

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 322

HON. LEE SMALLEY EDMON, JUDGE

4
5 TOYOTA UNINTENDED ACCELERATION)
6 CASES,)

7 (UNO TRIAL))

) SUPERIOR COURT
) CASE NO. JCCP 4621
)
)

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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 MONDAY, SEPTEMBER 30, 2013

12 P.M. SESSION

13
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1 CASE NUMBER: JCCP 4621
2 CASE NAME: TOYOTA CASES (UNO TRIAL)
3 LOS ANGELES, CALIFORNIA MONDAY, SEPTEMBER 30, 2013
4 DEPARTMENT 322 HON. LEE SMALLEY EDMON
5 REPORTER: DAVID A. SALYER, CSR 4410
6 TIME: 1:10 P.M.

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8
9 THE COURT: Mr. Mardirossian, are you ready to proceed?

10 MR. MARDIROSSIAN: I am.

11 (The following proceedings were held in
12 open court in the presence of the jury:)

13 THE COURT: All right. Welcome back, everybody.

14 Mr. Mardirossian, you may proceed.

15 MR. MARDIROSSIAN: Thank you, your Honor.

16 Good afternoon, everyone. We'll take a vote later as
17 to how many of you ate Mexican food at lunch, but let me just
18 continue on.

19 Where we finished off was talking about number 1.
20 You're thinking if he's going to take as long as he is going
21 to take with number 1 with the next 11 questions, we will be
22 here for a month. I promise you I won't be doing that.

23 As a matter of fact, the next 11 questions will be
24 pretty quickly. Number 1 is the one that has taken a little
25 while because it's an important question and it has a lot of
26 information in it.

27 So what I've done is going through the evidence with
28 you is given you all the reasons why you should be answering

1 yes to number 1. Because we know from all the evidence that
2 there was a design defect in this vehicle.

3 It's important to remember when we're talking about the
4 design defect, we're talking about the 2006 Toyota Camry
5 design without the brake override safety system in it. That's
6 what we're talking about, and that was a factor, a substantial
7 factor in causing the harm.

8 We've gone through why it's a substantial factor. It
9 doesn't necessarily mean it's the most or significant portion;
10 it just means that it contributed to the harm. And it did
11 cause harm to Peter and Jeff Uno, and we're talking about harm
12 as in the death of Noriko Uno.

13 So having gone through that, the answers to the next
14 two questions, just as the answer to this question, so this
15 one here I would ask you to answer yes to that.

16 The next one also yes, and I'll tell you why real
17 quickly. Because the next one is an easy question to answer.

18 It's an easy question because we basically -- by
19 answering yes to number 1, you answer yes to number 2.
20 Because it would be impossible for Toyota to come up here and
21 argue to you their burden. Because what happens in this
22 second question is there's a burden that Toyota has, and the
23 burden is this.

24 This first part of question that deals with number 2,
25 the jury instruction, is Peter Uno and Jeffrey Uno claim that
26 the 2006 Toyota Camry's design, meaning without the brake
27 override, caused harm to Peter and Jeffrey Uno, meaning loss
28 of Noriko.

1 To establish this claim, Peter and Jeffrey Uno must
2 prove all the following: That they were harmed -- you know
3 that she died -- and that the Camry's design was a substantial
4 factor, which is exactly the goal of question number 1.

5 So now there's a shifting of the burden, and this is
6 how this works.

7 It says if Peter Uno and Jeffrey Uno have proved these
8 two facts, then your decision on this claim must be for Peter
9 Uno and Jeffrey Uno unless Toyota proves that the benefits of
10 the 2006 Camry design, meaning without brake override,
11 outweigh the risks of the design. In deciding whether the
12 benefits outweigh the risks, you should consider the
13 following.

14 So what Toyota has to prove to you are these: That the
15 gravity of the potential harm resulting from the use of the
16 2006 Toyota Camry, the likelihood that this harm would occur,
17 the feasibility of an alternative safer design at the time of
18 manufacture, the cost of an alternative design, the
19 disadvantages of an alternative design.

20 You see, we've already answered all those questions.
21 Because we know from testimony that there is no cost in
22 incorporating them in vehicles from the factory. Because all
23 the initial R and D, or research and development, was done all
24 the way back in 2001.

25 MR. GALVIN: Your Honor, I object. There is no
26 evidence to that.

27 MR. MARDIROSSIAN: The evidence --

28 THE COURT: The objection is sustained.

1 MR. MARDIROSSIAN: The evidence is in 2001 they already
2 had brake override in vehicles. So we're saying the same
3 brake override they had in those vehicles, whether it be Bosch
4 or Denso, be placed in the newer vehicles.

5 As a matter of fact, in 2011 they incorporated the
6 Denso system, the brake override, in all of their cars in
7 America.

8 So there is nothing unsafe about it. Because if they
9 were to come up here and say, well, not to put it in is safer
10 than to put it in, meaning a vehicle without brake override is
11 safer than a vehicle with brake override, that would have to
12 be their argument to meet their burden.

13 Then they couldn't explain why it is that they put them
14 in every one of their brand new cars if it would be safer not
15 to have it.

16 So what are the negative risks? What are the risks of
17 having brake override? There are none.

18 We asked their expert. I asked their expert,
19 Mr. Walker, specifically that question, and he clearly said
20 when it comes to safety, there's not a single safety negative
21 impact, safety impact that adding the brake override would
22 have on the vehicle.

23 Now, what I did is I prepared a little -- the risks and
24 benefits of brake override, and so this would be like
25 disadvantages. That would be the risks, and these would be
26 the benefits. Okay?

27 So when you look at the risks or disadvantages of
28 having brake override, there are none, zero. So in order for

1 Toyota to meet their burden in the second question, they would
2 have to show you that there were significant disadvantages to
3 having brake override, and there are no disadvantages, none.

4 And what are the advantages or the benefits of brake
5 override? It's a safety feature. It prevents UA, very
6 effective in a trapped pedal situation.

7 If you remember, these are the same quotes I had from
8 their witnesses that I put up on a previous board with their
9 pictures, Lentz, Walker, Smith, brings the vehicle to a quick
10 safe stop, avoids accidents, restores brake vacuum, minimizes
11 driver panic. All these are their words.

12 So these are all the good things about brake override,
13 and there are no bad things. Therefore, it would be
14 impossible for Toyota to prevail on the second question. So
15 that should be a yes.

16 Then we come to the third question, and that is that
17 deals with Olga Bello. Here the question is -- and I'm going
18 to read, I guess, the qualifier to the question, the
19 transitional that says if your answer to question 2 is yes,
20 then answer question 3. If you answered no to question 2,
21 then insert the number zero next to Toyota in question 9 and
22 answer question 3.

23 With 3 it goes was Olga Bello's negligence a
24 substantial factor in causing harm to Peter Uno and/or Jeffrey
25 Uno, the same kind of analysis you have to go through in terms
26 of substantial factor.

27 And I believe that you will find that Olga Bello, just
28 as Toyota, played a substantial factor in causing harm to

1 Mrs. Uno because of her death obviously and a return, of
2 course, to Peter and Jeffrey Uno.

3 Now, before I get to that board, now, as we know, Olga
4 Bello did not stop at a stop sign. She was supposed to come
5 to that stop sign, come to a stop and look to her right to
6 make sure that there was no traffic coming her way, and if
7 there was no traffic after coming to a stop, then she was
8 supposed to move forward.

9 She didn't do that. She ran the stop sign at 10 miles
10 an hour. She T-boned Mrs. Uno's vehicle. She caused
11 Mrs. Uno's vehicle to spin 170. And during that spin, no one
12 really knows what happened to Mrs. Uno inside the vehicle.
13 All we know is that it was an unexpected, sudden, hard impact.

14 We've heard the excuses of how that's nothing more than
15 maybe a bumper car impact, and we've shown you why that's
16 nothing like bumper cars. Everything from the fact that you
17 know -- you sign up for it. You go with a little car with
18 bumpers all around it.

19 Also, remember, you know, an ambulance was called
20 afterwards and took Lynette Bello to the hospital to check her
21 out because she was having some hip pains.

22 To try to suggest in bumper cars you call an ambulance
23 after every impact and this is the same as bumper cars is just
24 silly, but that is what the Olga Bello defense is.

25 Rather than coming in and admitting negligence and
26 liability, they denied negligence and liability until after we
27 started trial.

28 If you recall, the judge read --

1 MR. DUFFY: Objection, your Honor.

2 MR. MARDIROSSIAN: The judge read to you a statement of
3 this case at the start of trial. In the first statement of
4 the case, Olga Bello denied negligence and causation. After
5 we started trial, they admitted negligence. But four years
6 later, they admitted negligence after we started trial.

7 So now they say, okay. We'll admit negligence. We ran
8 the stop sign, but we didn't cause her any harm. It was just
9 bumper cars. You have an excuse for everything.

10 Their own expert came in and said, well, okay. Okay.
11 Maybe more than bumper cars. Maybe -- it may have caused some
12 confusion. Maybe you may have caused a daze or maybe
13 disorientation. Yeah. Yeah, we agree that momentarily it did
14 that. It did that because no one is going to go through an
15 impact like that, have their vehicle spin 170, and walk away
16 like nothing happened.

17 What happened thereafter, you know, there are just two
18 ways to explain. One is the pedal got stuck, and the other is
19 Mrs. Uno, because she was a diabetic and was not in good
20 health, she just pressed on the gas pedal. I think we've
21 shown you through all the evidence that the second way can't
22 happen, just couldn't.

23 Remember the standard of proof is more likely than not.
24 So if you were to imagine the scales of justice and if we tip
25 those scales ever so slightly in our way, even by 50.1 percent
26 our way, just slightly, then we prevail on that issue.

27 Here the question is is it more likely than not that
28 this vehicle accelerated away from the Bello collision because

1 Mrs. Uno was in poor health and just misapplied the pedal or
2 misapplied the pedal as she's going down Euclid, or is it more
3 likely that there's something else wrong here?

4 It's not her health. It's not her health. There is
5 something else going on here.

6 That something else points to the Bellos, and it points
7 to Toyota. Because if this vehicle had brake override, the
8 first time she put her foot on that brake, the vehicle would
9 have come to an idle, slowed down as you would have expected,
10 and she would be alive today.

11 So coming back to Bello, what's also important, it's
12 not just that they didn't admit negligence early on. They
13 denied it. Not only denied it, they denied it to the police
14 officer.

15 When Officer Sellers pointed out to her, Mrs. Bello, I
16 know you're telling me you were behind the stop sign and some
17 car hit you and ran, but all the debris from your car happens
18 to be in lane number 2 and the bike lane. How do you explain
19 that?

20 All I know is I was behind the stop sign; somebody hit
21 me and took off.

22 What? Back up. That can't be.

23 Well, then we get the data recorder in the car. The
24 data recorder in the car doesn't lie. Right?

25 Now Bello admits they're negligent because their
26 recorder conclusively said it never came to a stop, slowed
27 down to four miles an hour, and then sped through the
28 intersection at ten miles an hour, was still accelerating when

1 she T-bones us causing our vehicle to spin.

2 Then comes right here before you -- she's not here, but
3 I want to say something about that. Remember I said don't use
4 outside facts to judge this case; judge the case on the
5 evidence?

6 Mrs. Bello not being here, you should never use that
7 against her. As the judge told you, this is not a criminal
8 case where a defendant has to be here. So she doesn't have to
9 be here. She's excused from being here. Do not use against
10 Mrs. Bello the fact that she was not in this courtroom
11 throughout the trial.

12 So setting that aside, she came in here and testified
13 before you saying the same thing she told Officer Sellers. I
14 was stopped behind the stop sign. That's all I remember. And
15 some car came and hit me and took off. I looked up, the car's
16 going. And I was really concerned about what was happening to
17 Lynette. I had to call the ambulance. They came and took
18 her, but she's fine.

19 So I think the answer to number 3 is fairly
20 straightforward. In terms of right of way, there is no
21 question that we had the right of way.

22 In terms of damage to the car, there is no question
23 that \$13,000 of damage to just her car, the front end of her
24 car, speaks loudly about the damage done to her car.

25 I would like to think that -- it's okay -- that the
26 answer to 3 -- if you can just show all three of them.

27 The answer to all three of these questions should be
28 yes, yes, and yes.

1 Now we get to the part of the verdict where we talk
2 about damages, and this is a very important part of the case
3 because that's why we're here. After all, this is, you
4 know -- it's not an eye-for-eye times in our lives. It's not
5 like we can go to someone that did wrong to us and punish them
6 for doing wrong to us. It's not an eye for an eye. In our
7 system of justice, all we can do is come to a jury and ask you
8 for fair compensation, ask you to compensate.

9 All that means, again, using the scales of justice, is
10 that when you have heavy damages, then you must be compensated
11 a significant amount to equalize, to balance the books.

12 Here the damages to Mr. Uno, Peter, and Mr. Uno,
13 Jeffrey, are tremendous. They're catastrophic. They lost a
14 loved one, a mother and a husband. Some of you are lucky to
15 find that person in our lives that we connect with and as
16 Peter had done.

17 You know that Christmas party just a few blocks away
18 where he met her in 1973. They were married for 35 years
19 before she died. And she's the one that said, well, I don't
20 know how to drive. Can you teach me how to drive.

21 Next thing you know, he's teaching her how to drive,
22 they're going out on a date, and he's marrying her. '74 they
23 get married. '75 they have their son.

24 They connected, and they connected because they had a
25 past that was similar and they're both from Japan, raised in
26 Japan, and now they're here in America.

27 She was, at the time, working at Sumitomo Bank as a
28 teller. She was a people person. She was Ms. Sunshine. She

1 was the one who would show up every morning at work and say
2 good morning.

3 And as Raymond said, it would drive us nuts because
4 everyone is going for coffee just trying to wake up and find
5 coffee and in would come Noriko with her smiley face. She
6 would never have a negative thing to say. She would not harm
7 a fly. She was just a positive, positive, positive influence
8 on her husband and son and a tremendous influence. I'll go
9 through that a little more in detail in a moment.

10 When you think about what she meant to them and the
11 loss they have suffered as a result of losing her in this
12 tragic accident.

13 I'm going to show you a video in a moment, a video that
14 will be a montage of her life sort of, and, at the same time,
15 give you the elements of what it is that you need to consider
16 in reaching a decision that's a monetary decision in her
17 favor.

18 What I'm going to do first is ask you to look at a CACI
19 instruction that lays out the specific reasons and the
20 specific elements that are contained in the instructions about
21 damages.

22 Why don't I just show you the verdict form that has --
23 Armen, could you do that, please?

24 The verdict form will direct you to the specific
25 elements. If I could just ask you to zoom in on that, please.

26 So start off with what are Peter Uno's non-economic
27 damages.

28 We're not seeking at this point any of these economic

1 damages -- I'll get to the subject of economic damages a bit
2 later -- and we're only going to be seeking a small amount to
3 that.

