

NASH COUNTY

11 CVS 86

Defendants. )

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) T R A N S C R I P T  
)  
) Pages 1 through 124  
)  
) (Plaintiff and Defendant  
) Ford's Opening Statements)

The above-captioned case coming on for hearing at the Monday, March 2, 2015 Civil Session of the North Carolina Superior Court, heard in Nashville, North Carolina, Nash County, before the Honorable Thomas H. Lock, Judge presiding, the following proceedings were had:

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*Appearances Continued >>>>>>>>>>>*

Date Ordered: 3.2.15

Date Delivered: 3.3.15

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P R O C E E D I N G S

(Superior Court of Nash County resumed its civil session in the case of *Tyndall v. Ford Motor Company, et al.*, Nash County Case No. 11 CVS 86, on Monday, March 2, 2015 before the Honorable Thomas H. Lock at 9:35 a.m. Other matters in this case were addressed before the Court prior to Plaintiff's opening statements commencing at 11:06 a.m.)

THE COURT: All right. I think we are ready for the opening statements. At this time, the jury is with the Plaintiff. Mr. Emison.

MR. EMISON: May it please the Court.

THE COURT: Yes, sir.

MR. EMISON: Good morning.

THE JURY: Good morning.

MR. EMISON: My name, again, is Kent Emison and I along with Hoyt Tessener will be speaking for Che-Val Batts this morning. And I'm going to be talking to you but you'll be seeing some things up on a screen if it would help you understand better what I'm saying.

A manufacturer is never allowed to unnecessarily put the public at risk. Car manufacturers must build cars that are crashworthy. Now, crashworthy means that every part of every car is designed and built safely enough to keep persons as safe as possible in a crash. That's an important word. I'm going to say that one

1 more time. Crashworthy is a pretty simple, straightforward  
2 concept. It means that every part of every car is safe  
3 enough that in the event of a crash, that the passengers are  
4 kept as safe as possible. That's what crashworthy means.

5 Manufacturers are required to make every part  
6 of every car crashworthy.

7 Now, it has to be as crashworthy as  
8 technology allows and without costing the manufacturer an  
9 unreasonable amount of money. So every part has to be  
10 crashworthy, as technology allows, without costing the  
11 manufacturer an unreasonable amount of money.

12 We're going to be talking a lot in this case  
13 about extra harm or extra injuries. Now, what does that  
14 mean? It's when people are harmed more than they would have  
15 been in a crash if the part had been made crashworthy. I'm  
16 going to say that a little bit differently because this is  
17 not a common term. Extra harm or extra injuries is when  
18 there's a crash and some part of the car is not crashworthy.  
19 And because of that, a passenger is injured more than they  
20 would have been if it had been manufactured crashworthy.  
21 That's the extra harm, the extra injuries. Sometimes it's  
22 called enhanced injuries.

23 That's what the manufacturer is responsible  
24 for. When is a manufacturer responsible for these extra  
25 harm or extra injuries? It's when the part could have been

1 made safer. Again, without costing the manufacturer an  
2 unreasonable amount of money no matter who caused the crash.  
3 So it doesn't matter who caused the crash. If the  
4 manufacturer made a part that was not crashworthy, and  
5 somebody has these extra harms -- causes extra harm or extra  
6 injuries, that's what the manufacturer is responsible for.

7 Now, let me tell you what happened -- the  
8 story of what happened in this case. And to do that, I need  
9 you to go back in time with me to April 1966. I need to  
10 take you back to the Ford Motor Company world headquarters  
11 in Dearborn, Michigan. That's located in the Detroit area.  
12 In April 1966, there was a Ford Motor Company  
13 recommendation, an executive communication that said for  
14 1969 to 1971 models, to provide three-point lap shoulder  
15 belts for all passengers, all passengers in the front seat  
16 and the rear seat. Now, this was a proposal. Another term  
17 I want to make sure you understand is -- we heard some of  
18 this in jury selection but we're going to be talking about  
19 two-point belts, which are the lap belt. Two points -- they  
20 call it two points because it just has two points and it  
21 goes right across your lap. I'm sure you're familiar with  
22 that. And we're going to be talking about three-point  
23 belts, which is the lap shoulder belt. It has three points;  
24 two for the lap belt plus one for the shoulder belt. So  
25 when I talk about that, I'll try to say "lap shoulder belt"

1 or "lap belt." If I say "three point" or "two point," I  
2 want you to make sure you understand what I'm talking about.

3 So in 1966, almost 50 years ago, Ford made a  
4 proposal recommending that for all the cars 1969 to '71, all  
5 passengers to have three-point belts front and rear. That  
6 did not happen.

7 17 months after that, this is September 9th,  
8 1967, a Ford biomechanic manager -- there's another term  
9 that's not common for most people, biomechanic. A  
10 biomechanic is a safety expert who looks at the movements of  
11 people inside a car during a crash. They study how people  
12 move in a crash and what they hit, what causes injury.  
13 That's what a biomechanic is. And this was the manager, the  
14 head of Ford's biomechanic department. And this is what he  
15 told other Ford engineers in 1967, that in frontal impacts,  
16 frontal crashes, that lap belts provide no upper body  
17 support, allowing the body to jackknife over the lap belt.  
18 I'm going to be trying to explain what some of these terms  
19 mean. Most of you know what jackknifing means. Jackknifing  
20 just means when your front -- there's nothing holding your  
21 front. Like in a frontal crash there's a jackknife  
22 (indicating) is right over like that only the person would  
23 be sitting down. That's what that means. It is the common  
24 meaning of jackknife.

25 The head of the Ford biomechanic department

1 also told other Ford engineers that jackknifing causes  
2 injury to the spleen, the small intestine, pancreas, as well  
3 as lumbar fractures, breaks your back. So the jackknifing  
4 caused injuries to these vital organs in your abdomen.  
5 Again, 1967, you know, 40 some years ago.

6 Ten days after that, just ten days after  
7 that, September 19th, 1967, the same Ford biomechanic  
8 manager, the head of the Ford biomechanic department reports  
9 to other Ford engineers that a properly worn three-point lap  
10 shoulder belt clearly protects passengers better than a  
11 two-point lap belt since the three-point lap shoulder belt  
12 prevents injuries from jackknifing. Again, that's common  
13 sense. You have a shoulder belt, it's going to hold you  
14 back, you're not going to jackknife in a frontal impact.  
15 That's what was recorded by Ford's head of the biomechanic  
16 department to other engineers in 1967.

17 Now, I want to take you 11 years after that,  
18 in 1978, sled test. In this case, you're going to be  
19 hearing about crash tests and sled tests. Crash tests are  
20 when they crash cars into a barrier or into another car.  
21 And you're mostly going to be hearing about sled tests in  
22 this case. A sled test is where they put the occupant  
23 compartment of a car on a sled, a great big sled, and they  
24 put the seats in that car and they put the seat belts in the  
25 car and they put crash dummies in the seats in seat belts.

1 And all car companies use this because it's repeatable.  
2 They don't have to crash a car every time. It goes down a  
3 sled. They can control the speed of it. They can video it  
4 and they can learn what works with the seat belt and what  
5 doesn't work with the seat belt or some other things in  
6 these sled tests.

7 So in 1978, Ford ran a sled test, a frontal  
8 impact. And in it, they put two crash test dummies in the  
9 two-point lap belts. And they ran that test at about 35  
10 miles an hour. And at impact, at impact, the crash test  
11 dummies jackknife over the two-point lap belt and they're  
12 ripped apart. In the film you can literally see the top,  
13 the upper part of it that when they jackknife, it's ripped  
14 apart and you see the top part, the torso of the crash test  
15 dummy flying through the air, both of them. Both of them in  
16 lap belts, they both rip apart. That's 1978.

17 Seven years after that, 1985, another sled  
18 test. Only in this sled test, Ford puts child dummies.  
19 They have adult size. You'll hear about all different  
20 sizes. But they do have child size. They're supposed to be  
21 I believe about a 6-year-old child. They put child dummies  
22 in this sled test. And in this sled test, the child's --  
23 the child dummies, crash test dummies, have lap belt only,  
24 the two-point lap belts on. And what Ford saw, what Ford  
25 engineers saw in this sled test was that the child dummy



1 jackknives over that two-point lap belt. You'll see the  
2 violent jackknifing motion of child. Now, they didn't rip  
3 apart, but you'll see the two child dummies jackknife over  
4 the lap belt. And these -- that's what Ford saw in this  
5 1985 sled test.

6 One year after that, 1986, Ford receives a  
7 safety study that was sent to all US auto manufacturers.  
8 The safety study was almost 300 pages long. And it's too  
9 long for me to give you too much detail at this point in  
10 time, but I do want to talk to you about some of the  
11 conclusions that Ford Motor Company saw in this safety study  
12 in 1986; that is, that Ford saw that overall crash  
13 performance of lap belts was very poor. Ford saw that the  
14 safety study concluded that even correctly worn lap belts  
15 caused severe injuries, even if the person in these crash --  
16 crashes was part of this study, even though the people  
17 correctly wore the lap belts, they still received severe  
18 injuries.

19 Again, this is 1986. The safety -- Ford sees  
20 the safety study concludes that the injuries typically  
21 caused by the lap belt were among the most dangerous types  
22 of injuries, injuries to the head, injuries to the spine,  
23 and injuries to the abdomen, the vital organs in the  
24 abdomen.

25 Ford sees in 1986 the safety study concludes

1 that the head and spine injuries caused by the two-point lap  
2 belt are brought about by the violent jackknifing motion,  
3 the jackknifing motion over the lap belt, injuries that  
4 would not have occurred except for use of a lap belt.

5 That's the same thing that the Ford biomechanic safety  
6 expert told Ford engineers back in 1967, only this is 1986.

7           The safety study -- Ford saw this, that the  
8 safety study concluded that the three-point shoulder belts  
9 provided better crash protection than the two-point lap  
10 belts and provide a significantly, significantly lesser risk  
11 of causing injury.

12           1986 after seeing this, Ford continued to  
13 manufacture its vehicles without the three-point lap  
14 shoulder belt in the rear center seat. And most of the time  
15 during this case, that's the seating position I'm going to  
16 be talking about, the rear center seat. If I'm talking  
17 about some other seating position, I will let you know.

18           But two years, two years after this safety  
19 study, in 1988, there's another sled test. They put a sled,  
20 they put a -- the inside of a passenger compartment on the  
21 sled and they have a rear seat of a car. Only in this one,  
22 there are three crash test dummies in this -- in this sled  
23 test. And two of them have the three-point lap shoulder  
24 belt. That's the ones on the outboard. And the outboard  
25 simply means the ones by the window on the driver's side and

1 the window on the passengers' side. So those have the  
2 three-point lap shoulder belts. There is a dummy in this  
3 sled test with the two-point lap belt and that's the one in  
4 the middle.

