'S A
2 10 PERCENT CHANCE IN HIS BELIEF. HE HAS PERFORMED
3 HUNDREDS OF THESE AMPUTATIONS IN HIS CAREER. HE
4 BELIEVES THERE'S A 10 PERCENT CHANCE. ONE IN TEN
5 PEOPLE.

6 WHEN WE'RE THINKING ABOUT THE MEDICAL BILLS,
7 MR. HOUSTON TOUCHED ON THIS A BIT EARLIER, AND IT'S
8 IMPORTANT THAT I TOUCH ON IT AGAIN. HE'S GOING TO HAVE
9 THOSE PAST MEDICAL EXPENSES AND THOSE FUTURE MEDICAL
10 EXPENSES NO MATTER THE OUTCOME OF THIS TRIAL.

11 I WOULD ARGUE THAT JOEY DESERVES ACCESS TO THE
12 BEST MEDICAL TREATMENT FOR THE REST OF HIS LIFE. I
13 WOULD ALSO ARGUE THAT SUZUKI DOES NOT GET A DISCOUNT.
14 THERE IS NO DISCOUNT WITH JUSTICE. THERE IS ONLY FULL
15 JUSTICE.

16 NOW IF YOU DO THE CALCULATIONS, MR. HOUSTON
17 FIGURES, THEY ADD UP TO \$11 MILLION ROUGHLY. IT'S A LOT
18 OF MONEY BUT WE HAVE TO PUT THAT INTO CONTEXT. WE HAVE
19 TO PUT THAT INTO PERSPECTIVE. SIX SURGERIES SO FAR.
20 THREE MORE REASONABLY CERTAIN TO OCCUR, TO A REASONABLE
21 DEGREE OF PROBABILITY.

22 CHRONIC PAIN FOR THE LAST TEN YEARS, AND
23 CHRONIC PAIN FOR THE NEXT 40 YEARS OF HIS LIFE. THAT IS
24 WHAT THE TESTIMONY AND EVIDENCE SUPPORTED.

25 GOING BACK TO LISTENING VERSUS HEARING. I DID
26 MY BEST TO LISTEN THROUGHOUT THIS TRIAL. I DID. I AM

1 SURE WE ALL DID. THERE WAS A LONG TIME AND A LOT OF
2 EVIDENCE. BUT THERE WAS SOMETHING THAT JOEY SAID THAT I
3 LISTENED TO THAT REALLY STUCK WITH ME.

4 AND IT WAS WHEN HE WAS TALKING ABOUT MEETING
5 DR. HATCH FOR THE FIRST TIME, AND HOW HE JUST WANTED
6 DR. HATCH TO MEET HIM AT TRYING. NOW I ARGUE IS THE
7 TIME TO MEET HIM AT DO. TO DO WHAT IS RIGHT, TO DO WHAT
8 IS NECESSARY, AND TO DO WHAT IS JUST.

9 ONCE AGAIN, I THANK YOU FOR YOUR TIME. WE
10 THANK YOU FOR YOUR ATTENTION. WE PROMISED THAT WE WERE
11 GOING TO KEEP THIS SHORT, AND WE LOOK FORWARD TO SEEING
12 YOU UPON READING THE VERDICTS.

13 THANK YOU.

14 THE COURT: THANK YOU, MR. MUNOZ. LADIES AND
15 GENTLEMEN WE ARE DOWN TO THE LAST THING. I HAVE A
16 COUPLE OF INSTRUCTIONS I NEED TO READ TO YOU. THEY DEAL
17 WITH WHAT YOU WILL BE DOING IN THE DELIBERATION ROOM.

18 IF YOU WILL INDULGE ME FOR JUST A FEW MORE
19 MINUTES.

20 (AT THIS TIME, THE JURORS WERE FURTHER
21 INSTRUCTED BY THE COURT.)

22 (WHEREUPON, AS PREVIOUSLY STIPULATED
23 TO BY PARTIES, INSTRUCTIONS TO THE
24 JURY WERE NOT REPORTED.)