4 Here are the elements. Love, companionship, comfort,
5 care, assistance, affection, society, and moral support from
6 August 28th, 2009 to the present time, meaning up until now.

7 And then we're going to ask you to consider
8 compensating them for the damages from that date forward.
9 That means from now basically to the future. What does the
10 future mean?

11 Instructions, as the judge **read you, say that Mrs. Uno**
12 **would live 20 more years had it not been for this accident,**
13 **20 more years, and that means four years in the past and**
14 **another 16 years in the future, in the past meaning up until**
15 **now.**

16 What I'm going to do is go over what some of these
17 concepts mean, and I'll be real quick.

18 When we think about these words, they sound so similar.
19 What does love mean? Why is that different than companionship
20 or comfort? Well, love is a deep emotional connection, a
21 strong and constant affection.

22 What I'm talking about here is if you got that feeling
23 from hearing Peter Uno testify about his connection to his
24 wife and how they did things together and what they meant to
25 each other and what a loss it is, what a void has now been
26 created in his life because of her dying back in 2009.

27 Their background, their culture, what they did here
28 together, from working together, establishing a business, to

1 having a son and raising that son in the way they could never
2 do any better as far as they're concerned.

3 Remember what he said about the three arrows? He said,
4 you know, Noriko said an old shogun or samurai tale that one
5 arrow is strong, but two arrows are much stronger than one.
6 Three are even stronger. You can never break three arrows.

7 Now he's said down to two arrows without Noriko.
8 That's the feeling he has. Life for him is still worth
9 living, but without Noriko it's next to impossible.

10 Companionship, the positive feeling of sharing life
11 with another person.

12 Comfort, to soothe or forgive, strength and hope, to
13 cause someone to feel less worried, upset, or frightened.

14 Care, to nurture or make safe.

15 Assistance, to help or support someone.

16 Affection, a feeling, caring for someone else.

17 Society, friendly interaction with others.

18 Moral support, to encourage the endeavors of others.

19 Training, a process by which someone is taught needed
20 skills.

21 Guidance, to advise and assist.

22 And you heard the testimony from witness after witness,
23 whether it be the Nelsons or you remember Mr. Morgan, Jerry
24 Morgan, who came in early and said she had this effervescence,
25 this smile, the infectious laughter, and all these elements
26 are a part of the instructions that you'll receive, and all
27 these elements are what you need to consider.

28 I'm going to ask at this moment, if I can, for

1 Mr. Grandberry to play the video montage, please.

2 As he plays it, I'll try to save time and read to you
3 some of the things that these witnesses said. And by
4 "witnesses," I'm talking about the family, friends, customers
5 who came in and testified before you.

6 Ready?

7 As Mr. Morgan said, that she was effervescent; that
8 kids loved her and kids have a good instinct is what he said;
9 that her laughter was infectious; that she was witty and she
10 was humorous, you know, cracking jokes and trying to make fun
11 out of things.

12 She had a protective instinct that was tremendous. She
13 was always looking after her husband and son.

14 She had great pride in her son's accomplishments.

15 People loved her.

16 She would share everything that she had, even the
17 winnings in Vegas.

18 Then Raymond talked about how she was Little
19 Miss Sunshine with her laughter, with her good morning.

20 She worked six days a week. She would go home on
21 Saturdays to help with putting the house in order, shopping
22 for the week.

23 She was the force, the main force in making sure that
24 Jeffrey would go to the best schools; get not only a high
25 school degree, a college degree and then a law degree.

26 She was extremely kind and generous, never had an
27 unkind word to say about anybody.

28 She would greet kids when they came to her home with

1 envelopes full of gifts or money.

2 Her main purpose in life, she lived for her husband and
3 her son.

4 She had a little garden where she would harvest fruit
5 and then make preserves for neighbors, family, and friends.

6 She was a caring, nurturing, and devoted wife.

7 Never wore extravagant clothing or jewelry. Was very
8 simple in the way she carried herself. She was the emotional
9 glue, feminine touch that the family had.

10 When she spoke, she spoke with feeling and shared her
11 love.

12 She would tell jokes to make people laugh.

13 She was the leader of the family. And when Peter said,
14 well, no. No. I always had the last word, and he said the
15 last word was "Yes, dear."

16 Peter, a chef and a restaurateur, wouldn't eat at the
17 restaurant, wouldn't eat anywhere but his wife's cooking.

18 Every evening when they got home, whether it's
19 11 o'clock, midnight, or 1:00 a.m. -- because they would close
20 up the restaurant around 11:00 by the time they cleaned up,
21 shut the place down, and got home -- she would be waiting for
22 them.

23 The garage door would open. She would be right there
24 to bring him in and feed him a snack, a meal before they went
25 to bed.

26 She was there every morning.

27 There is hardly a picture that you'll see in any of the
28 photos we have that you don't see her smiling. I don't know

1 if you notice that. She's always got a smile.

2 It is a tremendous loss. There is no doubt about that.
3 I don't think anybody could look at this and say otherwise.

4 As I go through there, I'm going to ask you for the
5 same amount I told you I would ask you for at the start of
6 this trial.

7 When we look at breaking this down into numbers and
8 figures, we did that. We tried to do that. We said, well,
9 let's try to sit down and give real numbers and real figures
10 to Peter's loss, you know, companionship or comfort, care,
11 assistance, affection, society, moral support, all those
12 elements.

13 We gave those numbers and came up with what those
14 numbers should be. It came out to \$750,000 a year. And the
15 past three years would be three million alone.

16 When you look at the future, that would be 10,500,000.
17 But as I suggested to you, rather than breaking it down this
18 way, I just said we're going to ask for \$20 million total for
19 both Peter and Jeffrey. So that is basically \$10 million
20 each, or you could decide to break it down the way you think
21 is appropriate.

22 The same for Jeffrey as we break down his numbers.

23 As you add them all up, it comes out to about 9,200,000
24 future and 2,300,000 past, so both of those numbers are
25 greater than 10 million each.

26 The numbers we suggest to you are numbers that we are
27 giving you some guidance on. You may decide to go higher; you
28 may decide to go lower. If you went higher, obviously you

1 would be going with the numbers I suggested in terms of the
2 specific amounts, which could easily go over 20 million, or if
3 you go with what I've asked, which is a total of 20 million,
4 or you could decide it should be less.

5 But it's a decision you folks make. You folks sit
6 there in that room and talk about what this loss meant to
7 Peter and what it meant to Jeffrey, what did Noriko's loss
8 mean to them, and come up with a number that you feel good
9 about; that five years from now, ten years from now when you
10 relate back to this case and you say, you know, did we do
11 justice by them, you feel good about yourself, that you did do
12 justice, that you did come up with fair compensation. Because
13 this is a tragedy of the loss of this woman.

14 And when I'm done and defense counsel speaks, I would
15 challenge them to tell you what they think the loss meant to
16 Peter and Jeffrey and how much they think this loss is worth.
17 If they think it's worth any less, they should tell you.

18 Now, we go to the questions. Again, let me see if I
19 could ask Armen to put that up.

20 So if we have on the Elmo here -- so question number 4
21 is the non-economic to date. So that would mean to the
22 present. And this number will be a number that you choose
23 along with from this date forward, meaning in the future.
24 That is a number you choose.

25 I'm asking that you -- when you add these two together,
26 whether this is two and eight or one and nine, whatever it is,
27 that this comes out to about \$10 million. That would be 4.

28 Question number 5, please.

1 The same thing with question number 5. You may decide
2 that with 5-A that number is one or two or three, whatever
3 million you feel is appropriate and fair. Write that number
4 down.

5 Then the number 4 in the future, meaning from this day
6 forward, what are Jeffrey's losses, what is the fair
7 compensation. I'm asking that that total also be 10 million
8 so that -- approximately 10 million.

9 You may decide that Peter's loss is greater under the
10 circumstances even though he has less years to live when you
11 look at the charts. Because as the judge read to you, the
12 charts -- the life expectancy charts read that Peter has
13 another 13.9 years to live, approximately 14 years.

14 Jeffrey, of course being young, has 40 years to live.
15 So Jeffrey would have outlived his mother while Peter may not
16 have. That's why Peter's numbers, one could argue, may be
17 less, but you may find that Peter's loss is greater because,
18 after all, this was his wife and, after all, he was in love
19 with her, more than just having a son relationship.

20 So whatever you decide on, that is your decision. I'm
21 asking that the grand total be 20 million, around there.

22 Next, please, the next slide.

23 When you finish 4 and 5, then you go to 6. Here -- if
24 you can just go down a little bit, Armen.

25 Again, you know, it tells you, the transition language,
26 what to do before you get to 6.

27 Now, this next question deals with economic damages.
28 You remember I said we're not going to ask for any significant

1 economic damages. As a matter of fact, we're not asking for
2 any, quote, unquote, economic damages from the Bellos, but as
3 to Toyota, we are.

4 As successors in interest of the estate of Noriko Uno,
5 we have to ask you first to give an economic award before we
6 get to punitive damages.

7 The economic award -- and I'll show you how I come up
8 with that number \$1,093.80. I come up with that number by
9 merely looking at the front page. I don't know if we have
10 that exhibit that we can pull up on the Elmo. If not, I'll
11 give you the --

12 So if we look at the property damage estimate for the
13 Uno vehicle, if we just concentrate on damage that we can
14 specifically relate to the Toyota before her death, before
15 Noriko Uno's death, would be that line that speaks of a -- of
16 the two doors on the right side of the vehicle being damaged.

17 In other words, on the passenger side of the vehicle,
18 if you recall, that's when she sideswiped pole number 1 and
19 the doors on the passenger side were damaged. And the
20 estimate shows that number 4 is the right door; number 5 is
21 the left door. That says replace quality -- I believe that's
22 6.

23 Regardless, it's \$300 each, 11.2 hours and 7.7 hours in
24 labor.

25 I'm just asking for one door, just one door. So that
26 would be \$300 for the door and the hours, which is 18.9 hours,
27 at \$42 an hour totals up to \$1,093.80. So this is plus 11.9
28 times \$42 an hour. So 18.9.

1 So it's \$1,093 is what I have written in in economic
2 damages. That is all that we're asking you to compensate the
3 estate for, not the rest of the vehicle, just the right side
4 of the vehicle, \$1,093 for the damage incurred prior to
5 Mrs. Uno's dying at the -- after striking the small and the
6 big tree.

7 Now, if we go to the next question, I told you it would
8 be question number 7. So I told you it would go faster.

9 The next one is was Noriko Uno negligent. All right.
10 Believe it or not, you have to answer that question too. I
11 think it's an simple answer. Absolutely not. She could not
12 be and she wasn't.

13 Let's go through that for a moment.

14 There is an instruction that the judge read you, and
15 it's instruction 452.

16 Armen, if I could ask you to put this on the Elmo.

17 That basically describes what her condition was like
18 right after she was T-boned by Olga Bello, and it reads Peter
19 and Jeffrey claim that Noriko was not negligent because she
20 acted with reasonable care in an emergency situation.

21 Remember when we read some of the responses we got from
22 Toyota's own experts and own people that said that a UA, or
23 unintended acceleration, is an emergency situation? That's
24 what she was facing at that moment, that there was a sudden
25 and unexpected emergency situation in which Noriko was in
26 actual or apparent danger of immediate injury.

27 Her vehicle came out like a rocket, all kinds of
28 obstacles, cars coming at her, everything else, so she was in

1 immediate danger.

2 That she did not cause the emergency. She didn't run a
3 stop sign. She didn't do anything wrong. She was minding her
4 own business going down Euclid.

5 Number 3, that Noriko acted as a reasonably careful
6 person would have acted in similar circumstances even if it
7 appears later -- in other words, when we sit back doing our
8 Monday morning quarterbacking, even if it appears later that a
9 different course of action would have been safer.

10 So, yeah, now we could sit back and say, well, gosh,
11 you know, she thinks her foot is stuck underneath that brake
12 pedal. She thinks she can't get it out. All she had to do
13 was drop her foot and pull it out.

14 All we're trying to say is she was stuck back there and
15 she was trying to pull off. You pull off. You don't go down
16 and off.

17 At that time she has just been T-boned, spun around,
18 her car is accelerating, and she just did not have a clear
19 mind with which to be thinking like you would if you're just
20 sitting down in your office and say why didn't she just drop
21 her foot. She didn't because she was in an emergency
22 situation because she panicked, because she was facing danger.

23 Even though now it would be easy for experts and Toyota
24 lawyers and anyone else to come in and say she could have
25 easily dropped her foot. Plenty of room there. Sure there
26 is. Sure there is if you're not in a panic situation, if you
27 weren't in an emergency.

28 But when you're in an emergency and you're terrified,

1 you're horrified, you're scared, you're panicked, and, you
2 know, you're looking at trees you could run into, god knows
3 what kids might be playing on the street if she went --

4 MR. GALVIN: Objection, your Honor. There is no
5 evidence of children.

6 THE COURT: Sustained.

7 MR. MARDIROSSIAN: We don't know what there were on the
8 streets. All we know is that, instead of going straight, she
9 made her -- she drove right at a high rate of speed and she
10 kept going down.

11 We don't know what pedestrians were or were not on the
12 street. She didn't hit anybody. That we do know.

13 She didn't hit Marjan Whyte. She didn't hit
14 Mr. Piceno. She didn't hit all of these cars that were right
15 next to her as she was going by them.

16 She did not allow the car to go into the driver median.
17 She was driving this car, trying to control it as best she
18 could until she saw Epperson backing out.

19 As Epperson said, she turned right to avoid hitting me.

20 As Geiggar said, she turned right as to avoid hitting
21 me.

22 As Brandt said, she turned away from my SUV full of six
23 kids to avoid hitting us.

24 So to suggest that she wasn't in harm's way, that she
25 wasn't in an emergency wouldn't be honest. And she was doing
26 everything she could faced with an emergency to bring her
27 vehicle to a stop, but she could not.

28 Now, some of the things that I want to point out to

1 you -- a couple things I wanted to mention to you and I
2 couldn't earlier, and this goes back to what was she doing
3 that may have suggested she was negligent.

4 For instance, if she had hit curbs on her way down or
5 if she had run into stationary objects like mailboxes or
6 parked cars, but there is no evidence of that. In fact, the
7 evidence is contrary. So to suggest that she was in any way
8 negligent is not supported by the evidence.

9 I want to show you one more thing. The defense expert
10 Doug Young's testimony. I do have a board so it will be
11 easier.

12 This is a defense expert. Dr. Young testified here
13 before you just 13 days ago. (Reading:)

14 "From the start of that startled
15 response to the crash at the big tree is
16 approximately 10 seconds, correct?

17 "A. Approximately."

18 Now, let's analyze that just for a moment.

19 They claim that Mrs. Uno, as she's driving down, she
20 gets startled by Marjan Whyte who happens to be occupying the
21 same lane she's going down. That would be lane number 1, the
22 fast lane.