5 This sled test, again, is run at about 35  
6 miles an hour. It's a frontal crash. And when that frontal  
7 crash occurs, the dummies in the three-point belts are held  
8 back by the shoulder belt. They do not have the violent  
9 jackknifing. The dummy in the middle with the two-point lap  
10 belt, well, the same thing happened that happened ten years  
11 before that; that dummy rips apart. It jackknifes over the  
12 two-point lap belt, the upper torso flies through the air,  
13 lands on the steering wheel or where the steering wheel is  
14 supposed to be in a car. And when the test is over, you  
15 look back, you see the legs and the lap belt. When this  
16 crash test dummy jackknifed over that lap belt, it was so  
17 violent it ripped the dummy apart. Ford saw that in this  
18 1988 sled test; dummy ripped apart.

19 That same year, 1988, Ford puts out a field  
20 bulletin. And in that field bulletin, Ford Motor Company  
21 described the benefits of a shoulder belt. This field  
22 bulletin went to the field supervisors and district managers  
23 for Ford and it explained that the shoulder belt helps  
24 restrict upper body motion, that the shoulder belt added --  
25 provides added restraint to the upper torso, the upper part

1 of the body and that it works very well with the lap belt.

2 Now, the purpose of this field bulletin was  
3 to tell Ford field people about what they called a retrofit  
4 kit. So what Ford was doing, they offered -- were telling  
5 their managers that they were going to offer a retrofit kit  
6 where Ford customers who had bought cars previously with  
7 only the lap belt, that they can go and they could buy a  
8 shoulder belt. And they were telling their field managers  
9 the advantages of a shoulder belt. But here's the deal:  
10 This was only for the outboard positions. This was only for  
11 the positions by the windows on the outside of the rear  
12 seat. This is for the rear seat. There was no shoulder  
13 belt being provided as a retrofit to make the rear center  
14 seat safer.

15 Ford offered this retrofit kit to -- for  
16 Escorts in 1981 through 1989 Escorts. Three years after  
17 that, 1991, Ford has safety guidelines you're going to hear  
18 about. And in the safety guideline issued in May of 1991,  
19 again, a proposal to provide three-point lap shoulder belts  
20 for all fixed bench rear -- forward facing rear seating  
21 position.

22 At this time, they had already decided to put  
23 Ford -- and other manufacturers had decided to put the  
24 three-point belts in the outboard positions of the rear  
25 seat; but Ford did not put it in the rear center seat, only

1 a lap belt there. Well, a proposal was made by Ford Motor  
2 Company in the safety guideline to provide the three-point  
3 lap shoulder belt for all seating positions, including the  
4 rear center seat. That didn't -- that did not happen. Ford  
5 continued to sell hundreds of thousands of vehicles with the  
6 two-point lap belt only in the rear center position.

7 Five years after that, 1996, for the first  
8 time, Ford puts the three-point lap shoulder belts in the  
9 rear center seat for its cars -- the cars sold here in the  
10 US. The Lincoln Continental, the Ford Taurus, and the  
11 Mercury Sable. Those all were sold with the three-point lap  
12 shoulder belts in the rear center. First time, 1996.

13 The next year, 1997, Ford issues another  
14 safety guideline. Gets -- this is company-wide for all car  
15 programs. This goes to all car programs. There's Ford,  
16 Lincoln Continental, Mercury. Those were the three main  
17 brands that Ford had during this time.

18 And this safety guideline, again, contained a  
19 proposal that all future programs are to include a  
20 three-point lap shoulder belt in the rear center. And this  
21 safety guideline talked about the advantages of a  
22 three-point lap shoulder belt; again, we're talking about  
23 the rear center seat. This is what the proposal was for.

24 And I want to go through what the safety  
25 guideline told Ford engineers and Ford management back in

1 January of 1997: That the three-point lap shoulder belt  
2 provides the highest level of safety for rear center seat  
3 occupants, the highest level of safety for the rear seat --  
4 rear center passenger; that the three-point belt is better  
5 than the two-point belt; that the three-point belt is very  
6 user friendly.

7 This continues the advantages. And that one  
8 of the advantages to a three-point belt is that the  
9 passenger doesn't have to wear -- it prevents the passenger  
10 from wearing the two-point lap belt. And that it includes  
11 an automatic locking retractor to use with child seats.

12 Now, you're all familiar with retractors, I  
13 take it. When you take your seat belt off, your three-point  
14 belt off, it retracts back in. When you put your seat belt  
15 on, the retractor helps cinch up the lap and shoulder belt  
16 so you don't have too much slack. Three-point belts have  
17 retractors. The two-point lap belt has no retractor. They  
18 provide the passenger with no retractor. So one of the  
19 advantages that Ford noted in January 1997 was we put a  
20 three-point belt in there, there's going to be a retractor  
21 and that's an advantage. And you can use it with car seats.

22 This also noted that no new technology is  
23 required. Ford had the technology, January 1997, to put --  
24 put it in their cars. They were already putting it in the  
25 cars we talked about in 1996.

1 Ford included the costs, the estimated cost  
2 of it, 9 to 12 dollars for sedans. And we're generally  
3 going to be talking about sedans, it's like a four-door car,  
4 and 9 to 12 dollars was the cost. And they -- the -- the  
5 nut was a dollar; the retractor, 7 to \$10; and the assembly  
6 cost, a dollar to two dollars. And that's what they put in  
7 this company-wide safety guideline, 9 to 12 dollars per car.

8 The same year, 1997, the Ford Escort had a  
9 complete redesign, and it was manufactured with the  
10 two-point lap belt only in the rear center seat. Now, you  
11 all have heard about cars being a complete redesign and  
12 you've heard about cars having cosmetic changes. Well, for  
13 cars in general, it was -- it's the same basic car  
14 manufacturer. It varies depending on manufactured car; but,  
15 typically, three, four or five years, it will be the same  
16 basic car and they will only make cosmetic damages (sic).  
17 And then every, you know, four or five years, there will be  
18 a complete redesign. The Escort in 1997 was a complete  
19 redesign. And when they did the complete redesign, they did  
20 it with only the two-point lap belt in the rear center seat.

21 One year after that, 1998, Ford -- Ford sells  
22 more cars with the three-point lap shoulder belt in the rear  
23 center. They sell the Ford Contour, and they sell the  
24 Mercury Mystique, in 1998 with that.

25 One year later, 1999, Ford puts out a sales

1 brochure of a 1999 Ford Contour. And in that sales  
2 brochure, they show a picture of a little girl sitting in  
3 the rear center seat with the three-point lap shoulder belt.  
4 And in that picture, you can see that that lap shoulder belt  
5 fits her very well. It goes right over her shoulder, and it  
6 fits her very well. That's in a 1999 Ford Contour brochure.

7 That same year -- this is June 1999 -- Ford  
8 makes a statement. They do this every now and then where  
9 they comment on -- on recommendations. Ford made an  
10 official company comment that it supported the NTSB --  
11 that's the National Transportation Safety Board -- they  
12 supported the NTSB recommendation to install rear center  
13 three-point belts in all cars.

14 Ford noted in this -- in this letter that  
15 most Fords, Lincolns and Mercury cars have or will have  
16 three-point lap shoulder belts except the Crown Vic, the  
17 Mercury Grand Marquis and what -- this is Ford's words --  
18 carryover Escorts. Carryover Escorts. So all their cars  
19 had the three-point belts in the rear center seat by this  
20 time except those, those three.

21 Now, for the three-year period 1997 to 1999,  
22 Ford sells these cars with three-point lap shoulder belts in  
23 the rear center in the US: The Taurus, the Sable, the  
24 Lincoln Continental, the Lincoln Town Car, the Ford Contour,  
25 the Mercury Mystique, and the Ford Focus. I want to



1 clarify, the Ford Focus was called a 2000 model year but it  
2 was sold in '99. So that was sold in '99 with a three-point  
3 belt in the rear center. Now, from 1997 to 1999, that same  
4 three-year period Ford installs the two-point lap belt in  
5 all Ford Escorts, in all Ford Escorts. Here's a summary of  
6 the list I just told you, the cars with the -- and, again,  
7 the rear center seat is what we're talking about, the  
8 three-point belts are the ones on the left, the two-point  
9 belts are the ones on the right.

10 And that three-year period, Ford sells  
11 hundreds of thousands of Escorts with the two-point belt in  
12 the rear center.

13 Now, I need you to fast forward with me to  
14 August 2010. One of those Escorts was a 1999 Ford Escort  
15 and as that 1999 Ford Escort was going down the road, a  
16 vehicle pulls out into its path. There's a frontal impact.  
17 And in the back of that car, in the back seat in the rear  
18 center is a passenger with the two-point lap belt. When the  
19 impact occurs, the passenger jackknives violently just like  
20 the Ford safety expert mentioned back almost 50 years ago.  
21 And when that passenger jackknives violently over that lap  
22 belt, that lap belt cuts into the person, the -- the -- the  
23 passenger's small intestine. It causes two holes to be made  
24 in the small intestine. It cuts through the large bowel.  
25 It eviscerates the muscles and the fat. And you'll see

1 these are not my words. These are medical terminology. The  
2 two-point lap belt goes so far into the person's vital  
3 organs, the passenger's vital organs, they get back to the  
4 spinal cord. And when it gets to the spinal cord, it  
5 damages the spinal cord so badly that the passenger is  
6 paralyzed from his midsection down.

7 That passenger is Che-Val Batts, and here  
8 today with us is Mr. Amos Tyndall. Amos, would you stand  
9 up? Mr. Tyndall will be Che-Val's representative in this  
10 case.

11 Che-Val is now a paraplegic, permanently  
12 paralyzed.

13 Now, who are we suing and why? I want to go  
14 through the basis of why we're here. The first reason we're  
15 suing Ford is that manufacturers must make cars that are  
16 crashworthy. They must keep passengers as safe as possible  
17 in a crash. Ford made the 1999 Ford Escort with a two-point  
18 lap belt only in the rear center. Ford had the safer  
19 three-point lap shoulder belt available. The evidence in  
20 this case will be that Ford had that three-point lap  
21 shoulder belt available long before, long before the 1999  
22 Ford Escort was manufactured. They had it available long  
23 before the 1997 complete redesign of the Escort.

24 And the cost, was the cost reasonable? Yes;  
25 9 to 12 dollars per car. That's what was in the Ford safety

1 guidelines sent to all of its managers. All of the Ford  
2 engineers, I should say.

3           You're going to hear from Mr. D'Aulerio.  
4 Mr. D'Aulerio is a crash safety expert. He has worked with  
5 the Navy in developing seats and seat belts. He has done a  
6 lot of study and work on that going back to the early 1990s.  
7 He has worked with NASA in developing ejection seat  
8 alternatives for the space shuttle and he has been qualified  
9 to testify in hundreds of cases throughout the United  
10 States.