25 THE COURT: AT THIS POINT IN TIME IF YOU COULD
26 SWEAR IN THE COURT ATTENDANT.

1 THE CLERK: YES, YOUR HONOR.

2 DO YOU SOLEMNLY STATE THAT YOU WILL TAKE
3 CHARGE OF THE JURY AND KEEP THEM TOGETHER. THAT YOU
4 WILL NOT SPEAK TO THEM YOURSELF NOR ALLOW ANYONE ELSE TO
5 SPEAK TO THEM UPON ANY SUBJECT CONNECTED WITH THIS CASE
6 EXCEPT BY ORDER OF THE COURT. AND WHEN THEY HAVE AGREED
7 UPON A VERDICT, YOU WILL RETURN THEM TO THIS COURT SO
8 HELP YOU GOD?

9 COURT ATTENDANT: YES.

10 THE COURT: IF YOU WILL TAKE THE JURY INTO THE
11 JURY ROOM.

12 (AT THIS TIME THE JURY WAS ESCORTED
13 TO THE JURY DELIBERATION ROOM TO BEGIN
14 DELIBERATIONS, AT 3:45 P.M.

15 (IN OPEN COURT IN THE PRESENCE OF
16 JUROR NO. 152.)

17 THE COURT: YOU MAY BE SEATED. WE HAVE ONE
18 ALTERNATE JUROR. YOU ARE LUCKY. YOU HAVE A SPECIAL
19 INSTRUCTION JUST FOR YOU.

20 (AT THIS TIME, THE ALTERNATE JUROR
21 WAS INSTRUCTED BY THE COURT.

22 (WHEREUPON BY STIPULATION, BY AND
23 BETWEEN THE PARTIES, INSTRUCTIONS
24 BY THE COURT WERE NOT REPORTED.)

25 THE COURT: SIR, I AM GOING TO ASK YOU TO WAIT
26 AROUND FOR THE REST OF THE DAY IN CASE WE NEED YOU.

1 OTHERWISE I AM GOING TO ASK THAT YOU PROVIDE YOUR
2 CONTACT INFORMATION TO THE CLERK IF YOU HAVE NOT ALREADY
3 DONE SO. ON MONDAY, YOU ARE NOT REQUIRED TO COME IN BUT
4 IF WE NEED YOU, AND WE CALL YOU, WE NEED TO HAVE YOU
5 DOWN HERE WITHIN 30 MINUTES.

6 CAN YOU DO THAT?

7 JUROR NO. 152: YES.

8 THE COURT: YOU HESITATED. IS THERE A
9 PROBLEM?

10 JUROR NO. 152: I WAS THINKING ABOUT MY
11 SCHEDULE. IT IS DOABLE.

12 THE COURT: I WANT TO MAKE SURE. IF YOU WILL
13 STAY AROUND FOR TODAY UNTIL THE JURY LEAVES, AND THEN WE
14 WILL GO FROM THERE.

15 JUROR 152: OKAY.

16 THE COURT: THANK YOU VERY MUCH, SIR.

17 COUNSEL, UNLESS THERE IS ANYTHING ELSE, I AM
18 GOING TO GO TO THE ROBING CEREMONY.

19 THE CLERK: IF THE JUROR COULD PLEASE WAIT
20 OUTSIDE.

21 (IN OPEN COURT, OUT OF THE PRESENCE
22 OF THE JURY.)

23 THE COURT: IF I DON'T SEE YOU THE REST OF THE
24 DAY, I WILL SEE YOU MONDAY AT 9:00 A.M. THANK YOU VERY
25 MUCH.

26 (RECESS.)

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(JURORS WERE EXCUSED AT 4:30 P.M.)
(WHEREUPON, AT 4:30 P.M., THE PROCEEDINGS
WERE ADJOURNED UNTIL 9:00 A.M., MONDAY,
APRIL 24TH, 2023.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DEPARTMENT N18

HON. GLENN SALTER, JUDGE

THOMAS JOSPEH SOULLIERE,)
)
 PLAINTIFF,)
)
 VS.)
)
 SUZUKI MOTOR AMERICA, INC.,)
)
 DEFENDANT.)
 _____)

CASE NO: 30-2015-00790644
CU-PL-CJC

I, SUZANNE ONUKI, CSR NO. 13734, COURT REPORTER PRO
TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF ORANGE, DO HEREBY CERTIFY
THAT THE FOREGOING PAGES, 1 THROUGH 87, COMPRISE A FULL,
TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS IN THE
MATTER OF THE ABOVE-ENTITLED CAUSE ON APRIL 21, 2023,

DATED THIS 23RD OF APRIL 2023.



SUZANNE ONUKI, CSR NO. 13734

COURT REPORTER PRO TEMPORE