23 Now, we know that Marjan Whyte says she saw the Camry
24 when she was here and that the Camry passed her right at this
25 point, right at this point. That says Whyte, her name in the
26 middle, Camry passed her, right there.

27 So at the very latest point where she could be startled
28 by Camry is at this point, which is Toyota's theory; that she

1 gets startled at that point or further north and hits the
2 accelerator even harder and continues to barrel down Euclid.

3 So she's doing this, and we measured that distance.

4 From here, the last point, to the first pole is
5 1,650 feet. From there to the tree where she passed is
6 2,000 feet. You know, we have the scale here. We measured
7 it, 2,000 feet and 1,650 feet.

8 So I just did a quick little graph to show you how
9 impossible that would be. In order for her to have gone from
10 the start of this startled response to the crash at the big
11 tree, 10 seconds, this distance in 10 seconds. Because,
12 remember, she's traveling at about 40 miles an hour already.

13 Her car would have to go 232 miles per hour. That car
14 can't go over 110 miles an hour, maybe 120 at best. She would
15 have to go 232 miles an hour for Toyota's theory to hold
16 water.

17 For her to have hit the first pole -- let's just say it
18 wasn't the big tree; it was the first pole. Because on
19 cross-examination, he said, well, I said the big tree, but I
20 think more likely the first pole, the first pole.

21 I said, all right. Let's say it's the first pole.

22 In order for her to accomplish that purpose to go from
23 40 miles an hour to the first pole which is 1,650 feet south,
24 she would have to go 185 miles an hour. Her top speed would
25 have to be 185 miles an hour to make that distance in
26 10 seconds. Even if you were to expand that to 12 and 15
27 seconds, it would not be enough time to cover that distance.

28 Because the defense comes in and tells you at the first

1 pole she could not have been doing more than 82, 89. So she
2 had to have been going much, much, much faster, over 130 miles
3 an hour, to get to the first pole.

4 As a matter of fact, she would have had to have
5 averaged 112 miles an hour just as an average instead of a
6 peak. But in order to get to 112 miles an hour, she had to
7 have a peak of 185 miles an hour.

8 Remember the concept, you're starting at 40, if you're
9 average has to be 112, to average 112, you have to go way
10 above 112 and then average it with the 40 to get to 112.

11 She would have to get to a peak of 185 for Toyota's
12 theory to be true according to their expert Mr. Young,
13 Dr. Young, who was the human factors expert that came in and
14 testified before you.

15 Now, this is for question number 7 then. I believe the
16 answer is fairly straightforward and simple, that she's not at
17 all negligent.

18 But just as a final point, again, if you look at the
19 Noriko Uno diabetes graph -- because, like I said, she either
20 had to be out of control because of her diabetes or there's
21 something wrong with that vehicle. That something wrong could
22 have been easily cured by brake override.

23 Now go to the next question.

24 So I would suggest that you answer this one as a no.

25 And the next question only deals with what
26 apportionment you would make if you answered yes. So if you
27 go to -- is it 8?

28 MR. AKARAGIAN: If you say no, you skip 8.

1 MR. MARDIROSSIAN: Can we put 8 down for just a moment.

2 MR. AKARAGIAN: Yes.

3 MR. MARDIROSSIAN: When you go to 8, that one says, if
4 you say no to Noriko's negligence, then you skip 8 and you go
5 straight to 9. So let's go to 9.

6 See, when you go to 9, by the time you get here, I have
7 to caution you about, this is where you do apportionment.

8 This says if 100 percent of the total responsibility
9 for the death of Noriko and Peter and Jeffrey Uno's harm, what
10 percentage of responsibility of harm do you assign to Toyota,
11 Olga Bello, and Noriko Uno. This is where the apportionment
12 comes in.

13 So I must caution you to, please, before you get to
14 this point, when you're doing evaluation of the harm and when
15 you're thinking about the dollar amount, do not reduce the
16 dollar amount at all. Because this will deal with it and the
17 judge will deal with it.

18 When you do your evaluation of the harm and the
19 compensation, do it the full value you believe she deserves
20 without any reduction.

21 Then at this point is where you put in your
22 approximation or your numbers in terms of responsibility of
23 harm.

24 I believe the evidence is pretty clear that the lack of
25 brake override is what caused Noriko Uno's demise. But we
26 also know that had it not been for the Bello T-boning, we
27 would never have had this problem.

28 So it's a combination of the two. It's those two

1 actions that merge together that resulted in Noriko Uno's
2 death.

3 So you could decide that it's 60/40 or 40/60 or 70/30,
4 but I would suggest that it's 50/50, it's half and half, and
5 that there would be zero negligence of Noriko Uno because she
6 did nothing wrong.

7 There's a CACI instruction 431 for multiple causes, and
8 this is an instruction that comes in handy when answering this
9 question.

10 A person's negligence or defective product may combine,
11 as I suggested, with another factor to cause harm. If you
12 find that Toyota or Olga Bello was a substantial factor in
13 causing Peter Uno and Jeffrey Uno's harm, then that party is
14 responsible for the harm. Toyota or Olga Bello cannot avoid
15 responsibility just because some other person, condition, or
16 event was also a substantial factor in causing Peter Uno and
17 Jeffrey Uno's harm."

18 Basically, they can't just say since the other person
19 was responsible and therefore we can't be. No, it can be
20 concurrent. It can be both. And this particular instruction
21 which you'll have with you is one you would consider.

22 Remember we also had Dr. Kio(ph) come and testify. We
23 had Dr. Katchem come and testify. And I won't go through that
24 with you again because you've heard that.

25 So once we have got beyond question number 9, the 50/50
26 and the question for Noriko, we come to question number 10.

27 In order to get to question number 10, you have to give
28 us the number of \$1,000, approximately. You could decide that

1 number could be higher or lower. That's fine but a number
2 there.

3 Here the question is did Toyota engage in conduct with
4 malice, oppression, or fraud.

5 Now, those are terms that we're not always familiar
6 with as you know, just everyday people, but they do have
7 special meaning in the law. And this is defined in a jury
8 instruction that you can look to for some guidance.

9 A person of malice fits very well with this case. I
10 will go over this and give you sort of the meat behind the
11 bones of this instruction.

12 And oppression means Toyota's conduct was despicable
13 and subjected Noriko Uno to cruel and unjust hardship in
14 knowing disregard of her rights, basically her right to live,
15 her right to be safe.

16 What does despicable conduct mean? It's conduct that
17 is so vile, base, or contemptible that it would be looked down
18 upon -- looked down on and despised by reasonable people.

19 So when you think about that, the kinds of evidence
20 that you saw in this case -- and you saw it through the
21 testimony of some of the witnesses, specifically Mr. Lentz.

22 I had Mr. Lentz here testify, and he referred to an
23 email, an email that we talked a little bit about. But this
24 email sort of gives you the fingerprints or footprints of the
25 mentality of Toyota where they put the profits over safety,
26 where they put money ahead of safety.

27 When you look at this email, he was cc'd on it and his
28 name is right here under cc. He's Jim Lentz. And it was one

1 where he was being copied in as Toyota Motor Sales at Toyota.
2 The subject was attorney-client privilege, confidential, brake
3 override system naming of SafeStop Technology.

4 They're so worried about what to name this technology.
5 Because as they put it, restate and explain our recommendation
6 to Toyota Motor Corporation that brake override system naming
7 should be SafeStop Technology. That's what America wanted to
8 call it. That's what Toyota Motor Sales wanted to call it.

9 MR. GALVIN: For the record, I want to object to that,
10 the date and time.

11 THE COURT: The objection is overruled.

12 MR. MARDIROSSIAN: TMC has conveyed their concern that
13 focusing on it as a safety feature could have a big impact.

14 We know it's a safety feature. They've said so. They
15 put it in every one of their new cars. Potentially creating
16 pressure for Toyota to retro all of our vehicles, they would
17 have a negative impact on our engineering resources at TMC.

18 What does negative impact mean?

19 MR. GALVIN: Your Honor, I object. There is no
20 retrofit recall claim.

21 MR. MARDIROSSIAN: It's corporate conduct is what we're
22 talking about, your Honor.

23 THE COURT: The objection is overruled.

24 MR. MARDIROSSIAN: So what this shows you is the kind
25 of corporate conduct that is prevalent, but very rarely will
26 you have some expert or some insider come in and say, oh,
27 yeah, we put, you know, profits over safety. Oh, we don't
28 care about injuries. We care about, you know, how much money

1 we save. That's not going to happen.

2 So what we look for are these little footprints that
3 are found in their internal correspondence, and this one tells
4 you a little bit about the corporate conduct. They're worried
5 about engineering resources having a negative impact and
6 worrying about the bottom line.

7 And this goes back to -- remember we talked about how
8 Toyota has an ownership stake in Denso but Bosch is not part
9 of Denso? Bosch is a separate German corporation. And they
10 chose to put brake override in the European countries that we
11 spoke about, and all those vehicles had Bosch in them.

12 All the American vehicles at the same time period had
13 Denso --

14 MR. GALVIN: Objection. There is no evidence of that.

15 THE COURT: Sustained.

16 MR. MARDIROSSIAN: Toyota chose to use Denso in America
17 because they owned part of --

18 MR. GALVIN: Your Honor, there is no evidence of that.
19 Objection.

20 THE COURT: Sustained.

21 MR. MARDIROSSIAN: They have an ownership stake in
22 Denso but not in Bosch. That's the evidence you heard.

23 MR. GALVIN: There is no -- objection. There is no
24 evidence of ownership, yes or no, in Bosch.

25 THE COURT: Overruled.

26 MR. MARDIROSSIAN: You didn't hear a single witness
27 come in and say they own Bosch.

28 You did hear a witness come in and say, we have an

1 ownership stake in Denso. That's yet another reason why they
2 chose to do business with a company that they own a part of
3 because that affects their bottom line.

4 THE COURT: Sustained.

5 MR. MARDIROSSIAN: So the footprints are obvious.

6 And they go on to say, acknowledging TMC's concerns,
7 how we can use SafeStop Technology in our marketing
8 communication so we do not trigger an action to retrofit all
9 our UIOs, which are units in operation.

10 Again, this is corporate mentality. This is them
11 speaking.

12 When we had Mr. Lentz on the stand, he said, well, you
13 know, I can't get to speak to TMC directly; I have to go
14 through this middleman group. I have to tell them what I
15 want, and then they take that information and they tell the
16 people behind a window what it is we want.

17 Then the people at TMC tell the people in the window
18 what their response is. Then they come to us. They have this
19 little system set up.

20 You folks here in Los Angeles on Commonwealth between
21 Wilshire and Sixth can send a message to people through that
22 window without using interpreters that you won't stand for
23 that; that when it comes to safety, when the technology is
24 there, when it's economically and technologically feasible, it
25 costs nothing, there's no downside to it. Put it in. Put it
26 in every car. And when you don't put it in, you have to pay a
27 price if you don't.

28 So you will send that message to them loud and clear.

1 This is a rare situation where 12 jurors in America could
2 tell Toyota, the company that as the judge read to you is
3 worth \$135 billion, net worth, you can tell them you're the
4 biggest and largest producers of automobiles. That's great.
5 But when it comes to safety, it doesn't cost any extra and
6 there is no negative side effect to it, give it to us all.

7 Because you didn't do it in the past, we're going to
8 make sure you don't repeat that conduct. So to deter future
9 similar conduct and to punish, that is the reason for punitive
10 damages.

11 Here they are worth \$135 billion. I mean, I could
12 write that number down and I couldn't tell you how many zeroes
13 you would have to put at the end of 135 to get to 135 billion.
14 I couldn't. It's a huge, huge number.

15 And would I even dare tell you to give us a percentage
16 of that? I won't even do that. I'm going to leave it up to
17 you.

18 If you go into that jury room and you think to
19 yourselves, you speak amongst yourselves, you go, we want to
20 get their attention, tell them you shouldn't have done this,
21 that you should do this in the future, and please take note
22 we're watching.

23 I leave that up to you because I'm not going to write
24 it down because it would be a huge number and I don't want to
25 sensationalize this, but this is an important case. This is
26 Noriko Uno's life, her estate.

27 I'm going to sit down because I know I have another
28 opportunity to speak with you.

1 I want to, once again, not only thank the court staff,
2 but thank you. We've taken about two months of your life away
3 from you, away from your normal life, and had you come in here
4 and hopefully listen to a trial that has been somewhat
5 interesting but often, I'm afraid, boring, and I apologize for
6 that.

7 But I don't apologize for being here. Because this is
8 a worthy cause and you've played a tremendous role in it. The
9 fact that, you know, you paid attention, you've taken a lot of
10 notes and the time and the energy, and your gift to us is your
11 common sense and your knowledge.

12 When you go into the jury room and you deliberate,
13 think about the fact that this is our only opportunity to ever
14 seek justice for this family.

15 And with that, I'm going to sit down and ask that the
16 defense attorneys do respond to my simple request. If you
17 don't think this is a \$20 million case, tell us what you think
18 it's worth.

19 Thank you.

20 THE COURT: Mr. Galvin, do you want to take a break?

21 MR. GALVIN: We're going to need to. He has to move
22 all his stuff.

23 THE COURT: Why don't we take an afternoon break.
24 15 minutes.

25 You're reminded not to discuss this case amongst
26 yourselves or with any other person, not to form or express an
27 opinion on the matter until it is submitted to you for
28 decision.

1 See you in 15.

2 (Recess.)

3 (The following proceedings were held in
4 open court out of the presence of the jury:)

5 MR. GALVIN: Just for the record, counsel in the last
6 part of his argument made an argument with respect to Bill
7 Fahey email dated May 31st, 2010. My objection at the time
8 and my objection now is that this is irrelevant. It doesn't
9 go to corporate conduct.

10 This is a 2010 email. It can have no relevance to any
11 decisions that were made with respect to the 2006 Camry that
12 was designed years prior to 2006. There is no reference and
13 no way to connect this document to the design, development,
14 and decision process with respect to that.

15 So I just want the record to be clear I object.

16 THE COURT: I did not understand the nature of your
17 objection with respect to the date, but I'm assuming that you
18 will argue that to the jury.

19 MR. GALVIN: I think I made some reference to time and
20 place, your Honor. But that's neither here nor there. I
21 objected. I think it was improper.

22 MR. MARDIROSSIAN: Didn't our board have a date on it?

23 MR. BERRY: No.

24 MR. MARDIROSSIAN: Well, I didn't purposely.

25 THE COURT: No, it didn't.

26 MR. BERRY: It did not.

27 MR. MARDIROSSIAN: I didn't know. It doesn't matter.

28 It's no big deal. Obviously when the evidence came in, we did

1 talk about the date.