11           You're going to hear from Dr. Joseph Burton.  
12 Dr. Burton is formerly a coroner for several Atlanta  
13 counties. And part of his work -- and this was part of his  
14 training. Not all of it was done around Miami, but part of  
15 what he did, he went to many, many accident scenes where he  
16 would go -- he would be with the first responders and he  
17 would look at the crashes and he would see how the people  
18 were injured. And that was part of his work, to determine  
19 what caused their injury. He's a biomechanic. He's a  
20 person that studies how people move in a crash. Another big  
21 word, kinematics. It's how they move in a crash, the body  
22 movements in a crash and what causes them injury in a crash.  
23 He's also testified in many, many cases on injury causation.

24           Now, we all know and manufacturers know that  
25 there are millions of crashes each and every year.

1 Manufacturers know that a little over half of those crashes  
2 are going to be frontal crashes. Some are going to be  
3 minor, some are going to be moderate, some are going to be  
4 very severe, but that's something that manufacturers know  
5 are going to happen.

6 Now, there's a number of ways to make a  
7 vehicle, car crashworthy. I want you to visualize with me a  
8 car, start at the front, the bumper. Manufacturers have  
9 done a good job in making bumpers to where every little  
10 fender bender doesn't cause a lot of damage. It causes more  
11 than we want but there's been a big improvement over the  
12 years on making bumpers crashworthy. Then visualize the  
13 engine compartment where the hood is. Manufacturers have  
14 helped make cars crashworthy by making these hoods crumble  
15 in a crash. When they crumble in a crash, that's good  
16 because that crumbling absorbs energy of the crash before it  
17 gets to the passengers. Moving on through the car,  
18 manufacturers have, you know, airbags, both on the side and  
19 in the front. They have improved seats, they have  
20 improved -- improved gas tanks, the location of a gas tank,  
21 shielding of a gas tank. A lot of improvements have been  
22 made because they know crashes are going to happen.

23 Now, I want to explain extra or enhanced  
24 injuries. That's a concept I want to make sure you  
25 understand. And to do that, I'm going to use an example,

1 all right. This example has nothing to do with this case  
2 but I think it will help you understands what that means.  
3 So if a car is in a frontal impact --

4 MS. EZELL: Objection, Your Honor.

5 THE COURT: Overruled. Go ahead.

6 MR. EMISON: If a car is in a frontal impact  
7 and in the crash one passenger receives a broken arm and  
8 another passenger receives a broken leg, every part of this  
9 car is crashworthy except the fuel tank. Because the fuel  
10 tank is not crashworthy, there's a leak, gas comes out,  
11 there's a fire, and the passengers are burned. In this  
12 example, you have crash injuries, which are the arm and the  
13 broken leg. The manufacturer is not responsible for that.  
14 But the manufacturer is responsible for the extra injuries,  
15 the enhanced injuries, the added harm caused because the  
16 fuel tank was not crashworthy. It leaked.

17 In that particular example, it's pretty  
18 clear, the burns of the passengers are the extra injuries;  
19 the broken arm and broken leg are crash injuries. The  
20 manufacture is responsible for the burn injuries because the  
21 gas tank wasn't crashworthy.

22 And you can -- you'll hear about the same  
23 example with respect to seat belts, the extra injuries  
24 caused by the lap belt because it's not crashworthy over and  
25 above what a passenger would have received if they had a

1 shoulder belt. And that's because of the jackknifing over  
2 the two-point lap belt. Ford was told back in 1986, was  
3 told before that by its own safety engineer almost 50 years  
4 ago in the late 1960s, the jackknifing of the two-point belt  
5 causes severe to fatal injuries, among the most dangerous  
6 types of injuries, and that three-point lap shoulder belts  
7 provide superior crash protection, significantly lesser risk  
8 of induced injury.

9 Not new concepts in 1999, not new concepts in  
10 1997 when the Ford Escort was redesigned. This same  
11 information was told to them almost 50 years ago time and  
12 time again as we went through the -- the timeline that we  
13 talked about.

14 Ford had choices. Ford had choices with when  
15 they made the 1999 Ford Escort. Ford chose to keep the  
16 two-point lap belt in the '99 Ford Escort. When Ford chose  
17 to do that, Ford knew that any passenger in a frontal impact  
18 would jackknife violently over that lap belt. Ford knew  
19 that there was a big risk, significantly increased risk that  
20 when that happens, that that person is going to receive  
21 severe injuries that its safety engineers told them almost  
22 50 years before that. Ford chose to put these passengers in  
23 that rear center seat at risk.

24 Che-Val Batts did not have any choices in  
25 this case. When he sat down in that rear center seat, it

1 was the law that he put that lap belt on. He didn't have  
2 any choices. Ford is the one that had choices when they  
3 decided to put the lap belt in the '99 Escort. Ford's  
4 choice resulted in Che-Val being permanently paralyzed.  
5 What should Ford have done instead? At this point, it's  
6 probably pretty obvious. They should have put a shoulder  
7 belt. Should have put a shoulder belt in the '99 Escort.  
8 Ford should have kept all passengers safe. That would have  
9 helped; again, it's obvious, Che-Val would not have  
10 jackknifed violently over the lap belt. Che-val would never  
11 have been paralyzed in this case.

12 I want to talk to you about another sled  
13 test. This sled test was done in 1995. And this sled test,  
14 it had a code name of CT120. That was Ford's code name for  
15 the '97 through 2002 Ford Escorts. Again, complete redesign  
16 of the Escort in 1997. They continued to sell that Escort  
17 through 2003, and I think you might hear a few were sold  
18 in -- or 2002 and a few were sold in 2003. So the same  
19 basic car was sold from '97 at least to 2002. Well, in  
20 1995, Ford did -- or Ford -- there was a sled test done. I  
21 think you'll hear that Mazda actually did the sled test and  
22 I'll explain that later. It's a partnership. Ford had a  
23 partnership with Mazda to build the Escort. So a sled test  
24 was done in 1995. And in that sled test, Ford put crash  
25 test dummies in the back seat of the Escort. Only on the

1 outboard where it -- on the outboard against the windows on  
2 the outside, the crash test dummies had the three-point lap  
3 shoulder belts. So these crash test dummies had a shoulder  
4 belt and they crashed that car, a frontal crash with the  
5 sled test at about 35 miles an hour. And -- and what Ford  
6 saw in that crash test was that those crash test dummies did  
7 not violently jackknife over because they had a shoulder  
8 belt. Ford saw that in this Ford Escort that the  
9 three-point lap belts worked very well with the crash test  
10 dummies.

11 Now, in this crash test, Ford did not put a  
12 crash test dummy in the rear center seat with the lap belt.  
13 So it's empty. And what you'll find is, is that Ford often  
14 did that. They did not put crash test dummies when they did  
15 a crash test. And I'll talk more about that in just a  
16 minute. They did not put a crash test dummy in the  
17 two-point lap belt when they did these -- these tests.

18 The second reason we're suing Ford: When a  
19 manufacturer knows of a danger in its product that can cause  
20 harm, then the manufacturer must eliminate the danger.

21 This is a very basic safety concept that is  
22 taught to safety people, taught to safety engineers, some of  
23 the most basic engineering courses. It can be applied to  
24 any manufacturer; that is, when you have a product, you must  
25 identify the potential dangers or hazards with the product.



1 When you identify those dangers, then you must design them  
2 out if it's possible. Sometimes you can't. Sometimes you  
3 can't. But if a manufacturer can design out the danger or  
4 harm, they must do that. If they cannot design it out, then  
5 they must shield or guard. And I'll explain a little bit  
6 about that, too. If they can't shield or guard, then they  
7 must warn the consumer or user of the product about the  
8 hazard or danger.

9 Ford had a safety rule, same safety rule,  
10 design the product to eliminate potential hazards. Again,  
11 this applies to all manufacturers. To explain this, again,  
12 I want to use an example that you may be familiar with  
13 around your house. In the old days, they had automatic  
14 garage door openers that wouldn't stop if something was  
15 in -- down in between them. So if you -- if you hit your  
16 garage door opener, it went down. And if something was in  
17 its way, it was not good. And so pets were injured; and,  
18 unfortunately, some children were injured when that happens.

19 Well, the garage door manufacturers knew they  
20 had to eliminate that danger. And so what they did, they  
21 developed a beam of light that goes across the bottom. So  
22 now if somebody -- if that garage door is going down and a  
23 pet or a person is in the way of that door, that beam of  
24 light is broken and the door won't hurt anybody. That's  
25 just an example of identifying a danger or hazard and

1 eliminating that danger or hazard.

2 Another example -- this will date me a little  
3 bit -- but when I was growing up, there were riding lawn  
4 mowers and it certainly wasn't a good idea but people  
5 sometimes would get up and get -- step off of those riding  
6 lawn mowers before they were completely stopped. And not a  
7 good idea. But lawn mower manufacturers identified  
8 that -- a lot of people got hurt that way, and they identify  
9 that hazard, and they eliminated the hazard very simply.  
10 They made it so if somebody stood up in the seat, there was  
11 a switch that would shut that lawn mower off immediately.  
12 That's just another example -- and I could keep talking. I  
13 won't. But that's another example of an everyday product  
14 where a hazard was identified and because of safe design, it  
15 was eliminated.

16 Ford had a safety policy. They had another  
17 rule, a safety policy that said design and build cars to  
18 advance the state of the art in safety whenever practicable.  
19 That safety policy went way back, way back.

20 The state of the art with respect to safety  
21 in the rear center seat for the 1999 Ford Escort was a  
22 three-point belt. The state of the art to keep passengers  
23 safe as possible in the event of a crash was to put a  
24 shoulder belt in that rear center seat. Was it practicable?  
25 It was 9 to \$12 per car. 9 to \$12 per car.

1 Ford violated its own safety policy when they  
2 chose to put that Escort -- that '99 Escort out on the road,  
3 out to be used by young adults, by adults with that  
4 two-point lap belt.

5 What happens when a manufacturer chooses to  
6 violate its own rules? Well, it's what happened when Ford  
7 chose this. Ford chose the lap belt, not the safer design  
8 that they had been told 50 years ago by their safety people  
9 to use. And when that happens, people get hurt really bad.  
10 Che-Val jackknifed. Che-Val broke his back. Che-Val is  
11 permanently paralyzed. There are consequences to  
12 manufacturers' choices.

13 I want to run through these real quick  
14 because it's obvious, what should Ford have done? Provided  
15 Che-val with a shoulder belt. Provide him with a shoulder  
16 belt, he would not have jackknifed, Ford should have kept  
17 all passengers safe. Che-Val would have never jackknifed,  
18 would never have been paralyzed, he would be back to his  
19 normal life today.

20 Mr. D'Aulerio is going to talk to you about  
21 why two-point lap belts are not safe in a frontal crash.  
22 He's going to talk to you about why three-point lap shoulder  
23 belts are much safer than two-point lap belts. He's going  
24 to talk to you why Ford should have provided Che-Val with  
25 the safer three-point lap shoulder belt. They should have

1 provided Che-val with a shoulder belt.

2 He's going to talk to you about why Che-Val  
3 would not have been paralyzed in this crash, if he had been  
4 provided the shoulder belt.

5 Dr. Burton, I'm going to quickly run through  
6 his conclusions, that Che-Val suffered an injury to his  
7 spinal cord. I don't think that's going to be in dispute.  
8 His spinal cord was injured by the two-point lap belt when  
9 he jackknifed over and now he's permanently paralyzed.  
10 Dr. Burton will talk to you about the fact that Che-Val wore  
11 the lap belt properly, that the two-point lap belt caused  
12 Che-Val's permanent injuries including paralysis, and that  
13 if Che-val had been provided the shoulder belt, he would not  
14 have jackknifed, he would not have been paralyzed, and he  
15 would be living a normal life today.

16 We've also sued Mr. Rios. Mr. Rios caused  
17 the crash. He pulled out in front of the Escort. Mr. Rios  
18 is responsible for the crash injuries to Che-Val. Che-Val  
19 received some bumps and bruises in addition to the permanent  
20 injuries from his lap belt only. But with respect to the  
21 lap belt only, the permanent injuries are the extra or  
22 enhanced injuries that Che-Val received from not being  
23 provided the shoulder belt.

24 Everyone in this case, all witnesses on both  
25 sides in this case, agree that all of Che-Val's permanent

1 injuries came from the two-point lap belt. All injuries --  
2 all the permanent injuries to his midsection tearing through  
3 his small intestine, tearing through his large bowel,  
4 getting -- cutting through his muscles and his fatty tissue,  
5 getting all the way back to his spinal cord, all of that was  
6 caused by the lap belt. That's one thing that I don't think  
7 you're going to see any fight over in this case.

8 Before coming to trial, we wanted to look at  
9 several things in this case. I want to go through some of  
10 these. Number one, were government standards good enough?  
11 What we found was that government standards are minimum  
12 standards. It says that right in the standard, right in the  
13 standard. It says they're minimum standards. We also found  
14 that government inspectors do not go to the assembly plants  
15 at Ford or any other manufacturer to check and see how the  
16 seat belts performed.

17 The manufacturers self-report. They send a  
18 document to the government saying we comply. We comply. So  
19 the government doesn't go to the plants before the cars are  
20 put on the road and check it. The manufacturers  
21 self-report.

22 We also found that every car that's been  
23 placed on the road since about 1967 has met the minimum  
24 government standards. Every car on the roadway since 1967,  
25 the manufacturer self-reported to the government said these

1 cars meet the minimum federal standards.

2 We also wanted to look and see if this --  
3 that the shoulder belt was the -- maybe a safety feature for  
4 just the luxury or expensive cars. And what we found is  
5 that in 1999, Ford put the lap belt in the rear center of  
6 many family and economy cars; the Taurus, the Sable, the  
7 Contour, the Mystique. Those are not luxury cars.

8 Why did they do that? Because the part cost,  
9 the part cost was 9 to \$12 per car. Was the three-point lap  
10 shoulder belt practicable? Absolutely. You're going to  
11 hear from a Ford representative in this case and he said a  
12 rear center shoulder belt was feasible. It was in other  
13 cars by 1999. He's talking about the '99 Ford Escort. It  
14 certainly was feasible for Ford to do that.

15 How much better? Well, what we wanted to do  
16 was see how much better were -- was a three-point lap  
17 shoulder belt than a two-point belt. And so -- I'll go back  
18 to that. What we found -- what we did was we went back and  
19 looked at that 1995 crash test of the Escort. And what we  
20 saw was that the crash dummies in that performed very well.  
21 They didn't jackknife over it. It performed very, very  
22 well. We went back and we looked at what Ford engineers  
23 were telling -- Ford safety people were telling Ford  
24 managers back in 1966: Lap belts were dangerous, that  
25 three-point belts were significantly better. We saw the

1 recommendations in 1966, 1991, and 1997 for Ford to put a  
2 three-point belt, the safer belt in the rear center. But  
3 those recommendations were not followed. So it's clear that  
4 Ford knew and other manufacturers knew that the shoulder  
5 belt was much safer than a two-point belt. We also want to  
6 know was there something about the Ford Escort that made it  
7 where it was -- you couldn't put it in there? And what we  
8 found again was the Ford representative said no, we could  
9 have put it in the Ford Escort, if we wanted to. It was  
10 feasible.

11 We looked at the similarly sized cars; again,  
12 these cars. The -- the Escort certainly is a small car.  
13 These are not large luxury cars. So the Ford Escort, what  
14 we found is Ford had no good reason to not put that shoulder  
15 belt and provide that for Che-Val in that '99 Escort.

16 We wanted to look at crash and sled tests.  
17 And I've already talked to you about the sled tests that we  
18 saw and the dummies being ripped apart, showing the danger  
19 of a lap belt. The '95 crash test showing how well the  
20 three-point belt worked. What we wanted to look at is what  
21 Ford did to show if in the Escort, if they put a dummy -- a  
22 crash test dummy in that lap belt. And we don't have one.  
23 Ford said they can't find one. So you won't see any crash  
24 test dummy in -- for the Ford Escort in a -- in a lap belt  
25 only.

1 Ford knew what would happen to that dummy.  
2 They didn't put one in it.

3 Ford did a crash test for this case. And  
4 this is not a sled test. Ford did a crash test for this  
5 case. They took a '99 Escort and they ran it into a 1999 --  
6 or 1994 Jeep Cherokee. They ran it in at the same speed as  
7 what their expert -- what their reconstruction person says  
8 the speeds were. And you'll hear about that. And in that,  
9 we wanted to see if Ford put crash test dummies in their own  
10 tests in this case. They didn't put any. They didn't put a  
11 crash test dummy in the three-point belt. They didn't put a  
12 crash test dummy in the lap belt only. So they went to all  
13 this trouble for the crash test, didn't put any dummies in  
14 the cars.

15 We wanted to see if child seats were a  
16 problem. Was that a reason why Ford didn't put a  
17 three-point belt in the Escort? So we looked at other 1999  
18 Ford vehicles with a three-point belt in the rear center  
19 seat, Taurus, the Sable, the Continental, the Town Car, the  
20 Contour, and child seats fit in all those three-point belts  
21 in the rear. There was one more there I missed, the  
22 Mystique and the Focus. No problem with child seats in the  
23 rear center in those cars. The hundreds of thousands of  
24 those cars that Ford put on the market in 1999.

25 I want to go back because with respect to the



1 child seat, in that 1997 Ford safety design guideline, it  
2 talked about the retractor and how well that retractor  
3 worked with child seats. You'll also hear Mr. D'Aulerio.  
4 Mr. D'Aulerio went out and bought all the information on the  
5 child seats available in 19 -- for 1999. And Mr. D'Aulerio  
6 will tell you -- will tell us that all child seats that he  
7 was able to find, and he found a lot, would have fit in the  
8 rear center of an Escort with the safer shoulder belt.

9 We wanted to find out if shoulder belts were  
10 a problem for children, children who were old enough they  
11 didn't need a booster seat, they didn't need a child seat,  
12 but they were children who would sit in that rear center  
13 seat and use the lap shoulder belt. And so we looked at the  
14 1999 Ford Contour. We looked at some other things, too,  
15 that you may hear about. But we looked at the Ford Contour  
16 brochure for 1999 and there's a little girl sitting in a --  
17 the rear center with a shoulder belt that goes right over  
18 her shoulder, and it fits perfectly.

19 That's what I was talking about there, the  
20 '99 Ford Contour. We wanted to see if speed was an issue in  
21 this case.

22 Now, both sides have an accident  
23 reconstructionist who looked at everything and will tell you  
24 what they believe the speeds were. And what we found is  
25 that the speeds are very similar. The chief velocity at

1 impact, Mike Sutton is our accident reconstruction witness,  
2 he said 12 to 13. Joe Kent is Ford's. He said 14 to 15.  
3 So the Jeep Cherokee was going 12 to 15 miles an hour. The  
4 Ford Escort velocity at impact, Mr. Sutton 31 to 33;  
5 Mr. Kent, 33. 31 to 33 is what the Escort was going. And  
6 then you're going to hear both tell you about Delta-V. It's  
7 another engineering term. I will never be able to explain  
8 it to you in a short period of time the way I need to. But  
9 it's -- it's the change in velocity, and that's what safety  
10 experts look at when they look at the forces, how severe the  
11 impact is, what the change in velocity that the -- the  
12 people inside had to experience and go through during a  
13 crash. And in this, Mr. Sutton said the change of velocity  
14 was 15 to 17, and Ford's witness, Mr. Kent is going to say  
15 22.8 miles per hour. And what the safety experts are going  
16 to tell you in this case is that at these kinds of speeds,  
17 and these change in velocities, that it's not a minor crash.  
18 You're not going to hear that. It's a crash that people are  
19 going to receive some injuries. They're going to receive  
20 some broken bones. And people are going to receive some --  
21 some other types of injuries, but people should not be  
22 paralyzed in this kind of crash if the parts are  
23 crashworthy. So that's what we looked at. That's what  
24 you'll hear in this case.

25 We also looked at the kinds of injuries the

1 other people in the car, the Escort, received. Nikita Stone  
2 is the driver. Nikita is Che-val's mother. She was wearing  
3 her three-point belt. She had her shoulder belt like the  
4 driver does. Her injuries: Cuts and bruises -- or cuts,  
5 bumps and bruises, aches and pains, and she eventually had a  
6 ligament replaced, the ACL in her knee. She eventually had  
7 that done. That was her injuries in the front seat as the  
8 driver.

9 Thomas Batts, that's Che-Val's father, now,  
10 you're going to hear some witnesses say he was belted;  
11 you're going to hear some witnesses say he was unbelted.  
12 I'll let you decide. But we know what his injuries were.  
13 He had a broken leg. Now, he did have bumps and bruises.  
14 He did have aches and pains. You're going to have that in a  
15 crash like this. But his crash injury was a broken leg.

16 Teresa Durham: Teresa was seated in the back  
17 seat. Now, I -- I think I mentioned this, Thomas Batts was  
18 the right front passenger, okay, his father. Teresa Durham  
19 was in the back seat sitting seated to Che-Val's left. And  
20 he called her aunt. She was really just a very, very close  
21 friend of his mother's and she's an adult. She was unbelted  
22 right behind the driver. Her injuries: Two broken legs.  
23 And that's exactly what you would expect in this crash for  
24 someone who's on the side closest to the impact that's not  
25 belted, two broken legs.

1                   She had had bumps and bruises and obviously  
2 aches and pains.

3                   Nicholas Stone. Nicholas is Che-Val's half  
4 brother. Nicholas was seated to Che-Val's right. Again,  
5 you're going to hear some people -- some witnesses say he  
6 was belted; you're going to hear some say that he was not  
7 belted. It's up to you to decide. But he was to Che-Val's  
8 right sitting right next to him in the back seat. His  
9 injuries: Bumps and bruises, aches and pains. He was out  
10 walking or he walked away -- he walked away from this crash.  
11 That's all he had.