2 MR. GALVIN: We did talk about it.

3 The evidence talked about what is going on with respect
4 to the recall situation in 2009, 2010.

5 The argument that was being made here is that this is a
6 basis for punitive damages for decision made on a vehicle
7 designed and developed years before that. So its relevance in
8 when it came in with respect to Mr. Lentz, that's not what the
9 argument was.

10 THE COURT: And that's exactly what you'll argue, I'm
11 sure.

12 MR. GALVIN: Indeed. But I didn't want to waive an
13 objection.

14 MR. DUFFY: I made an objection, and I didn't know if
15 the Court ruled or didn't rule.

16 THE COURT: I couldn't hear you.

17 MR. DUFFY: I made an objection.

18 THE COURT: I heard a noise, and I looked up and looked
19 around, but I didn't hear anything.

20 MR. GALVIN: You didn't even move. I couldn't even
21 tell.

22 MR. DUFFY: I made the objection in the reference to
23 the statement that Olga Bello conceded negligence; that before
24 the trial she did and she did now. There was no evidence.

25 There was evidence that before the trial started we had
26 submitted the negligence instruction, and there was no
27 evidence as to when Olga Bello did concede negligence or not.
28 I thought that was improper to even address that in argument.

1 MR. MARDIROSSIAN: The Court, in reading the statement
2 of the case to the jurors prior to picking the pool, read to
3 them on a couple of occasions -- and I have the record if we
4 need to show it -- that both defendants, Toyota and Olga
5 Bello, contest negligence and damages both.

6 Only after the Court read those to these folks did Olga
7 Bello finally admit negligence and put it on the record. I
8 said what the Court read to you, the statement.

9 MR. DUFFY: That was my point. There was no evidence
10 to that, and therefore it was improper to even raise that
11 before the jury because the jury, as far as this jury was
12 concerned, when we came in here, the first thing I said in
13 opening statement was we were not disputing negligence.

14 But I didn't hear what the Court had said, so I
15 didn't --

16 THE COURT: And I did not hear the objection.

17 MR. DUFFY: Okay.

18 THE COURT: Mr. Galvin, are you ready to begin?

19 MR. GALVIN: Thank you.

20 THE COURT: Before we get them, we should probably
21 address what we're doing in terms of timing.

22 Unless you're very, very fast, Mr. Galvin, it appears
23 we're not finishing arguments today.

24 MR. GALVIN: That's what it seems to me to be. Because
25 I think counsel took two hours and 15 minutes.

26 THE COURT: He took two hours and 10 minutes -- was it
27 two hours? In any event, it was two hours, 10 minutes longer
28 than he had said.

1 The bottom line is we're not going to finish today and
2 we have to figure out what to tell the jury about tomorrow.

3 As I recall, Ms. De Jesus can't get here until 2:00.
4 So we could begin arguments at 2:00 tomorrow, but that's going
5 to be enough time to wrap them up so they can begin
6 deliberation on Wednesday.

7 We've got a Toyota JCCP scheduled at three o'clock.

8 MR. GALVIN: I think it's 1:45.

9 THE CLERK: Yes, your Honor. 1:45.

10 THE COURT: Okay. 1:45.

11 So we will be done in 15 minutes?

12 MR. GALVIN: Should be. We only have one thing to do
13 really.

14 THE COURT: If that's true and it won't be an issue,
15 that's fine. I was thinking it would be three o'clock and it
16 would be dead in the middle of what we're trying to do.

17 MR. GALVIN: 1:45 is what you told us based on looking
18 at your calendar.

19 I think really the big deal is the movement of things.

20 THE COURT: Mr. Lebovits may want to weigh in on this.

21 MR. LEBOVITS: Your Honor, I doubt we're going to do
22 that because we have some problems with Saylor on the
23 five-year issue.

24 There is still disagreement in terms of moving our case
25 or Chaudhary. I have all of those people in order.

26 And I'm certainly happy to send out notice on behalf of
27 everyone if the Court wants to put the matter over for a few
28 days. I could certainly call my office right now and have

1 that done.

2 THE COURT: We can --

3 MR. LEBOVITS: We can post something on Case Anywhere
4 if that is your preference.

5 THE COURT: Let me find out.

6 I was supposed to be out Wednesday, Thursday, and
7 Friday. So we could do it Wednesday morning.

8 MR. GALVIN: That's fine with me.

9 MS. HANNA: I can't be here.

10 Your Honor, the Saylor issue actually doesn't need to
11 take that long because, even though they will be raising the
12 five-year question, that case has been stayed at various
13 points. So depending on how much of the stay the Court wants
14 to pay attention to, the five years goes past the date.

15 THE COURT: Do we have counsel for Pretty back here
16 too?

17 I'm reluctant to be talking about any individual cases
18 without the parties to the cases here.

19 MR. LEBOVITS: Wednesday morning is fine, your Honor.
20 I can be here if Mr. Galvin is here. I know Ms. Hanna is
21 important, but I think Mr. Galvin can probably handle it.

22 THE COURT: Is that acceptable to Ms. Hanna?

23 MR. GALVIN: Is that Wednesday? Yes.

24 THE COURT: Say Wednesday, what do you want to do,
25 10:00 a.m.?

26 MR. LEBOVITS: Wednesday, 10:00 a.m., whatever the
27 Court wants, and I'll have it posted on Case Anywhere right
28 now.

1 THE COURT: Should we say 10:30 a.m.? Just in the
2 event there's something that we have to deal with.

3 MR. GALVIN: Why don't we say 11:00. Because any time
4 we pick, it will be getting in the Costco line. It will be
5 the wrong line.

6 THE COURT: We can fill whatever time I'm sure there
7 is.

8 So if we say 11:00, perhaps we will get done in an
9 hour.

10 MR. LEBOVITS: That's a good goal.

11 THE COURT: So let's say 11:00 a.m. on Wednesday.

12 And if you could please give notice, Mr. Lebovits, that
13 would be very good.

14 MR. MARDIROSSIAN: Let's get all our jurors here at
15 1:30 on that same thought pattern.

16 THE COURT: I thought Ms. De Jesus said two o'clock.

17 MR. GALVIN: She did say 2:00.

18 MR. MARDIROSSIAN: I'm saying just in case she gets
19 done early and all the jurors will be here, we get started
20 right on time.

21 MR. BERRY: Your Honor, we did try to avoid -- try to
22 get it done on one day and not have a situation where there is
23 a split argument where plaintiffs' counsel is getting rebuttal
24 tomorrow.

25 We specifically talked about on the record on the 19th
26 two hours for his opening and closing. I mean, for his
27 closing, including rebuttal, now he's taken two hours and 10.

28 So I think it is only fair if he's going to get to do

1 rebuttal tomorrow, it ought to be time limited. We should not
2 have to come back after him having the benefit of all night
3 and half the morning and do some long rebuttal tomorrow. That
4 would just not be fair to Toyota.

5 MR. MARDIROSSIAN: If I recall, we took a significant
6 amount of time on exhibits, jury instructions that should have
7 been handled last week.

8 At the time we were talking about two hours, punitives
9 was not in the mix at the time. And the Court never limited
10 me strictly. It asked me what I thought I could do it in, and
11 I did say to this Court two hours total.

12 I did not rehearse my closing. I didn't know how long
13 it was going to take.

14 THE COURT: Let's not take any more of the time. I
15 appreciate the fact that we are moving it along, and I did not
16 feel like you were dragging things out.

17 Having said that, I do hope -- I mean, if we bring the
18 jury back tomorrow, we need to wrap this up tomorrow and not
19 have anything hanging over to Wednesday. That is absolutely
20 certain.

21 And that, of course, is Mr. Duffy having a reasonable
22 time period as well.

23 MR. MARDIROSSIAN: It's all on John.

24 MR. DUFFY: It sounds like the last two days of
25 testimony.

26 Vince, do you have any idea if you are -- I'm going to
27 go today or tomorrow?

28 MR. GALVIN: I think you should go tomorrow.

1 Hold on one second.

2 How about if we let John go now and I go tomorrow?

3 MR. MARDIROSSIAN: No. No. We thought we had an order
4 that we're going in. Now they're going to turn this around.

5 THE COURT: Here's the problem with that, Mr. Galvin.

6 Then tomorrow is all bets are off. Because who knows
7 how long you're going to argue and if you're going to get it
8 done so there is enough time for you and Mr. Mardirossian.

9 I am comfortable with the concept that we'll get
10 Mr. Duffy and Mr. Mardirossian done tomorrow afternoon.

11 MR. GALVIN: Okay.

12 THE COURT: I'm not so sanguine if you go tomorrow.

13 MR. GALVIN: If I were to start tomorrow.

14 THE COURT: If you start tomorrow.

15 Yes, please.

16 MR. GALVIN: I can finish my last module in the
17 morning.

18 THE COURT: I got it.

19 MR. GALVIN: Your Honor, can we stop at 4:00?

20 MR. MARDIROSSIAN: If we are done.

21 MR. GALVIN: No. We want to stop at 4:00.

22 MR. MARDIROSSIAN: We're not stopping until you're
23 done.

24 THE COURT: We are not going beyond 4:30.

25 MR. DUFFY: If it makes a difference, I would volunteer
26 to go now. That's fine. Either way.

27 (The following proceedings were held in
28 open court in the presence of the jury:)

1 THE COURT: All right. Welcome back, everybody.
2 Mr. Galvin.

3 MR. GALVIN: Thank you, your Honor.

4 Good afternoon. I'll try to keep it lively given it's
5 almost the end of the day.

6 There are basically eight sections, eight little
7 chapters, eight modules that I want to address. And I want to
8 start first talking about what your job is as jurors.

9 You've heard some of the instructions, and the Court is
10 going to give the instructions to you. Basically, those
11 instructions are going to be the rule book, and you've seen
12 some of them on the screen today. Those instructions are what
13 you have to follow.

14 When we talked about this in -- during voir dire and in
15 opening statement, they define how you look at the evidence
16 here. And there's just -- and you -- and the question is
17 going to be what happened more probably than not.

18 The question is the party that has the burden of proof,
19 what they have to prove, they have to prove to you in a
20 certain way under the law a party must persuade you by the
21 evidence presented in court that what he or she is required to
22 prove is more likely to be true than not true. This is
23 referred to as the burden of proof.

24 It's not like making guacamole. It's not like what
25 flavor anything is. It's what the rules say. And in this
26 case the question is was the 2006 Toyota Camry's design a
27 substantial factor in causing harm to Peter and Jeffrey Uno in
28 this accident on that day under the circumstances.

1 Given the claims that are made here, plaintiffs have to
2 prove that the foot was stuck. That's a keystone. The foot
3 has to be stuck, caught, however you want to phrase it.
4 That's the basis of their case.

5 They have to prove that the brakes were used. They
6 have to prove the brakes were used. Under the scenario they
7 have presented to you, ladies and gentlemen, they have to
8 prove that the brakes were used.

9 They have to prove that the brakes already in the Camry
10 would not have stopped or controlled the car in this accident
11 scenario.

12 They have to prove that the design of the '06 Camry was
13 a substantial factor in causing harm to Mrs. Uno on that day;
14 that as a result of the lack of brake override that that's
15 what caused this accident.

16 And they have to prove that such a system would have
17 made a difference in this accident; that had this vehicle had
18 brake override, that it would have made a difference.

19 You were shown the substantial factor question rule
20 that you need to follow, and then you were taken through the
21 guacamole recipe.

22 A substantial factor in causing harm is a factor that a
23 reasonable person would have considered to have contributed to
24 harm. It must be more than a remote or trivial factor. It
25 does not have to be one that -- to be the only cause of the
26 harm.

27 Then there is another paragraph that you didn't go
28 through. Conduct is not a substantial factor in causing harm

1 if the same harm would have occurred without the conduct.

2 So if this accident would have happened with or without
3 brake override on that 2006 Camry vehicle, the absence of it
4 is not a substantial factor.

5 But plaintiffs have the burden. The evidence in this
6 case, the testimony would be -- has been that plaintiff hasn't
7 proved what they need to prove. They haven't sustained their
8 burden.

9 What you heard in Mr. Mardirossian's argument is a
10 general statement that, if this car had brake override, this
11 accident wouldn't have happened. You didn't hear any
12 discussion about the details of the reconstruction, what would
13 or would not have happened, any details.

14 In fact, you barely heard over the last nine weeks from
15 plaintiffs that Mrs. Uno was going the wrong way down a road.

16 So let's first talk about the first item that
17 plaintiffs haven't proved, and that is that the foot is not
18 stuck. That's where the case started, and that's where we are
19 right now.

20 You all remember Mr. Hannemann. (Reading:)

21 "With respect to this case, you told
22 us that, if there is no caught foot in
23 this case, there would be no accident,
24 right?

25 "I believe hypothetically speaking,
26 yes."

27 That's where this case begins, was the foot stuck.
28 Have the plaintiffs proved that the foot was stuck? And the

1 evidence is no.

2 What has been proven is that there is plenty of room in
3 this foot well. There is plenty of room for someone with feet
4 the size and shape of Mrs. Uno to get their feet in there,
5 move them around. There's plenty of room.

6 What has been proven is that with the whooshing that
7 Dr. Corrigan did that the foot doesn't get caught or stuck.
8 It's easily removed.

9 Mike James came in and showed you testing that he did
10 where he put -- had the surrogate put the foot in the position
11 that plaintiffs -- one of plaintiffs' experts says was a
12 position, and the vehicle was able to be driven, stopped and
13 slowed.

14 The foot wasn't stuck. The foot was easily removable.
15 There is plenty of room in there.

16 This foot-stuck theory is made up. Because plaintiffs
17 tried to figure out how could they explain it would be that
18 Mrs. Uno would get T-boned, come to a stop, start up again,
19 make two right turns and go the wrong way down a street.

20 They were trying to come up with an explanation of
21 that, and this is where the foot stuck theory came up. There
22 was no stuck foot. There never was a stuck foot, and there
23 isn't a stuck foot.

24 Then when you look at what their two theories are, they
25 have two theories. Their experts never even got together on a
26 single theory.

27 You had Mr. Hille come in here and describe his theory
28 of a stuck foot which was with the heel on the ground on the

1 floor, on the floor pan, the flip-flop heel on the floor pan.

2 And then during the Bello crash, the toes moved at a
3 45-degree angle, roughly 10:30 on the clock, so they were in
4 the position under the brake pedal with the heel still on the
5 floor. That was Hille's position. That wasn't Hannemann's
6 position.

7 Hannemann's position was -- and Hannemann and Posey was
8 with the foot behind the brake and the heel on the gas pedal
9 up off the ground. So they had two separate scenarios.

10 When Mr. Hannemann was shown the video, the 24-second
11 video of their supposed foot caught position, he agreed that
12 that didn't match what Mr. Hille had talked about.

13 So they don't even have a straight cohesive story about
14 how the foot is stuck. Is it stuck with the heel on the
15 ground? Or is it levitated off the ground being held there?