12                  Che-Val was in the most insulated position in  
13 the car for this particular impact. He was in the center  
14 rear. And you'll see photos of the interior of the car.  
15 There's nothing from the outside that came in. All of his  
16 injuries were caused by the violent jackknifing over the lap  
17 belt. I'm going to repeat all that because, obviously, he's  
18 permanently paralyzed.

19                  We wanted to see if the Escort's age was a  
20 factor. It's 11 years old. Che-Val happened to be 11 years  
21 old at the time of this crash, too. And what we found is  
22 that this Escort actually performed very well in this crash;  
23 that the front crumbled just like it was supposed to crumble  
24 to absorb the crash; the airbags deployed; and that the only  
25 part that was not crashworthy was the lap belt.

1                   So we looked at the lap belt. There's  
2 nothing about -- it's dirty. You'll see it. It's --  
3 it's -- it's not -- you know, it's dirty. But it's -- it's  
4 sturdy. It's very sturdy. There was nothing about the age  
5 of the lap belt that was any factor in causing the injury.  
6 It was just because it was a lap belt. A brand-new lap belt  
7 would have induced, caused the same injuries to Che-Val as a  
8 11 -- 11-year-old lap belt. A lap belt is a lap belt.  
9 Safety engineers have known for years and years and years  
10 what happens in a frontal crash if somebody -- the potential  
11 risk if somebody has a lap belt on.

12                   The Escort was bought used by Thomas Batts.  
13 They had the car for less than a year.

14                   I mentioned before Mazda, and we wanted to  
15 find out before we came to trial, was there anything about  
16 Mazda's part in -- in -- in the Ford Escort that would be a  
17 problem? And what we found was that Ford and Mazda had a  
18 partnership to build the Escort. They had a partnership to  
19 build several other cars: The 626 Mazda and some other  
20 ones. But with respect to the Escort, this was a  
21 partnership between Ford and Mazda. And what we found was,  
22 is that Ford's representative made it very clear -- this is  
23 the official representative for Ford -- for Ford Motor  
24 Company in this case -- that the decision to put the  
25 two-point belt in the rear center was a decision that was

1 made by Ford Motor Company. Ford Motor Company made that  
2 decision.

3           Would a three-point belt have been better,  
4 the same, or worse? And so what we did is we went back to  
5 the sled testing and looked at that. And what we found  
6 is -- we want to also look at Che-Val's size. That's why I  
7 put this here. You're going to hear Dr. Azikiwe.  
8 Dr. Azikiwe was the trauma surgeon who was at WakeMed when  
9 Che-Val first came in from the accident. She is the one  
10 that did the emergency surgery on him. She first saw him.  
11 And she said that when he first came in to the hospital,  
12 that they estimated his height at 5'6" and that they weighed  
13 him with a very sophisticated weighing machine, a scale, and  
14 he weighed 154 pounds.

15           Now, he comes in on a stretcher. And she'll  
16 tell us that when they put that stretcher on the scale, the  
17 scale automatically -- automatically deducts away the weight  
18 of the stretcher and that that is what they know Che-Val's  
19 weight was when he came in from the accident site. So  
20 Che-Val was 11 years old, but Che-Val was the size of an  
21 adult. And what we found is instead -- if you looked at the  
22 sled testing, if you talked to the safety experts, a  
23 three-point belt works very well with someone this size.  
24 And that if Che-val had been provided a shoulder belt, no  
25 jackknifing, no lap belt cutting into his belly, and no

1 paralysis. That's the sled test. I won't talk to you about  
2 that again. We've already discussed the one in '95 that  
3 showed the three-point belts work really well, the Ford  
4 Contour showing the little girl much smaller than Che-Val  
5 and the shoulder belt fitting very well.

6 We also wanted to see if Che-Val did  
7 something to contribute to his own injuries. We wanted to  
8 look at that question. And what we found was we talked to  
9 the first person to get to Che-Val and that was Ms. Fulcher.  
10 Ms. Fulcher testified that Che-Val's seat belt looked like  
11 it was cutting into his belly. It was tight. That's one  
12 thing we want to find out, was it tight? She said it was  
13 tight. It was tightly fastened. We also wanted to know  
14 whether -- where his seat was, where his buttocks were in  
15 relation to the seat back, and she said that his buttocks  
16 were right back up against the seat back. So if I sit down  
17 in this, that she testified his buttocks were right back up  
18 against the seat back. We wanted to know that to see  
19 whether he -- he somehow was out of position. She said he  
20 was not.

21 And she confirmed the lap belt was around  
22 him. She didn't take it off. It was around him and was  
23 very tightly around him.

24 Her husband John Fulcher was the second  
25 person. And I need to tell you that they got there -- they

1 didn't see the crash but they got there right after the  
2 crash. Their testimony was within a minute or two, within a  
3 few minutes after the crash, they got there. Ms. Fulcher  
4 went right to Che-Val, Mr. Fulcher checked on somebody else  
5 then went to Che-Val. And Mr. Fulcher testified that he saw  
6 the lap belt on. He testified that the lap belt was where  
7 one would expect it to be. He said that he had a  
8 13-year-old stepson and if he had put the lap belt around  
9 his stepson, he would have put it exactly where Che-Val's  
10 lap belt was located when he saw him right after the  
11 accident. He said that Che-Val's lap belt was where a lap  
12 belt would normally be.

13 We wanted to check and talk to the first  
14 responders. Brandon Taylor is the -- I believe he was the  
15 chief of police and the chief of the fire department in  
16 Farrell, Missouri (sic). And he said that Che-Val's lap  
17 belt was on; and, again, his buttocks were right back up  
18 against the seat back.

19 We wanted to look at the owner's, the -- the  
20 Escort owner's manual. And what we found of the owner's  
21 manual has one page in it about a lap belt. And that page  
22 says as a lap belt should fit snugly and as low as possible  
23 around the hips, not around the waist. That's what the  
24 owner's manual -- now, as far as we know, there's going to  
25 be no evidence that there was ever an owner's manual in that



1 Escort, but we wanted to find out what the owner's manual  
2 said.

3 And what we found was that there's a  
4 photograph taken at the hospital, and this photograph shows  
5 the belt mark. It shows the belt mark on Che-Val. And that  
6 belt mark is exactly where a lap belt should be. It is low.  
7 It is well below his bellybutton. It's well below his  
8 bellybutton in a very clear belt mark on this photo. I  
9 believe what you'll find is that Che-Val still has a scar  
10 from that belt mark. He still has his scar from -- from the  
11 belt mark.

12 And so what you'll hear from both sides, I  
13 believe, is that the best evidence of where that belt --  
14 where the lap belt was located was the evidence on Che-Val's  
15 body, where that belt mark was located. And what you'll see  
16 from this photograph, I believe what you'll hear from  
17 several witnesses is that the belt mark was low. The belt  
18 mark was exactly where you would expect a normally worn lap  
19 belt to be.

20 We also wanted to see if a two-point lap belt  
21 had a retractor. And what he found is, is that the Escort  
22 lap belt had no retractor. And we believe that most lap  
23 belts out there did not have retractors. But definitely the  
24 one that Che-Val was wearing -- wearing did not have a  
25 retractor. Every person in that car had a three-point belt

1 with a tractor -- with a retractor, but no retractor for --  
2 no retractor for the lap belt only. A retractor would have  
3 automatically prevented any slack from being in the lap  
4 belt. It helps you -- it helps take that slack out, and it  
5 makes it very easy to make the -- the lap shoulder belt  
6 perfect when you put it on.

7 Ford -- again, Ford provided a retractor in  
8 its three-point lap shoulder belts in the Escort, none in  
9 the lap belt. If Ford had provided Che-Val with a  
10 three-point lap shoulder belt, we wouldn't be here today.  
11 We would not be here today. There would have been no chance  
12 of slack in the belt. Che-Val would not have jackknifed  
13 violently over the lap -- over the lap belt because he would  
14 have had a shoulder belt protecting him.

15 Also, what we found is when we looked at  
16 whether Che-Val contributed to this, what we found is that  
17 no one's critical of Che-Val. Ford's witnesses are not  
18 critical of Che-Val. We wanted to look at mom, Nikita, and  
19 any others inside, the -- the passengers in the Escort.  
20 Nikita was the driver. What you'll find is they stopped at  
21 the Foy Mart, which is right on Rocky Cross Road right off  
22 the interstate. They stopped at the Foy Mart for gas. And  
23 I believe what you'll hear is that Thomas Batts was the only  
24 one to get out -- he got gas -- that Che-Val definitely  
25 didn't get out of the car. Che-Val had his lap belt on.

1 Nikita will tell you when she left that she looked back, and  
2 it looked to her like Che-Val was wearing that lap belt just  
3 like he should be.

4 Now, we wanted to see about other people  
5 inside the car. And what we found was that Teresa, Nikita's  
6 close friend that Che-Val considered his aunt, was playing  
7 UNO, a card game, with Che-Val in the back seat; and she  
8 didn't have her belt on. And I believe what you'll hear  
9 from her is she was scooted over by the door facing -- if  
10 Che-val was seated here (indicating), she was facing this  
11 way (indicating) and -- and they were playing UNO. But  
12 there's nothing to indicate that Che-Val was out of  
13 position.

14 What we found was the eyewitness testimony  
15 from the people we've talked about, the marks on the belt,  
16 all indicated that the lap belt was being properly worn --  
17 worn by Che-Val at the time of the crash.

18 Now, we wanted to look at if there was  
19 anything else from inside or outside the vehicle. And what  
20 we found is, is that some of the people in the car testified  
21 and talked about the spare tire being in the back seat right  
22 after the crash. And what you'll see is that the back seat  
23 of the car -- it's a 60/40 seat back where you can fold it  
24 down from the trunk -- on the right side where Thomas --  
25 where Nicholas was located is the smaller portion of that,

1 and that was dislodged. The seat back behind Che-Val was  
2 dislodged; but, obviously, he was sitting there, so it  
3 wasn't, you know, out.

4 And so what we found is that some of them  
5 talked about a spare tire being in the back. Ms. Fulcher,  
6 Mr. Fulcher, who was there within minutes, they didn't see  
7 any tire. So -- and everybody -- everybody agrees that all  
8 of Che-val's injuries were from the two-point lap belt.  
9 Everybody agrees that all of his permanent injuries were  
10 from that two-point lap belt.

11 Now, the crash was on August 16th of 2010.  
12 Ford ran the litigation crash tests. What you'll find is, I  
13 believe everybody agrees, that Mr. Rios pulled out of  
14 Anderson -- Anderson Road onto Rocky Cross and was in the  
15 path of Nikita when the crash took place. Nobody is  
16 claiming Nikita was at fault, and I don't believe anybody  
17 will claim she was at fault. Mr. Rios pulled out into her  
18 path. She did her best to slow down. She barely had time  
19 to get on the brake, and I don't know if there was any  
20 "effective" breaking, meaning -- meaning she tried to put on  
21 the brake, but -- but, really, she didn't have time to -- to  
22 brake very much. She was going well under the speed limit.  
23 The speed at impact was 33. The -- the speed limit there  
24 was 55. And you'll see Ford's litigation crash tests in  
25 this case. And you'll see the speeds at what -- the Escort

1 was going 33. You'll see the speed -- well, the -- the Jeep  
2 Cherokee in the crash test is stationary and the Escort is  
3 run into it. But you'll see the type of crash this was.