16 With it on the ground, which you noticed -- and you
17 noticed it in the surrogate work, and you noticed it in the
18 pictures, and you noticed it when Mike James was talking about
19 it -- with the Hille position with someone with a size six
20 foot and the foot being rotated at the heel to the left, only
21 the toes are under the brake pedal, not the part of the foot
22 that Hannemann says has to be under the brake pedal in order
23 to be under there so when you step on the brake it pushes the
24 gas.

25 We spent some time with Mr. Hannemann. (Reading:)

26 "The brake pedal is not grabbing and
27 holding the flip-flop or the foot, is it?

28 "Well, not -- yes. It's not

1 grabbing. It's pretty inert, but it's
2 preventing the foot from being pulled
3 rearward.

4 "Q. When you mean caught, that's all you
5 mean; you mean that the brake pedal is
6 mounted in the position that it's
7 designed to be mounted in. And if
8 there's a foot here, if Mrs. Uno wanted
9 to pull her foot back without moving
10 forward or sideways, she couldn't get it
11 past the brake pedal?

12 "A. Yes.

13 "Q. That's what you're saying."

14 That is not a problem with the car. (Reading:)

15 "Q. But there is nothing that would
16 prevent Mrs. Uno from letting her foot
17 drop to the ground, right?

18 "A. Yeah. There's -- yes. There are
19 ways she could have removed her foot."

20 If it was there. Is my -- I just added that.

21 This is Mr. Hille. (Reading:)

22 "Q. All right. Well, let's back up a
23 little bit. The foot is not stuck
24 between the pedals? Do you agree with
25 that?

26 "A. I would say caught not stuck, yes.

27 "Q. It's not stuck between the pedals?

28 "A. It's just caught."

1 This is a made-up story to account for an odd and
2 unusual circumstance where Mrs. Uno drove the wrong way down
3 the street.

4 If you look at this and you look at the time that's
5 involved, there would be plenty of time for anyone to pull
6 their foot out like that in the conditions -- even
7 Mr. Hannemann said that, yes, she could have pulled it out.

8 You can pull the foot out in about seven seconds.
9 That's less than -- that's less than half a mile.

10 The stuck foot theory the plaintiffs have doesn't cause
11 acceleration the way plaintiffs claim. Even if you accept a
12 Hannemann foot position, it does not cause acceleration the
13 way plaintiffs claimed, and they haven't proven that.

14 What Mr. Hannemann says is that he looked at a
15 surrogate. He and Mr. Posey looked at a surrogate, and that
16 surrogate put their foot under the brake and on top of the gas
17 pedal. And he just looked at it and determined that when the
18 surrogate put their foot there that that caused the brake
19 pedal to be pushed 50 percent down.

20 He didn't measure it. We didn't have any documentation
21 of it. He showed us nothing.

22 And he did his testing, and he claimed that, when he
23 put his foot in there, it was 50 percent -- without pressing
24 on the brake, just putting his foot there, that the gas pedal
25 was 50 percent down.

26 So therefore he says, well, then, what I do with my
27 foot in the vehicle in that position would be the same for a
28 person like Mrs. Uno with a size six foot. The problem is he

1 didn't prove to us what the correlation was. That's one
2 problem.

3 And we know from his test data that there is no
4 correlation because he's a race car driver. He has the
5 ability to manipulate his foot in his testing so he can press
6 on the gas without pressing on the brake. He can press on the
7 brake and flex his foot so he's not pressing on the gas. So
8 he has the ability to manipulate his foot, and we saw that in
9 the data we went through with Mike James.

10 In fact, we saw data from Mr. Hannemann's testing where
11 he had 10 pounds of brake pedal pressure on there, but he had
12 different percentages of throttle.

13 So if his theory is that if you press on the brake and
14 then you're pressing on the gas at the same time, then if
15 you're pressing on it with 10 pounds' force, then it should be
16 the same percentage of gas all the time. That's what his
17 theory was, but his own data shows that's not true.

18 The reason why it's not true was because of his ability
19 as a race car driver and because of his ability to manipulate
20 how the gas pedal is pressed and how the brake is pressed, we
21 know that he can manipulate the data.

22 So to listen to him and suggest that there's a
23 correlation between his testing and the foot in the
24 Hannemann/Posey position and when you press on the brake it
25 presses on the gas, there's no correlation. You can't trust
26 it.

27 And the data shows you can't trust it. And you know
28 what? We didn't ridicule him. We didn't put a picture of him

1 with a helmet on in his clam digger pants. That was
2 Mr. Mardirossian who did that with Mr. Carpenter.

3 What I criticize him for is he came in here with
4 opinions and he didn't have any data recorded to explain it to
5 you. He came in here with opinions about brake override
6 cancellation. He had the ability to record data and show it
7 to us so he could be cross-examined on it, and he didn't do
8 it.

9 That's where I find fault with him. It's not ridicule.
10 That's not professional.

11 So the bottom line is the foot isn't stuck. The only
12 way you could put your foot in the position that Posey and
13 Hannemann proposed is if you levitate your foot and you keep
14 it there. You keep it there. It's not pulling it against the
15 brake pedal; you have to purposefully rotate your hip. You
16 have to keep it there. That's not what happened in this case.

17 The next point I want to make is with the discussion of
18 a caught foot or a stuck foot, during the course of this
19 trial, it sort of morphed into a stuck pedal. There is no
20 stuck pedal in this case. There is no stuck pedal.

21 In fact, we asked Mr. Hille this. Mr. Berry asked him
22 (Reading:)

23 "Let me ask it again because I'm
24 trying to be very precise.

25 "At no time was the accelerator
26 pedal stuck in a fixed position?

27 "A. I think that's accurate."

28 And that is accurate because one of Mr. Hannemann's

1 descriptions of what was going on was the accelerator pedal
2 was moving. This is not a situation of a stuck, jammed,
3 entrapped accelerator pedal. That is not the story that has
4 been put forth. It's not a stuck pedal.

5 Third, in this case what plaintiffs have said was that
6 the evidence of braking -- one of the proofs that they
7 proposed to you, ladies and gentlemen, of evidence of braking
8 is that the foot was found -- the way the foot was found at
9 the end of the crash. That's one of the proofs.

10 One of the proofs they claim is that the injuries to
11 the foot are proof of braking. One of the proofs they say is
12 that the injuries themselves show what happened and that this
13 all happened at the small tree.

14 We talked about this with Dr. Posey. This vehicle --
15 so let me tell you the conclusion first.

16 The location of the foot at the end of this crash is
17 not proof of braking. The injuries to the foot at the end of
18 the crash that are on Mrs. Uno's foot are not proof of
19 braking.

20 They didn't happen at the small tree, and they don't
21 prove that her foot was stuck or caught a half a mile back.
22 They've proved none of that.

23 What we know is that when we went through this picture
24 with Dr. Posey, first of all, Dr. Posey was the one who was
25 addressing the injury analysis and when it happened. And we
26 know that he agreed that this vehicle, this shark bite that
27 came out of this vehicle occurred when the vehicle was
28 smashing into the big tree at 54 miles an hour.

1 When it did that, it did it at a 45-degree angle so the
2 crush was moving in and back.

3 Do you want to move this?

4 In and back. It took the floor pan. It took the seat.
5 It took part of the instrument panel. It pushed it up in and
6 back. And it took Mrs. Uno's foot and did the same thing with
7 it. It took her foot and grabbed it and punched it in the
8 crush.

9 Plaintiffs' experts, Dr. Posey, never evaluated what
10 was going on at the big tree with respect to the crush and
11 kinematics of Mrs. Uno, ever even evaluated.

12 Dr. Hille, except for making an outline of this on the
13 floor of his barn, never evaluated the crush and what moved
14 where, never did it.

15 And to suggest that you could not look at this, not
16 evaluate it, not try to figure out how it was that what was
17 going on with Mrs. Uno's right foot in this area when the fire
18 people could barely get her out of the vehicle. They had to
19 get the jaws of life in, pry this apart and pull the roof off,
20 pry the front part apart to get her foot out?

21 And when we look at that, the amount of energy involved
22 here, the amount of crush, and to say that when we look at
23 this tree here, it blew through this tree. It blew through
24 this tree at 60 to 62 miles an hour, cut it in half, and kept
25 going.

26 And to suggest that the foot injuries happened when
27 it's blowing through this tree? It didn't happen. It didn't
28 happen that way.

1 And when we look at -- when we look at what did
2 happen -- because Mr. Hille and Dr. Posey never even evaluated
3 what happened with the pedals.

4 We know at the scene when we look at the police photos
5 that Mrs. Uno's foot is down here. Depending on what angle
6 you look at, you can see what you see.

7 You saw the photos today, and you saw the photos when
8 Dr. Corrigan testified. Depending on the angle, you can see
9 more of the foot than the brake pedal and vice versa.

10 There was no doubt her right foot was entangled in the
11 crush between the brake pedal and the gas pedal. And knowing
12 that, knowing they had this made-up stuck foot theory, you
13 think the plaintiffs' experts would have tried to evaluate,
14 well, what's going on with her foot down there? Are the
15 pedals where they were a half a mile ago?

16 They're saying her foot was where it was a half mile
17 ago, but they don't know where their pedals are? You know
18 what? The pedals weren't in the same location they were half
19 a mile up the road.

20 The pedals -- the brake moved in 15 and a half inches,
21 and it moved back 13.7 inches, and it moved down four inches.
22 It moved from here over to here.

23 The gas pedal went in 11.3 inches. It went back nine
24 inches, and it went down two inches. The gas pedal ended up
25 over here.

26 The hand brake, the console, the seat, it was pushed
27 into the passenger compartment. It was pushed in, back, and
28 out.

1 The hand brake, for example, was pushed in 12.3 inches.
2 It was pushed back 7.4 inches, and it was pushed up
3 3.7 inches.

4 These components, ladies and gentlemen, were not in the
5 same place at the tree, at the big tree, as they were a half
6 mile away.

7 So to conclude that Mrs. Uno's foot position proves
8 what her foot position was a half mile up the road, that it
9 proves she was on the brake, and that it proves that because
10 she got the cut she got that it all proves what happened up
11 the road, it can't. It physically can't.

12 Plaintiffs never explained that, and they didn't
13 explain it because their experts never measured it. They
14 never evaluated it. They just came in here and said her
15 foot's proof that she braked because it was under the pedal
16 and that's where it's at now.

17 There is nothing left in the driver's area when we look
18 at it. There's just nothing left. Everything is in the
19 passenger area, everything.

20 So when you look at the instructions in the rule book
21 that the judge is going to give you and you say what's more
22 likely than not, what's more probable, is it the little tree
23 or is it the big tree?

24 Is it the damage that took the passenger -- the
25 driver's side and crushed it into the passenger side and took
26 Mrs. Uno's foot along with it, or is it when the car -- when
27 the right front blew through this small tree? Is that what
28 did it?

1 Common sense. You can also bring common sense to your
2 deliberations.

3 We also discussed this with Dr. Posey. And we also
4 discussed it with Dr. Corrigan.

5 We know with Dr. Corrigan's testimony that what she
6 explained was that, in order for Mrs. Uno's foot to be where
7 it is at the end of the crash, it had to be to the right of
8 the brake pedal. It had to be to the right of the brake
9 pedal.

10 If it was to the left of the brake pedal or under the
11 brake pedal, it would have moved further left because of the
12 way the crush was occurring.

13 We know from Dr. Posey that he agreed that as the
14 vehicle was crushing into the tree and all the floor pan and
15 all the bulkhead here was being pushed to the right as the
16 tree was stopping the vehicle and the vehicle was coming to
17 the left, that anything that would be over here like a foot
18 would be moving towards the crush, would be moving towards it.
19 And it would be moving to the left, and the crush would be
20 moving to the right, and they would meet.

21 That's how Mrs. Uno got her foot in the position it got
22 in and how it got injured the way it got injured.

23 There is no dispute, ladies and gentlemen, that her --
24 that there was interaction between her foot and the brake
25 pedal. There is absolutely no dispute about that.

26 The question is when did that interaction occur? Did
27 it happen with the small tree, or did it happen when the big
28 tree totally took out the driver's position?

1 It happened with the big tree. And you can't look at
2 what happened with the big tree and say that that tells you
3 what happened upstream. It's not proof of where her foot was
4 a half a mile upstream.

5 So the fact of the matter is Mrs. Uno's foot is not
6 stuck. There is not a reasonable scientific credible basis to
7 conclude that plaintiffs have proved that her foot was stuck.

8 The position they hypothesized requires someone to
9 levitate their foot and hold it there. It didn't happen.

10 It also requires that you believe one story and not the
11 other. Because both their experts had two different stories
12 and they never even talked about the other story. So they
13 didn't even get their own story straight.

14 The bottom line is the foot's not caught. If her foot
15 moved in the Bello crash, she could move it herself, and
16 Mr. Hannemann even suggested that. The foot's not caught.
17 There's no stuck pedal.

18 When we look at the position of Mrs. Uno's foot at the
19 end of the crash, we know it's positioned there and injured
20 the way it is because of the impact with the big tree, and
21 it's not proof of what happened a half a mile upstream.

22 Now, I want to talk about the brake system. Because
23 when you're evaluating this 2006 Camry, whether it was a
24 substantial factor in causing harm, you have to evaluate the
25 vehicle as a whole.

26 That's why the instruction says the 2006 Camry. It
27 doesn't say just because it doesn't have brake override. You
28 take the vehicle the way it is, the way it was designed.

1 This vehicle was designed initially when the first
2 generation started in the late '90s, and this vehicle was a
3 2006 vehicle, sold -- they bought it in 2005.

4 So this vehicle had an excellent brake system. It's a
5 vacuum assist brake system that's in millions of Toyota
6 vehicles over decades.

7 The benefits of the system are many. It's durable.
8 It's reliable. It's easy to use, and it's dependable.

9 You heard Mr. James talk about the components. It has
10 a brake pedal. It's a vacuum assisted power booster, power
11 brakes. It has a master cylinder with hydraulic redundancy.

12 It has front disk brakes and rear drum brakes so we
13 have two different brakes on front and back. It's four-wheel
14 anti-lock brakes, electronic brake force distribution.

15 There's no risks with this system. The braking system
16 of this vehicle was thoroughly and appropriately tested.

17 We know from the testimony of Mr. Walker that this
18 vehicle -- is that my poster? That's it -- right? -- not the
19 model?

20 This brake system that was in this vehicle was designed
21 so it has more stopping power than the engine has go power.

22 In this diagram, this chart that Mr. Walker made shows
23 that the green area is the brake torque available to stop the
24 vehicle versus the engine power down here that the vehicle can
25 generate.

26 There is no dispute. No plaintiff witness came and
27 said that what Mr. Walker said is not true. This vehicle's
28 brake system has the power to stop this vehicle more than the

1 engine power has to make it go if the brakes are used.