4 The damage to the Escort shows no intrusion  
5 into the rear seat. The front of the Escort, it's smashed.  
6 It's smashed. And that is exactly what it's designed to  
7 do -- to crumble and absorb the energy. But if you look at  
8 the back half of the Escort, it doesn't look like it's been  
9 in a crash.

10 And the Jeep, Mr. Rios had no injuries. He  
11 walked away. He was out walking around right after this  
12 impact. In the Escort, I'm going to go through these real  
13 fast, Nikita Stone, the driver: Cuts and bruises and a  
14 ligament injury. Mr. Batts: A broken leg. Nicholas Stone,  
15 the half brother sitting right by Che-Val: Bruises. He was  
16 walking around right after the impact. Teresa Durham, no  
17 belt, no belt at all, she had two broken legs.

18 Dr. Azikiwe, again, the main trauma surgeon  
19 at WakeMed, she saw the large seat belt marks; she called it  
20 a seat belt sign. They're trained to look for that, and  
21 she'll talk to us about that. The WakeMed record, this is  
22 what the actual record says and I put it in plain English.  
23 I didn't put all the medical terminology. Near evisceration  
24 with the bowel contained only by the skin and tissue. So  
25 the skin and tissue was the only thing holding back his

1 internal organs.

2 Significant tears to the small intestine at  
3 two locations, a tear in the large bowel, extensive injury  
4 to the entire abdominal wall and muscles at the level just  
5 below the umbilicus, the bellybutton consistent with  
6 transection -- transection from the seat belt. That's in  
7 the medical records right when Che-Val was there, right  
8 after the crash and they confirmed that the injury -- there  
9 was an injury to the spinal cord.

10 Dr. Azikiwe's conclusion: The lap belt  
11 caused all of Che-val's permanent injuries.

12 Everyone agrees, everyone agrees all of his  
13 permanent injuries were caused by the two-point lap belt.  
14 We all know now what would have prevented those injuries: A  
15 shoulder belt. A shoulder belt in the '99 Escort and we  
16 wouldn't be here today.

17 Mr. Tessener is going to talk to you about  
18 some -- more about the injuries and things that Che-Val has  
19 had to go through since the crash.

20 THE COURT: Members of the jury, we'll take  
21 our lunch break at this time. We're going to shorten the  
22 lunch break just a little today so we can get all of the  
23 opening statements in.

24 Now, during the lunch break, I would ask that  
25 you recall and abide by the instructions I gave you earlier

1 today concerning your conduct. It's fine if any of you want  
2 to go to lunch together, just do not discuss the case,  
3 again, among yourselves or with anybody else. Please  
4 continue to keep your minds open. You have not heard any  
5 evidence at all. You've heard one opening statement. Abide  
6 by all the other instructions. When you come back, I'm  
7 going to ask that you report directly to the jury  
8 deliberation room, which is where you met before you were  
9 brought into the courtroom. And I'm going to start back at  
10 1:30. So please be on time; 1:30.

11 All right. Everybody remain seated, please,  
12 until our jurors leave. We'll see you folks at 1:30. So,  
13 again, just meet in the jury deliberation room. Oh, yeah.  
14 Yeah. Before you leave, we are going to give you jury  
15 deliberation badges on the way out. If you'll wear those  
16 over the lunch break, they identify you to others as jurors,  
17 and you'll wear those around the courthouse at all times.

18 Thank you, sheriff.

19 (The jury was excused from the courtroom at 12:25 p.m.)

20 THE COURT: All right. The absence of all of  
21 the juror, anything for the Plaintiff before we recess for  
22 lunch?

23 MR. TESSENER: No, Your Honor.

24 THE COURT: For Defendant Ford?

25 MS. EZELL: No, sir.

1 THE COURT: For Defendant Rios?

2 MR. LEWIS: No, sir.

3 THE COURT: After Mr. Tessener's opening  
4 statements, of course, we'll take a recess and, Ms. Ezell,  
5 that will give you a chance to get set up. And then if you  
6 need one before you argue, Mr. Lewis, we'll take another  
7 after her argument -- or after her statement; not argument.

8 All right. Then we'll be in recess, sheriff,  
9 until 1:30.

10 (Court was in recess from 12:27 p.m. to 1:30 p.m.)

11 THE COURT: Plaintiff ready?

12 MR. TESSENER: Yes, Your Honor.

13 THE COURT: Defendant Ford ready?

14 MS. EZELL: Yes, sir. Defendant Rios ready.

15 MR. LEWIS: Yes, sir, Your Honor.

16 THE COURT: All the jurors back?

17 THE BAILIFF: Yes, sir.

18 THE COURT: Bring them in.

19 (The jury entered the courtroom at 1:32 p.m.)

20 THE COURT: All right. The record should  
21 reflect the presence of all jurors and all counsel. The  
22 jury remains with the Plaintiff. Mr. Tessener.

23 MR. TESSENER: Thank you, Your Honor, may it  
24 please the Court.

25 Counsel.



1 MS. EZELL: Yes, sir.

2 MR. TESSENER: And the jury. We had the  
3 opportunity, most of us, to meet the week before last or  
4 last week. My name is Hoyt Tessener along with Kent Emison  
5 and Hunt Willis. We represent Che-val Batts. My portion is  
6 to talk to you about the harms and the losses for Che-Val.  
7 I'm not going to get into how things really happened, other  
8 than to talk about that. And I told you, we had jury  
9 selection, that I was going to need to talk to you about  
10 this. And that the only thing you are to consider --  
11 because the judge is going to you instruct you at the end of  
12 this case -- is for an amount of money to make up for those  
13 harms and losses for what he has gone through and will go  
14 through.

15 And you're not to consider anything else,  
16 just the evidence that you have here that we're going to  
17 bring before you to determine those harms and losses.

18 I told you then and I will tell you again,  
19 it's not about sympathy. Time for sympathy is long over.  
20 This is to provide you with the information that you need to  
21 make your decision. On August 16th, 2010, Che-Val was in  
22 the rear center seat with a lap belt. He saw Mr. Rios  
23 through the windshield pull out, the wreck happened. It's  
24 an accident. Those things -- those things happen.

25 In an instant, his brother, Nicholas, gets

1 out of the car. Che-val tells him, I can't feel my legs.  
2 And he wants Nicholas to help him. Nicholas is afraid. And  
3 his legs were in an odd shape, one under the passenger's  
4 seat, front passenger's seat and one under the driver's  
5 front seat.

6 Very soon Beth Fulcher comes on the scene,  
7 literally within minutes. She finds Che-Val seated in the  
8 back seat. She noticed -- she describes his legs as  
9 contorted, and he's sort of just got his head tilted to the  
10 side. And she gets in with him, and he tells her he can't  
11 feel his legs. She holds his hand, and he cries. Soon  
12 Brandon Taylor comes, the fire chief from the Ferrell Fire  
13 Department. He's the first first responder. He's a  
14 paramedic, EMT, fireman. Comes and takes over from  
15 Ms. Fulcher, and sees the lap belt, it is tight around  
16 Che-Val low, his back is sitting up and, again, just leaning  
17 over. And he wants to get out. He's frightened. Chief  
18 Taylor unbuckles the belt, lap belt, eases him down and then  
19 other paramedics come and they take Che-val out of the  
20 vehicle.

21 He goes with his father to Wake Medical  
22 Center, Craig Perry and Jason Spruill were the two  
23 paramedics that come in. They note the large seat belt sign  
24 in the left lower quadrant and the right lower quadrant and  
25 take him to the hospital. Che-Val doesn't really remember

1 much about the hospital. And probably more frightening than  
2 anything for Che-Val was he's in an accident, and he tells  
3 Beth Fulcher that his tummy hurts. And he tells the EMT  
4 people that his tummy hurts. But more troubling is that he  
5 doesn't feel any more than that. He doesn't feel his legs.

6 So he gets to the hospital, and Dr. Ndidi  
7 Azikiwe is the trauma surgeon that's on call. They call her  
8 in. And she sees the large, what she describes as a seat  
9 belt sign. She assesses him and she said she remembers  
10 Che-Val. One, he had a different name; but, two, she said  
11 how he reacted. And she was touching him trying to find any  
12 sensation. She said he would just very stoically say, "I  
13 can't feel my legs. I can't feel my legs." "Do you feel  
14 this?" "No. No." She checked him over from head to toe.  
15 The only -- he had two injuries. What's been -- what's been  
16 described as a burn or a belt mark and a small cut or  
17 laceration on his left foot, on the top of his left foot.  
18 It must have got up under the seat or something. But,  
19 otherwise, no other bruises, no other abrasions, and no  
20 other complaints. And obviously, he couldn't feel what he  
21 had on his foot and because of his situation, Dr. Azikiwe  
22 took her time looking to see what sort of injuries he might  
23 have.

24 From looking at him, seeing where he is, CAT  
25 scans, finding all of the different damages, as you heard

1 Kent talk about, that they could see from the CAT scan, the  
2 first thing she decides to do, we've got to do an  
3 exploratory surgery. We've got to see what's in here. We  
4 know there's things to do. So Che-Val -- she goes into  
5 surgery, immediately she gets consent from his dad. His  
6 mom's not there yet. She is coming in a different vehicle,  
7 so dad who broke his leg in the wreck is there at the  
8 hospital, gives consent, they take him -- take him in.

9           She then says we open and just sort of the --  
10 and she'll describe this for you, but basically start with  
11 the easiest first and start and her -- this is her words "we  
12 put him back together." And she described it as very  
13 tedious and challenging surgery. She had to call in three  
14 other surgeons to help her. As she has -- she has seen the  
15 crash test that Kent talked about, and she will tell you  
16 that that's exactly what happened to Che-Val, where he was  
17 just essentially cut in half. Only thing that was holding  
18 him together was his skin.

19           So his bowels, some is cut out, some is put  
20 back together. The muscles are sewed back together as best  
21 they can. That's the day that this happened. That's not  
22 enough. The seat belt broke his -- it broke his back and  
23 injured his spinal cord.