2 In fact, I think Mr. Walker said the brake system has
3 three times the stopping power than the engine has go power.

4 The brake system in this vehicle, Mr. Hannemann talked
5 about it in terms of how vacuum is used in vehicles.

6 In focusing on the brake system, he said that the
7 primary thing is brakes. The vacuum is primarily used for
8 brake systems. He says vacuum assisted brakes are very
9 common.

10 So when we look at the brake system in the 2006
11 Camry -- because that's what you, ladies and gentlemen, are
12 evaluating -- the question is this brake system, does it work,
13 would it have worked in this accident, and was it used? The
14 question is is it defective? Is it defective?

15 Now, we know that plaintiffs claim that this vehicle
16 should have had brake override. We understand that. But we
17 also know from the testimony that brake override isn't part of
18 the brake system. It's part of the engine management system.

19 So when we're looking at the brake system and the
20 ability for a driver to stop the car because it is the
21 driver's job to stop the car, the question is what about the
22 brake system on the '06 Camry?

23 And we asked Mr. Hannemann (Reading:)

24 "You are not claiming in this case
25 or contending that the brake system on
26 Mrs. Uno's vehicle was defective?

27 "Correct."

28 He's not. There is no claim that this brake system is

1 defective at all.

2 And you were shown earlier today a poster talking about
3 a NHTSA test of the brake system comparing it to the 2007
4 brake system.

5 What wasn't explained to you but it was explained at
6 trial was that test was not a real test of this brake system.
7 That was a test that, first of all, failed the brake system
8 before the test was run. It bled all the vacuum out of it.

9 Then that test also used a device to apply a certain
10 amount of brake pressure, and in that case it was 50 pounds.
11 Then the vehicle was set to wide-open throttle and took off.

12 That is not this accident. And Mr. James explained
13 that in his examination. That's not what happened in this
14 accident. And that is an unrealistic scenario to try and draw
15 conclusions with respect to this case and the performance of
16 this brake system in this accident, period.

17 You heard the witnesses say, Mr. James in particular,
18 that if a driver is driving the vehicle and they step on the
19 brake and the vehicle starts to slow down, they're going to
20 press harder, and if the vehicle is not slowing down, they'll
21 press harder.

22 It's not like a machine where you say I'm only going to
23 press 20 pounds no matter what happens; I'm only going to
24 press 50 pounds no matter what happens.

25 So looking at that NHTSA test that was discussed
26 earlier today is not a realistic description of what happened
27 in this accident or the performance of this brake system.
28 It's a specific performance under a specific failed

1 circumstance which we don't have here.

2 So we don't have a stuck foot. We don't have a stuck
3 pedal. We know that the vehicle hits the tree at 54 miles per
4 hour and grabs Mrs. Uno's foot, injures it. It's tangled and
5 stuck in the wreckage, and it has to be pulled out. We know
6 that can't represent what her foot was doing up the road.

7 Now we know we have a brake system in this vehicle that
8 works. It's not defective. It's in millions and millions of
9 Toyotas. It's not odd or unusual because Mr. Hannemann said
10 it's common.

11 So the question is would it have worked? Did she use
12 it? That's the question. So that's point number five I
13 wanted to point out.

14 The brakes would have stopped this car in this accident
15 if Mrs. Uno would have used them. The brakes would have
16 stopped it. And you heard this again and again from the
17 witnesses. If she had used the brakes, the vehicle would have
18 stopped.

19 We know that she could use the brakes because she had
20 apparently had this car for, what, three or four years and
21 used it. She obviously had to step on the brakes.

22 So we know she knew how to use brakes, and we know or
23 we can infer that she knew how to use them. We can infer she
24 knew where the brake pedal was and that, had she used them, we
25 know from the performance of this vehicle that the brakes
26 would have stopped the vehicle.

27 There was nothing wrong with the brakes in Mrs. Uno's
28 vehicle on the day of her accident. There were no service

1 problems with them. There were no performance problems with
2 them.

3 Mr. Walker inspected the brakes. We went through that.
4 There was no history of problems. There was nothing wrong
5 with the brakes. There's nothing wrong with the brake
6 design, and there's nothing wrong with the brakes.

7 And with respect to Mrs. Uno using the brakes, there is
8 no issue that she couldn't have used them. This idea that
9 weak drivers only press 20 pounds, you remember that document.
10 That has nothing to do with this case.

11 Mr. Hannemann even agreed. There is no testimony that
12 Mrs. Uno was a weak driver. In fact, it's to the contrary.
13 Some of the people that counsel referred to who were friends,
14 who came in and testified, you know, about her said she was
15 not weak. In fact, she was strong, both emotionally and
16 physically.

17 We also know from the data that someone -- that women
18 in research pressed between 100 and 150 pounds on the brake.

19 We know that Mrs. Uno was about 160 pounds. So if she
20 was able to stand on one leg, we know she could have applied
21 160 pounds of brake pressure, pressure to the brake. If she
22 stands on two, then each foot can do about 80 pounds.

23 So there is no question, ladies and gentlemen, that
24 this brake system was a brake system that Mrs. Uno knew how to
25 use and could have used it and certainly had the capacity to
26 apply the brakes if needed.

27 When we think of braking, we need to think of it in the
28 context of the crash.

1 I only need one little one for right now.

2 And at 23rd Street where the accident happened, where
3 the Bello accident was -- can you guys see it over there?

4 At 23rd Street right here, there appears to be no claim
5 on plaintiffs' part that there was any braking, that she tried
6 to brake. In fact, it was Mr. Hannemann's testimony that she
7 didn't try and brake.

8 So in this segment of the accident, from Bello to the
9 point over on Euclid, Mrs. Uno, under plaintiffs' analysis,
10 never tried to brake.

11 And with respect to the point on Euclid, what
12 Mr. Hannemann's testimony was that after the Bello crash, the
13 Camry stopped and then Mrs. Uno drove away. And she took --
14 she turned, got on 23rd and then turned again.

15 Then he did a calculation or he did an analysis, and he
16 said that arc was 230 feet.

17 So from here over to this point over here, she drove
18 230 feet. It was at that end of that arc where he said that
19 based on perception and reaction time would be the first
20 opportunity that in his opinion she would apply the brake.

21 So from here to this point over on Euclid where the
22 perception and reaction time occurred that he opined about,
23 she never applied the brake.

24 Now, what we also know is that no one knows
25 specifically how she made this turn, but we have a few -- we
26 know a little bit.

27 We know, first of all, that she was here and ended up
28 going over here, going the wrong way down the street.

1 And we know that Mr. Wunsch said that she turned -- she
2 got to Euclid from this lane here, into the number 1 lane, the
3 lane closest to the number 1, so the southern part of 23rd.

4 We also know that to be in that area on the southern
5 part of 23rd, you have to be in this lane closer to the
6 southern median as opposed to up here.

7 We also know that he said that she would have had to
8 make that turn slower than he saw her going down the road
9 because when he saw her on the straightaway, she couldn't have
10 made a turn at the speed he saw her.

11 He mentioned 60, and everyone latches on to 60, but
12 when you look at his testimony -- and you can look at it -- he
13 says he really didn't know but it was faster than what he was
14 doing. He did say 60, but then out of the next breath, he
15 said but he didn't really know.

16 And then we also know from looking at the testimony
17 that Mr. Hannemann initially agreed that the blue line
18 represented his path, and then after lunch he wrote the red
19 line.

20 But we also know that that would not be consistent with
21 what Mr. Wunsch said the turn the Camry was making. Because
22 if you follow the red line, that's too far north making that
23 turn, and Wunsch said that it was close to the southern end of
24 there.

25 It's probably too much now for this, but the point is
26 there is no braking here.

27 So when you think about it, there is no braking at this
28 location, but we tested.

1 What we also know is that Hannemann's opinion was that
2 from the end of the Bello crash over to that point of the end
3 of the 230 feet arc that the vehicle got up to 36 miles per
4 hour. So this idea that the vehicle accelerated away is not
5 accurate.

6 Mr. Hannemann himself had the vehicle only getting to
7 36 miles per hour when it got to the straightaway, when he
8 said it was the first opportunity for her to apply brakes.

9 Mr. James did testing getting the vehicle up to
10 36 miles per hour and showed what the surrogate with the same,
11 you know, sized feet as Mrs. Uno, that even in the, quote,
12 caught-foot position a vehicle can be easily stopped,
13 controlled under the circumstances that Mr. Hanneman proposed.
14 So had the brakes been used in this area, the vehicle would
15 have easily stopped, and Toyota's testing has shown that.

16 Common sense tells you that, ladies and gentlemen.
17 36 miles per hour, the vehicle can be stopped.

18 Then as the vehicle goes down the road, Mr. Hannemann
19 did testing that we talked about that he describes, and in all
20 of his tests, the vehicle -- when you applied the brakes, the
21 vehicle slowed and decelerated.

22 With wide-open throttle and no brake, Hannemann's
23 testing showed the Camry would have been traveling at about
24 100 miles an hour when it got to the first pole. So therefore
25 he concluded, well, that didn't happen.

26 Then he did testing where he had brake pedal forces of
27 5 to 25 pounds with vacuum assist and starting at 40 miles per
28 hour, and the vehicle slowed down to 15 miles an hour. The

1 vehicle slowed. It didn't take off.

2 He had brake pedal force of 10 to 15 pounds with vacuum
3 assist starting at 40, and the vehicle slowed down to 25.
4 Then he did testing at 50 pounds with the vacuum assist
5 depleted starting the vehicle at 35 miles per hour, and the
6 vehicle also decelerated.

7 So every one of Mr. Hannemann's tests that he did to
8 try to sort of characterize, you know, what could happen on
9 Euclid because he doesn't know showed that under his scenario
10 with his manipulating stuck foot, stepping on the brakes with
11 vacuum and without vacuum, the vehicle slowed. The vehicle
12 would not get to the pole at 80 to 90 miles per hour.

13 And, in fact, when you look at Mr. Hannemann's testing,
14 when you look at -- you'll have the data. When you look at
15 the testing he did, he did a test where he depleted vacuum in
16 the system. He stepped on the brake with about 50 pounds of
17 force, and the vehicle decelerated. The vehicle slowed. It
18 wouldn't get to the pole at 80 to 90 miles per hour.

19 So you don't have to, you know, conjure up or go to
20 some NHTSA test that purposefully failed the system and
21 depleted all the vacuum even before the test started to ask
22 yourself what would be a scenario in this case. Because
23 Hannemann did that test. 50 pounds of brake force starting
24 out at 35 miles per hour, and the vehicle slowed down.

25 Why did he pick 35 and 40 to start? Because that was
26 the speed that he opined was what she was going at the end of
27 the arc after the Bello crash.

28 He tried to say, ladies and gentlemen, that, well, when

1 Mrs. Uno was making that arc, based on my surrogate work, I
2 think that her foot under the brake is causing the accelerator
3 pedal to be down 50 to 80 percent.

4 Of course, I've already explained to you that that's
5 not accurate. Because there's no -- he did no correlation of
6 that. We already know from his own testing that he could
7 manipulate his foot to get whatever percentage you want.

8 When we did testing with someone with a size six foot
9 actually driving the vehicle, operating the vehicle, that kind
10 of percentage didn't occur. That was the Mike James testing.
11 It was well less than 50 to 80 percent.

12 And then plaintiffs want to argue that if the pedal is
13 down 50 to 80 percent, well, that means the vehicle is going
14 to go to wide-open throttle because Mr. Hannemann tried to say
15 that. When asked what it was based on, he said it was some
16 defense test.

17 Well, first of all, what he was referring to was a test
18 that Mr. Carr did that you heard about just the other day on a
19 Lexus, a six-cylinder Lexus. And Mr. Carr clearly said that
20 above 25 miles an hour, if the gas pedal is at 50 to
21 80 percent, it's not wide-open throttle.

22 So there is no way that this vehicle was taking off
23 from the end of the Bello crash at wide-open throttle, and it
24 could have been easily stopped.

25 Based on Hannemann's testing, if the vehicle was going
26 36 miles per hour at the end of his 230-foot arc, even at the
27 throttle at 50 to 70 percent, if Mrs. Uno had stepped on the
28 brakes, this vehicle would have stopped.

1 And she would not have had to pump the brakes, ladies
2 and gentlemen, because the vehicle would have stopped.
3 Mr. Hannemann's own testing showed when he stepped on the
4 brakes with just 10 pounds of force, the vehicle slowed
5 appreciably.

6 So if someone steps on the brake and the vehicle starts
7 to slow and does exactly what you expect, if you want to stop,
8 you can press harder and you stop. The only reason one would
9 pump the brakes is if the vehicle is not stopping.

10 But Mr. Hannemann's own testing showed that with this
11 brake system in this '06 Camry, if you step on the brakes
12 under the scenarios that he described that he was trying to
13 bracket for this accident, that the vehicle stopped. There
14 would be no reason to pump the brakes.

15 So even though his depleted vacuum testing is there,
16 there is no basis to conclude that you would have had depleted
17 vacuum in this accident. Because you would have only depleted
18 vacuum if someone pumped the brakes and deplete the vacuum,
19 and why would someone pump the brakes if they step on the
20 brakes and the vehicle stops.

21 Does anyone want the fan because it's getting kind of
22 stuffy? Is that all right?

23 THE COURT: Please.

24 MR. GALVIN: I'm not the expert on this.

25 Everyone can stand up and take a --

26 THE COURT: Time for a stretch.

27 I think jumping jacks would be hazardous to everyone's
28 health.

1 MR. GALVIN: I want to talk about the braking now after
2 23rd because I want to break this up.

3 So we've talked about from the Bello crash over to
4 Euclid, no braking. And from 23rd down to pole number 1,
5 there's no dispute that there's no physical evidence of
6 braking. There's nothing on the road at all. There's nothing
7 on the car suggesting there was braking or no braking.
8 There's no testimonial evidence from 23rd Street down to pole
9 number 1 that there was braking.

10 So in terms of what was going on with the vehicle, the
11 evidence is no braking. There's no evidence of braking in
12 that time frame.

13 And there's one witness -- when you break the witnesses
14 down, there are witnesses that didn't see the back of the
15 vehicle so they have no basis to say braking yes, braking no.
16 So they can't say it one way or the other.

17 There are witnesses that saw the back of the vehicle
18 that said they didn't see brake lights. Some of them don't
19 remember one way or the other. Some of them, maybe one or
20 two, said that if they had seen brake lights, they would have
21 remembered it.

22 Then there is one witness, Mr. Epperson, who said that
23 he saw brake lights. He knows he saw brake lights, and he saw
24 it from where he saw it going down the road to the point where
25 the vehicle started to veer to the right.

26 He didn't see brake lights. Epperson said he didn't
27 see brake lights.

28 You were going to let me say that?

1 MR. MARDIROSSIAN: You said everything else.

2 MR. GALVIN: You should have objected. It misstates
3 the evidence.

4 So Epperson said he didn't see brake lights. He was in
5 roughly the same location as where Ms. Peeples was.

6 Now, I want to talk about Ms. Peeples a little bit.
7 Because as you guys have sat here, every time someone says
8 something about Ms. Peeples, about what she saw, if we say it,
9 Mr. Mardirossian objects saying we misstated the evidence. If
10 he says it, we say he's misstating the evidence.

11 So let's do this. Let's look at what she said, and
12 let's understand what she said. And whether I asked the
13 question or Mr. Berry asked the question or Mr. Mardirossian
14 asked the question, the question is the question. It's the
15 answer that you need to pay attention to because that's what
16 her testimony is.

17 So I want to go through her testimony. And I'm going
18 through the cross-examination testimony just to be very clear.
19 (Reading:)

20 "Q. Now, you told us the Camry was just
21 below 22nd Street when you first saw the
22 Camry, right?"

23 The answer was (Reading:)

24 "Yes.

25 "Q. So whenever on this model the pole
26 was that was clipped, that was the first
27 pole she clipped, right? I mean, you saw
28 a pole clipped?

1 "A. Yes.

2 "Q. And you were right next to it, right
3 next to her when she clipped the pole,
4 correct?

5 "A. Correct."

6 So we know, ladies and gentlemen, that Mrs. --
7 Ms. Peeples was in a vehicle, in her Tundra, and we know that
8 she was driving on Euclid going north, and we know that she
9 says she sees the Camry, and now she has a landmark. She
10 gives us a landmark at trial. She gives us a landmark. She
11 is by the pole that was clipped.

12 We know, ladies and gentlemen, that there were only two
13 poles clipped. There was the second pole and the first pole.
14 The first pole was north, and the second pole was south, and
15 then the vehicle went further south across 21st and into the
16 trees.

17 And so we have a landmark that we can base our
18 understanding of Mrs. -- of Ms. Peeples' position, and it's
19 the first pole that was clipped.

20 So when we look at what witnesses say where they are
21 along the street here, I don't think it's fair to say they can
22 tell us within millimeters or inches where they are,
23 particularly ones who are driving down the street and the
24 Camry passes them and where they first see the Camry.

25 We saw that that precision doesn't exist. Because
26 Marjan Whyte and other people have different descriptions
27 about whether it was 24th Street or 23rd Street. It's not
28 perfect. These are just people, just regular people like all

1 of us who happen to be in a place where an accident was
2 happening, and they happen to see it, and they happen to just
3 give us whatever recollection they have.

4 We have one witness that thought that the vehicle
5 started all the way at 24th and got that all mixed up,
6 straightened it out but still thought it was 24th. It's just
7 the way that people's recollections work.

8 So my point is that when we have a witness that's
9 driving along the street and says the car passes them and they
10 don't have any other frame of reference, I think that
11 precision is lacking. Directionally they can give you a sense
12 of where they are, but are they really dead on in terms of,
13 you know, just a few feet?

14 I don't think we can expect that from witnesses. You
15 know, that's just not what they're thinking when they see the
16 accident and when they get deposed a year or whenever it is
17 later and then when they go to court. It's just not something
18 that I think you could expect.

19 But if someone is more involved like Ms. Peeples in the
20 sense that she said she was -- saw the pole clipped and we
21 know there was a pole clipped, we know it was the first pole
22 clipped that she's talking about, and we also know that she
23 says she got rocks and stuff thrown up on her vehicle.

24 So in a sense she's sort of involved. So we can know
25 where she is. Because she says right here. "You were right
26 next to it, right next to her when she clipped the pole." and
27 the pole she's talking about is the first pole.

28 (Reading:)

1 "Q. All right. As she passed you, it
2 was right as she passed you that she
3 went -- the Camry went onto the center
4 median and kicked up some rocks and then
5 hit the telephone pole, clipped the pole,
6 right?

7 "A. Yes.

8 "Q. And you remember your Tundra having
9 rocks sprayed up where she went up --
10 sprayed rocks and then clipped the pole,
11 correct?

12 "A. Yes.

13 "Q. Now, you recall -- I think on direct
14 you told us you recalled being
15 interviewed by the police officers and
16 you recalled that you told them Mrs. Uno
17 had a blank stare on her face, right?

18 "A. Yes."

19 We know that the Camry was a Camry like her mother's,
20 and so she was paying attention to it, looked at it.

21 What we know from her testimony is regardless of where
22 the flags are on the model that she placed herself at the
23 first pole that was clipped. She saw it, she got stuff thrown
24 at her vehicle, and she was next to it.

25 (Reading:)

26 "Q. You and the Camry passed each other
27 at one of these poles, and then she
28 hit -- struck the pole, correct?

1 "A. Correct.

2 "Q. The two of you passed each other.
3 Just as you passed each other, she
4 strikes the pole, glances off the pole,
5 right?

6 "A. Right.

7 "Q. Okay. So everything you saw in
8 terms of the rear of the Camry,
9 everything you saw as you looked back was
10 after she hit the first telephone pole,
11 right?

12 "A. Correct."

13 So that's what her memory is. That's what her
14 testimony is, and it's anchored to an undisputable position
15 that is the first pole that was clipped.

16 So when we look at the testimony from 23rd to pole
17 number 1, there is no witness that says there's any braking.
18 There's no witness.

19 And we know from the testing that Mr. Hannemann did
20 that had the brakes been used in that stretch, this vehicle
21 would have stopped. This vehicle would have stopped.

22 So then let's talk about from pole 1 to the big tree.

23 What I also want to point out is this is pole 1 right
24 here, and we know from Peeples' testimony that she was at
25 pole 1 when they passed each other. We know she said she
26 pulled over, looked over her shoulder and watched what was
27 going on.

28 What she saw would have been what was going on south of

1 pole number 1. She describes -- she actually described two
2 things.

3 In her deposition which was read at trial, she
4 described what -- she said the brake lights went on for a
5 second, went off for a second, went on for a second, went off
6 for a second. Then she described here at trial they went on
7 and off, on and off about 15 times.

8 The reality is that we also have a witness,
9 Mr. Epperson, who's roughly in the same area. He is a little
10 bit north of the pole. Here's pole number 1, and here's where
11 Epperson was in the driveway. He says he was watching and he
12 didn't see brake lights.

13 What he says -- and you guys will remember this -- he
14 watched it go south. And I asked him where did you start
15 losing sight of it?

16 At first he started doing this green mark, and then he
17 was thinking about it and he couldn't really say. Then he
18 said that he remembered the vehicle veering to the right, and
19 so therefore it would have to be down here further that he --
20 as far as he saw it. So because he couldn't remember it
21 bearing right if he didn't see the vehicle.

22 So Epperson says he doesn't see any brake lights in
23 here.

24 What Peeples says is she describes seeing brake lights
25 on and off, on and off.

26 One explanation for that is when the vehicle goes over
27 the curb, there is inertial activation, but let's say she does
28 see them going on and off. Does any of that matter?

1 When we talked about brake override, what Mr. Hannemann
2 agreed what she described as being the brakes going on and off
3 would not have activated the brake override. So when we
4 consider her testimony, if you want to say that what she says
5 is true, that movement of the brakes wouldn't have activated
6 brake override.

7 In fact, it would have prevented brake override from
8 activating because the on and off, on and off would just --
9 you could press it on and it says, okay. Turn on. And then
10 you took it off, it says, okay. Take it off. It would have
11 never set.

12 And Hannemann agreed to that. There is no dispute. He
13 agreed that what she described would not have turned on brake
14 override. It would have deactivated it.

15 What she also describes is not purposeful braking.
16 It's not anything that is going to change the outcome.

17 This area -- once the vehicle hits the pole, this
18 accident has started. It hits the pole. It comes down and
19 clips the second pole. The vehicle yaws out here, and then
20 the vehicle is -- continues on, the rear end rotating out.

21 It goes across the median, into the median, hits a
22 small tree and then the big tree.

23 This accident has happened. When we looked at it from
24 the first pole, we're 3.2 seconds away from the big tree. 3.2
25 seconds.

26 If you listen to what Ms. Peeples says, she has to pull
27 over and look around. She is using up time. She didn't have
28 time to really see anything. So there's no time.

1 Once this big pole, the first pole, was hit, the die
2 was cast. There was no purposeful braking described, and the
3 braking that was described would not have activated or had any
4 effect on brake override.

5 When you factor in the brake override, the time it
6 takes for it to activate, and you look at the timing of
7 3.2 seconds, brake override would have had no effect in this
8 area.

9 Now, from pole 2 down to the big tree, there was
10 testimony from Mr. Hille that he opined that Mrs. Uno pulled
11 up the parking brake. That's what he said. From pole
12 number 2 -- after pole number 2, she pulled up the parking
13 brake.

14 So let's talk about the parking brake.

15 First of all, I don't believe he said it locked up the
16 wheels. What he said was there was a mark on the road that
17 was some impending brake mark that he believed was caused by
18 the park brake being pulled up. That's what he said. And his
19 opinion was that she pulled it up.

20 But when we analyze this -- and Mr. Smith talked about
21 this. When we analyze this, we see that the park brake has a
22 witness mark on it. A witness mark is a mark that is on there
23 that someone can associate with something else.

24 And when we looked at it -- first of all, when we look
25 at the vehicle, we know already from what we discussed that
26 there's a huge amount of crush here. And we know that the
27 console where the park brake is located is in the area where
28 it was crushed and moved over to the passenger side.

1 So we know in that area the hand brake was moved in
2 12.3 inches, it was moved back 7.4 inches, and it was moved up
3 3.7 inches.

4 We also know that in this vehicle -- when we look at
5 the vehicle here, the top picture here, Mrs. Uno is not in the
6 vehicle, obviously. And so what we have to understand and
7 envision here, ladies and gentlemen, is when the vehicle was
8 being smashed into the tree, not only was all the structure
9 and everything moving towards the passenger side, but Mrs. Uno
10 was also in there.

11 She's interacting with the console. She's interacting
12 with the structures around her. She's in there too. So she's
13 interacting with the console, everything that's beside her.

14 So we know that the console moved. We know it went in,
15 we know it went back, and we know it went up. So looking at
16 that, we see that there's a black mark on the brake handle
17 that is on the passenger side of the brake handle, and we
18 see -- you know, what does that tell us?

19 And we know that the whole console was pushed in. So
20 anything that's on the brake is going to be pushed toward the
21 side. And we know there's an upward movement of the console,
22 and we know it's moved back.

23 This is the black plastic thing that sits on top of the
24 console where the brake handle comes out of, and, you know,
25 there's cup holders and that kind of stuff.

26 Mr. Smith showed you that when you look at this opening
27 here that the park brake handle comes through, in this area
28 right here, there is deformation. So this black plastic is

1 black plastic that can make a witness mark like this if the
2 two interact.

3 And we know that the forces coming into the vehicle are
4 coming in at a direction that are going to cause this to
5 interact with this, and we know that that black mark is in
6 this area right here.

7 Do you see here where there is a little change in
8 elevation right there?

9 And we know that in order for there to be a black mark
10 from this black plastic that this handle has to be down so
11 it's close to the black plastic. If the handle is up, this
12 will be up here.

13 You see here it is up. Here it is down.

14 There is not going to be the relationship to the black
15 plastic so that when the console is pushed over that it can
16 contact the black plastic. It would be further down on the
17 brake handle.

18 For example, this is the brake handle in an exemplar
19 vehicle in a down position. If you pull this up and like it
20 is here, the mark would have to be lower on the brake handle.

21 Because we know that the black plastic was in that
22 location. We know the direction of the forces, and we know
23 what happened to the console. So it's reasonable to conclude
24 that the vehicle was crushed and the brake handle moved in
25 that crush.

26 We know the brake handle was down in the crush. We
27 know when it was crushing, it was down. Because otherwise
28 that black witness mark can't be made in the location it's

1 made.

2 So with respect to what we have so far, we have a
3 vehicle, a 2006 Camry, that has a brake system that is
4 perfectly fine, non-defective; that under the circumstances of
5 this crash would have stopped the vehicle.

6 In the testing done by the defense and the testing done
7 by the plaintiffs proves that, had the brake system been used,
8 the vehicle would have stopped.

9 Now, the fact that this vehicle did not have brake
10 override does not make it defective.

11 The issue you're going to decide, ladies and gentlemen,
12 is what are the benefits of the design that were in this
13 vehicle? Was this vehicle's design as it was a substantial
14 factor in causing harm?

15 And the answer to that question is no, it was not. It
16 had a brake system that, had it been used, would have stopped
17 this vehicle. It had a brake system that was in millions of
18 Toyotas. It's non-defective by plaintiffs' own testimony. It
19 had been used by Mrs. Uno before, and it would have stopped
20 this vehicle.

21 The question was with respect to brake override, that's
22 not an issue at 23rd Street. Because plaintiffs even agree
23 there was no braking from Bello over onto North Euclid.

24 In terms of from 23rd Street down to pole number 1,
25 there's no braking. The only evidence plaintiffs rely on for
26 braking in that location is the position of the foot at the
27 end of the crash, the rubber peeled from the brake pedal, and
28 the injuries to the foot.

1 Well, we already know that the position of the foot at
2 the end of the crash, the peeling of the brake pedal, and the
3 injuries to the foot all occurred due to the crushing damage.
4 There is no evidence that there was braking during the run
5 from 23rd Street to pole number 1.

6 Hannemann's testing shows that there couldn't have been
7 braking because the vehicle would have stopped. So in order
8 for there to be any involvement with brake override at that
9 point, you would have had to have stepped on the brakes.
10 Because that's what causes brake override to turn on.

11 But this vehicle didn't have brake override. This
12 vehicle didn't have brake override, and the testimony was in
13 this case that there was -- the hardware differences -- there
14 were hardware differences between this vehicle and the '07.
15 You didn't hear that this morning.

16 The CPU -- remember, this is an engine management
17 function. And the CPU in the '06 was different than the CPU,
18 the computer, in the '07. The power chip in the '06 was
19 different than the '07.

20 So to simply suggest because it has ABS and it has
21 wheel speed sensor is simplifying this beyond that.
22 Plaintiffs never proved that all the hardware necessary to put
23 brake override on this vehicle existed in this vehicle. They
24 never proved it.

25 In fact, what you heard from Mr. Walker was that the
26 ECU had different hardware.

27 Now, brake override wouldn't have changed the outcome
28 of this accident.

1 Number one, brake override is not a counter measure or
2 a solution for pedal misapplication. If you're stepping on
3 the gas when you want to be stepping on the brake, it's not
4 going to activate. So it's not a counter measure for that.
5 It's not.

6 What you heard was that brake override provides some
7 additional safety in the very limited circumstance of a
8 trapped pedal, and that didn't happen in this case.

9 So when you consider the risks and benefits of the
10 system and the system that was in this vehicle, there wasn't a
11 condition in this accident that brake override -- the limited
12 benefit of brake override would have addressed. And for other
13 reasons we'll get into, the conditions of this accident, brake
14 override wouldn't have activated.