24           So the very next day, he had to go back into  
25 surgery again with an orthopaedic surgeon to then fuse his

1 back, put in metal rods, screws, to hold that back in place.  
2 And it goes above and beyond where it was broken. It goes  
3 higher up on him because it's -- it's the only way he can  
4 keep himself straight up. So he had that surgery the very  
5 next day from Dr. D'Aulerio at WakeMed. From there, he goes  
6 to the intensive care unit, and you'll see that his medical  
7 records are 3,000 pages. And the PICU, the Pediatric  
8 Intensive Care Unit, so he goes there. He's there for ten  
9 days. He has -- he's intubated. There's a tube down his  
10 throat. He has a port to get medicine. He has a feeding  
11 tube. Once he is able to -- to recover enough, he then goes  
12 into the regular hospital, begins a little bit of sort of  
13 therapy and sort of trying to explain to an 11 year old his  
14 situation. And then he goes to the rehab hospital. And the  
15 rehab hospital is part of Wake Medical Center in Raleigh,  
16 but the -- the director of that, the medical director, is a  
17 man named Patrick O'Brien. He's also the director of the  
18 rehab hospital at Nash General. And -- and he's been there,  
19 I think, since 1991. And he takes care of people with --  
20 with spinal cord injuries, brain injuries, that sort of  
21 thing. And has taken care of a lot of children that have  
22 them. And he is -- he is Che-Val's doctor. So he undertook  
23 his care when he came to the rehab facility.

24                   Once he got there, and when I -- sort of  
25 think about rehab, I've always thought about kind of

1 physical therapy, that sort of thing. But it's much more  
2 than that when you have this situation. And Dr. O'Brien is  
3 going to tell you, he's known Che-Val now for four years --  
4 over four years. And he says he has got a great attitude  
5 and he's got a great mom who takes care of him. That's two  
6 things he has going for him.

7 But he will never -- he will never walk  
8 again. One of the reasons Che-Val is not here is because  
9 Che-Val believes he will walk again. He researches spinal  
10 cord regeneration. He researches robotics. He researches  
11 those things but -- but his doctors will tell you he's not  
12 going to walk again. But Dr. O'Brien will tell you that he  
13 has a great attitude. He's a good student. He's a good  
14 kid, and he expects him to lead a fulfilling and productive  
15 life.

16 But it will be with chronic conditions  
17 forever. And everything you do, Dr. O'Brien will tell us  
18 everything you do, every complication that you take care of,  
19 once you take care of it, it creates another complication.  
20 And then you have to take care of that complication which  
21 begins another complication. And what you see in spinal  
22 cord patients is they just have -- they have to adapt  
23 because everything is different for them.

24 But Dr. O'Brien is hopeful. But the rehab --  
25 this is what is -- you do have to learn physical therapy.

1 But what we learn from Dr. O'Brien is that at 11 years old,  
2 your muscles aren't fully developed. It's not as if you  
3 were paralyzed when you were 25 years old or 30 years old.  
4 But at 11 years old, your muscles aren't fully developed.  
5 Now, for Che-Val, once this happened, his arms and shoulders  
6 became his legs. So his arms and shoulders are his arms and  
7 shoulders and they're also his legs. Any mobility he has is  
8 rolling a manual wheelchair. That's all he has.

9 Well, that's too much. That's too much on  
10 his arms. It wears them out. And they're not developed.  
11 The muscles weren't developed yet. But he doesn't have a  
12 choice. He doesn't get a chance to rest those arms. If  
13 he's wants to move, he's got to use his arms.

14 His core muscles, what holds you stable that  
15 nobody really thinks about too much, helps you stand up, all  
16 of those things. Not only were they not developed, they  
17 were ripped apart. They were eviscerated. So he doesn't  
18 have the muscles even if they were developed, which is, as a  
19 result, you put in this fusion to help him stay to where he  
20 can sit up; but now he's already developed scoliosis at the  
21 top of his spine, which Dr. O'Brien says he will need  
22 further fusions going up. So it's one complication for  
23 another.

24 But that therapy, they go in and -- and they  
25 teach him things that he can do, sort of work out his arms

1 and his shoulders to try to get stronger instead -- as  
2 opposed to just doing this one exercise all the time. But  
3 then there's occupational therapy. And I never really -- I  
4 thought, well, that must have something to do with work,  
5 occupational. But it's -- it's not. What he has to learn  
6 is he doesn't get to get out of a chair. It's all  
7 transference for him. So it's -- it's transferring from one  
8 sitting position to a laying position to another sitting  
9 position. If he wants to get out of his wheelchair and sit  
10 on a sofa, he has to learn to transfer. If he wants to get  
11 into an automobile, he has to transfer. If he wants to get  
12 into bed, get out of bed, everything about that is transfer.  
13 So that -- he gets taught that. He gets taught how to do a  
14 wheelie in a wheelchair so that he can get over bumps.  
15 Enough to go up but not so much that you go down. But if  
16 you do fall over, try a way to get up and he's not mastered  
17 that yet. When he does fall over, he can't get up yet.  
18 But -- but -- but that's some of the things that they --  
19 they train him for.

20 And that's every day and it's just -- you  
21 know, we could be up here for -- forever talking about the  
22 consequences, but it's as simple as grooming, because you  
23 roll up to the sink, you may not can see the mirror. You  
24 may not can reach the sink because you can't get to it. So  
25 you've got to learn how to make those turns in every tight



1 corner. You go up to the refrigerator, you can't open the  
2 door because your wheelchair is right there. So all of  
3 those things had to be learned. So -- so that's what he  
4 begins with his inpatient rehab.

5 But that's -- that's not all that -- that he  
6 had to deal with. Because Che-Val's injury was where it  
7 was, he has a neurogenic bowel and bladder. It means he  
8 can't feel it. He doesn't know when he's got to go to the  
9 bathroom. So they start training him on a bowel and bladder  
10 plan. He's on a bowel plan or a bladder plan. And, for  
11 example, his bladder plan is he catheterizes himself four to  
12 six times a day. But before he can catheterize himself, the  
13 nurses, therapists had to do it for him, show him how to do  
14 it, show his mom how to do it. And I don't think I have to  
15 go into detail with what's involved with catheterizing,  
16 you -- you understand.

17 But people had to do that to him, and his mom  
18 had to do that to him until he could learn how and get  
19 comfortable to do it himself. And that's what he does for  
20 the rest of his life.

21 And then he's on a bowel plan, and  
22 Dr. O'Brien will explain that to you. But, basically, where  
23 you try to manage how many times you go to the bathroom.  
24 And when you decide to go, you have to digitally make  
25 yourself go. You have to use -- but first, nurses had to do

1 it, his mom had to do it, and now he's had to learn to -- to  
2 sort of try to make himself go to the bathroom.

3 But here's where you -- these things happen  
4 because he has to catheterize himself, he has urinary tract  
5 infections a lot. Once he has a urinary tract infection, he  
6 has to have antibiotics. Once he's on antibiotics, he has  
7 diarrhea. And he can't control -- and he doesn't know it.  
8 He can't feel it. He -- there's -- he only knows it if he  
9 smells it. And that's the rest of his life. So those are  
10 the things he's having to learn to do in his therapy at 11  
11 years old.

12 Now, while all of this was going on, while he  
13 was in therapy, this happened in -- in August 16th, 2010.  
14 Che-Val had finished the fifth grade, and he was a good  
15 student. He's got all kind of awards of character and  
16 honesty and things that he -- he did in his school and now  
17 he is starting middle school, sixth grade. He's going to  
18 North Johnston Middle School. And you know, there's going  
19 to be new kids there coming from different elementary  
20 schools, things like that. Well, this wreck happens 10 days  
21 before he's getting ready to start the sixth grade. So he  
22 doesn't go to school that first semester. North Johnston  
23 Middle School sends out a teacher, Gary Boyd, who starts  
24 coming to the hospital to -- to, I guess, home school him  
25 but hospital school him. And then once he got out of the

1 hospital, he came to his home because he really had not  
2 mastered, he went from -- he had the outpatient -- he had  
3 inpatient rehab but then he continued to have outpatient  
4 rehab that his mom would bring him to -- to practice and  
5 work on some of these things. And so he didn't go to school  
6 at all his sixth grade year. He did everything just home  
7 schooling.

8 But he passed, and he did well. And even  
9 Mr. Boyd will tell us, he will come talk to us, and he even  
10 taught Che-Val to play Chess and they will play Chess when  
11 they finish with their schoolwork. So he was -- he was  
12 motivated to do well in his school, and he did well. He  
13 starts school then the seventh grade year at North Johnston  
14 Middle School. All of the other kids had already been there  
15 a year, and now he's starting in the seventh grade in a  
16 wheelchair.

17 North Johnston assigns a teacher's aide as  
18 his case manager. Her name is Angie Taylor, and she said  
19 Che-Val was very quiet and reserved when she met him. And  
20 over time, they formed a bond. And her job was to sort of  
21 help him, if he -- he had a lot of accidents at school.  
22 When he did, he would go to her, and she would try to help  
23 him, if she could. Because it's not easy to clean him  
24 because he's got to have a place to lay down and all of  
25 that. But she had surgery on carpal tunnel syndrome and

1 came in and had a brace on her arm. She'll tell you Che-val  
2 asked her about that. She said, well, you know, I had to  
3 have surgery. He goes, the doctor told him I've got to have  
4 that surgery now, too, using his wheelchair. So they  
5 exchanged exercises. So he would work with her, she would  
6 work with him on his exercise so she wouldn't have to have  
7 surgery on the other hand and maybe delay the surgery he  
8 would have on his. So that went well. He drew pictures for  
9 her. He loves to draw. She always wrote notes. Her  
10 daughter is the same age as Che-Val and was moving on to  
11 North Johnston High School. Well, Che-Val thought that's  
12 where he was going to go. Turns out he ended up getting  
13 assigned to Corinth-Holders High School. His mom, Nikita,  
14 put in for a transfer so Che-Val could stay with Angie,  
15 Ms. Taylor, because they had -- you know, it's sort of a  
16 personal thing, and they had developed a relationship and  
17 so -- but that transfer got turned down, and so he goes to  
18 Corinth-Holders.

19 So he starts there in the tenth grade as a  
20 brand-new student in a wheelchair, and Dwight Carter is now  
21 a teacher and his case manager there. And Mr. Carter will  
22 tell us the type of student Che-Val is, the type of person  
23 he is, and his sort of accommodations and what Che-val has  
24 to deal with.

25 He rides the bus to school. When he gets

1 there, there's been a number of occasions that he has maybe  
2 had an accident on the bus. If he does, he has to come to  
3 Mr. Carter. Mr. Carter says, "I want to take him home, but  
4 I can't; the school won't let me." So he has to call his  
5 parents, and one of his parents have to come get him to take  
6 him home. So he miss -- he misses a lot of school. And  
7 he's tardy a lot.

8 In fact, Mr. Carter says one of his teachers  
9 even complained about it. Said, look, you miss too much  
10 school. Mr. Carter went to the principal about that and  
11 said, look -- look how well this -- look how well this young  
12 man does in school with all of his -- so they -- they  
13 don't -- if you miss seven days, you fail. Well, they don't  
14 apply that to -- to Che-val. And he -- he sits always right  
15 at the door, and he can leave a few minutes early because  
16 he's in the hallway and everybody is walking around and --  
17 and he's at waist level now. It gives him a little bit of  
18 time; but it also, if he does have an issue with his bowel  
19 or bladder, he can walk out. But it's not the attention  
20 that he wants. Every day he goes out.