15 But the bottom line is this vehicle, as it was designed
16 and developed and as it was put on the road in 2006, was not
17 defective for lack of brake override.

18 Now, in this case had brake override been on this
19 vehicle, would it have made a difference? And the answer is
20 no.

21 Brake override isn't a substitute for a brake system.
22 It's an engine management function. And the brake system in
23 this vehicle works fine, worked fine, and would have worked if
24 it was used.

25 Brake override works by stepping on the brake firmly as
26 described, staying on the brake, and you have to have a
27 jammed, non-moving gas pedal.

28 The brake override doesn't work if you don't step on

1 the brake. The brake override doesn't -- will cancel in this
2 vehicle -- well, in the vehicle that has brake override for
3 the Denso system that was in the '07 -- put in the '07 in
4 2010, the brake override cancels if the gas pedal moves a half
5 an inch up or down. That's 20 percent. Or if you pump the
6 brakes, the brake override will turn off or turn on depending
7 on what you're doing.

8 So in this case the brake override system under the
9 circumstances of this accident would not have made a
10 difference. One, because it wouldn't have been on. It
11 wouldn't have come into play from the Bello accident over to
12 Euclid because plaintiffs say there was no braking.

13 There is no evidence of braking from 23rd down to
14 pole 1. And so the plaintiffs haven't proved that it would
15 have worked, gone on there, because they haven't proved there
16 was braking.

17 In fact, they proved the opposite, that there was no
18 braking. Because had there been braking, the plaintiffs' own
19 tests show the vehicle would have stopped.

20 Then from pole 1 to the big tree, that timing in there,
21 whether you accept plaintiffs' reconstruction or defense
22 reconstruction, was so short that brake override, if it was on
23 the vehicle and had it activated, would not have activated in
24 time to prevent this crash from happening.

25 So when you look at the causation instruction that's in
26 the instructions that the Court is going to provide, ladies
27 and gentlemen, that goes to the issue of would this accident
28 have happened anyway. And the answer is yes.

1 And plaintiffs have the burden of proving the elements
2 of what they need to prove in terms of the facts. They have
3 to prove that the plaintiff braked going down the street; that
4 that would have activated and turned on brake override. They
5 have to prove that.

6 It's not something, ladies and gentlemen, that you can
7 just make up or assume. It has to be evidence in the case.

8 No matter how someone thinks, well, maybe this, maybe
9 that, if it's not evidence in the case, if it hasn't been
10 proven, you can't -- it's not a fact.

11 Your Honor, I'm at a point where it would make sense to
12 stop.

13 MR. MARDIROSSIAN: Should we go to sidebar?

14 THE COURT: Come to sidebar.

15 (Proceedings at sidebar not reported.)

16 THE COURT: Okay. Is everyone ready to go? Anyone
17 need a break?

18 Okay. Mr. Galvin.

19 MR. GALVIN: Okay. So on the issue of whether on brake
20 override it would have activated in this accident, I want to
21 direct your attention to Mr. Hannemann's testimony.

22 (Reading:)

23 "Q. Would you agree that what
24 Ms. Peeples saw would have canceled the
25 brake override in the vehicle had it had
26 brake override?

27 "A. Yes. When she released the brake
28 pedal, brake override would have

1 canceled."

2 So if you want to say that what she saw actually
3 happened, that doesn't support any argument about brake
4 override. Because it would have canceled brake override.

5 And in addition to that, what she saw was south of pole
6 number 1 in the blue zone where brake override wouldn't have
7 made a difference because it wouldn't have activated in time
8 to change the impact with the big tree.

9 Now, the issue of brake override activation is also
10 related to deactivation.

11 Now, Mr. Hannemann did testing, and he did testing in
12 his mind to sort of bracket, you know, how -- what the vehicle
13 would do. And he did it with his foot position, you know, in
14 this caught-foot position, and he was pumping the brakes and
15 pumping the accelerator pedal.

16 And the testimony is that when you look at what he did
17 in his testing, that if you wanted to assume that brake
18 override was on that vehicle, that the brake override would
19 have canceled in some of his tests. Because he was pumping
20 and moving the gas pedal more than a half an inch.

21 So while Mr. Hannemann's demonstration of, you know,
22 what he was trying to do with his stuck foot isn't Mrs. Uno,
23 to the extent the plaintiffs want to suggest that what his
24 testing shows shows the brake override would have made a
25 difference, it doesn't.

26 In fact, Mr. Hannemann didn't even know what the final
27 specification was for cancellation of brake override. He had
28 the developmental specification, the developmental

1 information.

2 I asked him do you know what actually went into
3 production that was in the vehicle? Do you know what the
4 Toyota spec was?

5 Ultimately he said no. He thought it was 30 percent.
6 It was actually 20 percent.

7 So in terms of the brake override, ladies and
8 gentlemen, the vehicle as it was was safe and non-defective.
9 Mrs. Uno could have stopped it if she stepped on the brakes.
10 The absence of brake override doesn't make a non-defective
11 vehicle defective.

12 When you analyze the design of this vehicle, you have
13 to analyze it in the context of this crash, of the
14 circumstances of this crash.

15 The purpose for brake override, the limited additional
16 value it provides is in the limited circumstance when the
17 pedal is entrapped. We even have Mr. Hille who agreed that
18 the gas pedal wasn't entrapped.

19 In order to look at the brake override, it's true that
20 in 2001 there was technology in a diesel engine in Europe, and
21 that diesel engine was in some vehicles. And that diesel
22 engine had a form of brake override for a diesel engine.

23 And you heard this morning from Mr. Mardirossian that
24 that could have been just put in this Camry, and that's not
25 true. In fact, the testimony that plaintiffs played said that
26 was not true.

27 And Mr. Walker pointed out that there was a difference
28 between the '06 Camry and the '07 Camry. So the suggestion

1 you could have simply -- plaintiff has the burden of proof --
2 that you could have put in the '06 what was in the '07, and
3 they didn't prove that.

4 What you heard about brake override was that it's
5 similar to other evolving technologies like vehicle stability
6 control, ABS when it was an evolving technology, different
7 technologies.

8 And what's interesting, ladies and gentlemen, you also
9 heard in testimony that, when the Unos bought this vehicle,
10 there was a safety package available with it that included
11 different safety features that they didn't buy. But here we
12 are four-plus years later when Mr. Mardirossian's saying they
13 would have gotten something or they should have gotten
14 something.

15 Well, there was a safety package available for the
16 vehicle when they bought it that they didn't get. So to sit
17 here these years later and suggest that this vehicle should
18 have had brake override is just inconsistent.

19 Now, I want to look -- it's important to understand the
20 issue with respect to the foot position because that is one of
21 the key points that plaintiff suggests proves that there was
22 braking in this crash. So I want to look at that model, Bill.

23 We saw this with Dr. Corrigan. And so, first of all,
24 Bill, could you close in a little bit more on it.

25 Dr. Corrigan went through in detail about how she put
26 this together in terms of using the photographs from the
27 scene, from the police, and trying to reconstruct it. Because
28 she wanted to get a good understanding of what was going on.

1 So, Bill, can you give us a front view, please. Go
2 back a little.

3 So as we see the foot in that position, if you're
4 looking in the way the picture was taken that we saw earlier
5 today in plaintiffs' presentation, you can see how it would
6 look like the foot is partially under the brake pedal.
7 Certainly it's not all the way under there.

8 And you can also see that it's in between the brake
9 pedal and the gas pedal, and you can see how everything has
10 been crushed and pushed in from the left-hand side.

11 Can you give us -- rotate it some more, Bill. And so
12 you can -- back a little bit.

13 And you will see there the location of the brake pedal
14 relative to the foot is in roughly the same area you see the
15 injury in the photographs. So that lines up.

16 Okay. Can you go to the far side?

17 You can see this is the gas pedal right here, ladies
18 and gentlemen. And it was Dr. Corrigan's opinion that the
19 foot, in order to get in the position it's in in the wreckage,
20 that it would have to be at or over the brake pedal -- pardon
21 me -- the gas pedal, certainly to the right of the brake
22 pedal.

23 Rotate it some more. Can we look down on it?

24 And when some of those police photos were taken, as you
25 know, the spreaders had been put in there because they were
26 trying to get her out so things were moved around.

27 For my last few minutes, I want to address a document
28 that was shown to you, ladies and gentlemen, in plaintiffs'

1 closing argument.

2 In making his argument to suggest that Toyota should be
3 liable for punitive damages, he showed you an email where the
4 date was blocked out. But the date on the email was May 31st,
5 2010.

6 MR. BERRY: Do you want to put this on the Elmo?

7 THE COURT: Sure.

8 MR. GALVIN: Curtis, show the date in the upper
9 right-hand corner. Zoom in, please.

10 Ladies and gentlemen, out of the millions of documents
11 that we have produced, this is the document that counsel wants
12 to suggest to you is a basis for punitive damages?

13 MR. MARDIROSSIAN: Objection. What millions of
14 documents?

15 THE COURT: Objection sustained.

16 MR. GALVIN: Out of the documents we have produced,
17 this is the one document that counsel chose to argue to you
18 that Toyota should be responsible or liable for punitive
19 damages, suggesting to you that this represents conduct?

20 When you consider this case, ladies and gentlemen, and
21 you consider conduct, you need to consider the conduct
22 concerning the design and development of this vehicle.

23 This vehicle was a 2006 Camry that they bought in 2005.
24 What were the decisions made at the time? Who made the
25 decisions? What were they? That's the conduct, ladies and
26 gentlemen, that is relevant for the discussion that you would
27 have on those instructions, not this email.

28 This email has nothing to do with this vehicle. It has

1 nothing to do with the design and development of this vehicle.
2 This email didn't even exist when this vehicle was made.

3 So to suggest that anything in this email reflects
4 design decisions that were made concerning the vehicle that
5 the Unos bought in 2005 is wrong, just like it's wrong to say
6 the foot was caught, just like it's wrong to say that brake
7 override would have made a difference in this crash. It's
8 wrong.

9 THE COURT: Mr. Galvin, is now a good stopping point?

10 MR. GALVIN: Yes, your Honor.

11 THE COURT: We're going to call it a day.

12 And, Ms. De Jesus, tell me about your timing tomorrow.

13 I'm inclined to suggest that we should all get together at
14 1:30 tomorrow and then you get here as quickly as you can
15 whenever that is.

16 Does that sound right?

17 JUROR DE JESUS: That's fine.

18 THE COURT: So that's what we will do. We'll start at
19 1:30.

20 So you're reminded not to discuss this matter amongst
21 yourselves or with any other person, not to form or express an
22 opinion on the matter until it is submitted to you for
23 decision.

24 Have a wonderful evening. We'll see you tomorrow at
25 1:30. Thank you.

26 (The following proceedings were held in
27 open court outside the presence of the jury:)

28 THE COURT: Okay. Great. Let's talk for a second

1 about a couple things.

2 One, we had a sidebar, and I wanted to keep it as short
3 as possible, but I didn't want my silence in response to what
4 you said, Mr. Galvin, to mean that I agreed with what you said
5 in terms of witnesses -- jurors napping.

6 MR. GALVIN: I didn't say napping. I said eyes were
7 shutting.

8 THE COURT: Because I have been watching them through
9 the entire argument of everybody's argument and taking steps
10 if they looked like they weren't alert.

11 I think they've done a remarkable job. I agree that
12 you've been going a long time and they were obviously tired,
13 but I do think they have been alert and remained alert
14 throughout the entire time.

15 MR. GALVIN: That's fine. Just to be clear, I wasn't
16 suggesting --

17 THE COURT: You didn't say napping.

18 MR. GALVIN: I just saw Ms. Woldeyes shutting her eyes.

19 MR. MARDIROSSIAN: You're saying she has wild eyes?

20 MR. AKARAGIAN: She was thinking really hard.

21 THE COURT: Let's talk about tomorrow. We're going to
22 start as close to 1:30 as we possibly can.

23 Mr. Galvin, you're about finished up?

24 MR. GALVIN: I have two little sections to go.

25 THE COURT: Okay. And, Mr. Duffy, do you have a time
26 estimate?

27 MR. DUFFY: I think about an hour, maybe less.

28 THE COURT: Okay. We really need to get this to the

1 jury tomorrow.

2 In terms of the closing, we've got a handful of closing
3 instructions to give that we've separated out, and so I'll
4 read these tomorrow.

5 The one thing that surprised me was that the
6 number 5012, which was the special verdict form, was read up
7 front.

8 It made perfect sense because I knew you were going to
9 be talking about the special verdict form, but I think it
10 might be a good idea to read it on the back end.

11 Everybody okay with that?

12 MR. GALVIN: Yes.

13 MR. DUFFY: Yes.

14 THE COURT: I think they need to have that fresh in
15 their mind about what they're supposed to do with it.

16 MR. GALVIN: Right.

17 THE COURT: I will redo that. I'll re-read 5012 and
18 otherwise read everything else you've got here as you had
19 given it to me in the stack.

20 MR. GALVIN: They might be confused. They don't have
21 to take it literally.

22 THE COURT: Okay. Anything else that we need to
23 discuss today before we break?

24 MR. AKARAGIAN: There might be exhibits, your Honor. I
25 will let them know today which ones we identified that we
26 intend to move in that haven't been moved in yet. There are
27 very few, not many.

28 MR. MARDIROSSIAN: Let's not forget. We still have

1 hanging the 3-D model.

2 MR. GALVIN: We still have to do all the exhibits. It
3 shouldn't take very long.

4 MR. AKARAGIAN: So the question is if we came here
5 early, let's say 11:00-ish, and had an issue, was the Court
6 available between 11:30 and 12:00 if we needed to resolve
7 things?

8 THE COURT: We have an unbelievably heavy calendar
9 tomorrow. I'm starting motions in limine for the next trial
10 up.

11 MR. AKARAGIAN: I'm sorry.

12 THE COURT: So the good news is I have already ruled on
13 about 60 of them and so that there is not that many more left,
14 but they're going to take a fair amount of time.

15 And so the answer is come ahead, talk and meet and
16 confer and do whatever you're going to do. Then I'll just try
17 to make myself available shortly before noon and see how much
18 time you need.

19 I suspect Ms. De Jesus is not going to be here right at
20 1:30, so we may be able to take some time then as well if
21 she's not here. One way or another, I know that is another
22 issue we have to resolve before we have to look at this to the
23 jury.

24 MR. AKARAGIAN: Thank you.

25 THE COURT: Anything else?

26 MR. MARDIROSSIAN: I was just going to suggest that we
27 ask the Court to rule on at least our model and their big
28 board because we are going to object to their big board unless

1 they don't object to our model.

2 THE COURT: I want you to meet and confer and reach
3 agreements on these things as best you can, and I'll address
4 anything as best I have to.

5 See you in the morning.

6 (At 4:30 p.m. the proceedings were adjourned
7 until Tuesday, October 1, 2013 at 1:30 p.m.)

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