21 But, you know, Che-Val is not -- you know,  
22 he's not -- doesn't have friends that come over or  
23 activities or do things at the school. He doesn't have the  
24 transportation for that. Through middle school and now high  
25 school -- he's in his tenth grade year now -- he's 16 years

1 old now. He could quit school if he wanted to. But he  
2 doesn't. But he would like to get his driver's license like  
3 most kids do when they're 16, but it's going to be -- for  
4 him, he can do it. He just needs some help and he needs the  
5 right kind of vehicle and he needs the training on that. He  
6 can do -- he can do those thing and then that would provide  
7 him some freedom and some independence.

8 But in high school and middle school, the  
9 opportunity to forge relationships, to make friends, to be  
10 what you may think is in love or not in love, to be  
11 rejected, to be accepted, all of those things that form who  
12 you are dealing with your life, he doesn't get because he's  
13 isolated. And -- and Ms. Taylor will say it's kind of like  
14 he's invisible. And -- and it's not that kids are -- are  
15 mean to him or anything, but -- but he's just sort of alone.  
16 And -- and probably the sadder thing about it is he kind of  
17 prefers that is -- because of the situation that he has.

18 Che-Val, because of his situation at -- at  
19 his house, he lives in sort of a trailer, modular home and  
20 has two doors. He can get in and out the front door, they  
21 built a ramp but he can't really get out the side door. He  
22 is -- when this happened, the -- they estimated his height  
23 at around 5'6". He was somewhere around that area, weighed  
24 154 pounds. Well, now he's 5'11" and he weighs over 180  
25 pounds. And in his house, only his father can pick him up,

1 and he can't pick him up for long, but he can at least pick  
2 him up. So if some -- something happens in that house, how  
3 does he get out? At the school, Mr. Carter will tell you  
4 that there's two people assigned to him, to find him if --  
5 when they have a fire drill, to come find him to get him  
6 out. And so -- so the school itself has two people assigned  
7 to him, where at home, or at any other time, Che-val doesn't  
8 have anybody assigned to him. He just has to -- somebody  
9 has to be there to -- to take care of him.

10 Before this happened, Che-Val was an  
11 11-year-old kid. He took karate. He was -- he earned his  
12 purple belt, which is I understand is like the fifth of the  
13 nine belts that says you're transitioning into understanding  
14 what a black belt is. He liked to play with his friends.  
15 He had a trampoline that he jumped on. He had -- liked to  
16 go water sliding. He just -- what kids do. He played video  
17 games. He really, really does like school, he like to  
18 write, likes to draw.

19 But, you know, he will tell you now his  
20 perception on life is different. You can ask him the  
21 question of "well, do you want to play football?" And --  
22 and he's thoughtful. And his answer will be "no." Because  
23 why would he? He can't. There's no point in going down  
24 that path for him anymore.

25 But that's how it was before. And his

1 family, he loves. His -- his dad is a big sort of rough  
2 character. But you can see through his rough -- his notes  
3 when he's recovering from his broken leg, Che-val would ask  
4 his mom, "can you bring a picture of dad? I hadn't been  
5 able to see him for two weeks" after he got out of intensive  
6 care. And this family, someone has to be on call for him  
7 all the time.

8                   To this point, Che-Val's medical expenses in  
9 the case (counsel writes on the flip-chart) \$528,890.  
10 That's for the medical care that's been received to this  
11 point. The surgeries, all of that, the therapy, those sorts  
12 of things. But why we are here is to get the money that  
13 Che-Val needs so that he can lead a productive life. And to  
14 do that, you will hear from -- from an expert. She's a life  
15 care planner. She has her PhD. She is a doctor that  
16 teaches at UNC. And she's a nurse by training, life care  
17 planning, has background in pediatrics, psychiatry,  
18 psychology. And what she does now is put together what is  
19 called a life care plan. And what that does is, is in a  
20 life care plan it basically goes through -- she meets with  
21 Dr. O'Brien. She talks to therapists. She has her own  
22 experience. She meets with Che-Val. She meets with his  
23 family. She goes over his school records and says, okay,  
24 what's it going to take, what's it going to cost? First of  
25 all, what does he needs for the rest of his life, and then



1 what's it going to cost? So then she puts that together.  
2 Now, then, that has to be looked at by Dr. O'Brien, and he  
3 has to approve it. And what he will tell you is he has been  
4 through this and he approves of every single thing in it.  
5 And he will also tell you that this is what's going to  
6 happen to Che-Val. This is what is going to happen to him  
7 in life. If you -- if -- if he is entitled -- if he gets  
8 everything in this life care plan, then the best he could  
9 hope for is he has no other issues. But remember what --  
10 what Dr. O'Brien says. You trade one complication for  
11 another. For example, Dr. O'Brien says that a lot of the  
12 spinal cord patients really don't like doing the bowel plan.  
13 They don't like doing that. They get tired of doing that,  
14 and it causes -- and -- and it can cause some problems.  
15 Because one of the issues that you have -- and this is in  
16 the life care plan -- is you get what is called decubitus  
17 ulcers or pressure sores or bed sores. Well, Che-Val can't  
18 feel himself back there. And to turn and position he has to  
19 do it with his arms. Dr. O'Brien will tell you that some  
20 paraplegics have spasticity. In other words, they move.  
21 That's good for preventing pressure sores because it reminds  
22 you to move. Well, Che-val doesn't have that. So he's --  
23 he's going to develop pressure sores. He's actually  
24 developed a couple of very small sores because it only take  
25 two hours for one spot to develop a pressure sore, and his

1 mom has healed them up. So he's -- he's going to have that.  
2 And Dr. O'Brien puts in there -- and he's probably going to  
3 have to have surgery. Because once you get that and then  
4 you have your bowels, it can get infected and then he's  
5 going to need surgery for that.

6 Now, what Dr. O'Brien says is some -- a lot  
7 of spinal cord patients, they don't want to do this anymore  
8 so they have a colostomy. They go in to where you start,  
9 you have your bowel movement out of the front. And it just  
10 happens. You don't have to digitally do it anymore and it's  
11 easier to clean.

12 Well, that's not in the life care plan. He  
13 didn't add that in. That would be a choice at some point.  
14 So this is what he would describe as what's called a minimal  
15 life care plan. This is what he's going to have to have.  
16 And -- and I'm not -- you -- we're going to go through this  
17 with Dr. Wilhelm and Dr. O'Brien is here. But basically, it  
18 talks about doctors' appointments, tests, the x-rays that  
19 he's going to need for the rest of his life, the medicine  
20 that he's going to need. But it's also going to talk about  
21 things that you -- like -- things like shower heads, a  
22 grabber, something that helps you reach. It has in there  
23 a -- an electric wheelchair so that he doesn't have to wheel  
24 all the time, give his arms a break. It has a sports  
25 wheelchair to give him an opportunity so that he can -- so

1 that he can play wheelchair basketball or do something like  
2 that it's -- it's -- that's therapeutic for him. So it has  
3 those types of things.

4 It also has surgeries that he is going to  
5 have to have, shoulder, shoulder surgery, back surgery, hand  
6 surgery. But then it goes for -- if Che-Val has shoulder  
7 surgery, for a period of time, he is a triplegic. He  
8 will -- he's never going to have the use of his legs; but  
9 once he has his arm operated on, he doesn't have use of one  
10 of his arms. So he needs more help then. Once that arm  
11 heals up, he has surgery on the other arm. He needs help  
12 then. But as this is a minimal life care plan, it allows  
13 for adapting his home so that he can get in and out. And it  
14 allows for adapting it one other time in his life. It  
15 provides him with a CNA so that someone can come in. But  
16 not 24 hours a day, not until he's 70 years old do they  
17 say -- Dr. O'Brien says he needs that. Between now and 18,  
18 he would get four hours a day and then from 18 to 43, two  
19 hours a day. And then he would gradually get more. And the  
20 point being, although his mom has done a great job, found  
21 these pressure sores, she's not trained. She is learning on  
22 the job. She is not a professional and she shouldn't have  
23 to be his aide or his nurse. She ought to be able to be his  
24 mom, and -- and let him have some of that privacy.

25 Well, once a life care plan is done because

1 Dr. Wilhelm can put in what the costs are, this is what it  
2 cost now. Well, as we know, costs go up, especially medical  
3 costs. And as those go up, what we have to do is have an  
4 economist. And the economist goes through the life care  
5 plan. The economist is from the University of Chicago,  
6 Dr. Stan Smith. And he will be here, and he'll talk about  
7 the cost of the life care plan and he'll also talk about the  
8 cost of lost earnings.

9 But once you add up everything that's going  
10 to be involved in the life care plan, this minimal life care  
11 plan, the cost (counsel writes on the flip chart) is  
12 \$8,645,638. That's what it's going to take to -- for  
13 Che-Val's medical care and to take care of him for the rest  
14 of his life because of his paralysis and everything related  
15 to that and then the things that come along from that.

16 The life care plan provides Che-Val with  
17 hope. It provides him with an opportunity that if he has  
18 the care that he needs, that he has an adapted van, that he  
19 could go to college, that he could live alone, that he could  
20 take care of himself.

21 People are able to do that and he's able to  
22 do that and he wants to do that, but he needs the help.  
23 With his disability, but given how he's worked, what we've  
24 seen, he wants to work.

25 Now, Dr. Smith will come in, and we talked a

1 little bit about this in jury selection, about loss of  
2 earnings. Che-Val was 11 years old. He didn't get the -- a  
3 lot of people start working in middle school or high school  
4 and some people even earlier than that. And they learn a  
5 work ethics. They learn what they want to do, and sometimes  
6 they learn what they don't want to do. But at least they  
7 get the opportunity.

8 Well, Che-Val didn't get that opportunity.  
9 So for him, work is going to be -- not only is it a  
10 challenge for him, it's going to be a challenge for an  
11 employer. It's going to be somebody that's got to be  
12 willing to -- to hire him and willing to accommodate him and  
13 willing to accommodate his conditions.

14 And so he needs the hope and the ability  
15 to -- to ease the burden on the employer so that the  
16 employer is equipped and knows that Che-Val can take care of  
17 himself.

18 Now, by every standard, Che-Val is come --  
19 completely and severely disabled. But that's not how he  
20 wants to live his life. Dr. -- Dr. Smith went back and he  
21 has done some scenarios for lost earnings. One is from --  
22 if Che-Val graduates high school, one is if he goes to high  
23 school with some college, and one is if he gets a four-year  
24 degree.

25 In each one of those scenarios, he will

1 explain what your salary would be if you had those and how  
2 it goes up and factors in and uses things like the Census  
3 Bureau, the Department of Labor, those statistics.

4 And Ford may very well say, "Well, that's not  
5 Nash County; that's not this area." Well, that's fine. But  
6 you have to use the statistics that you have. And you look  
7 at that and you can calculate out as if Che-Val -- this is  
8 what his earnings would have been if he were never disabled.

9 But that's not what we expect. We expect  
10 that he is going to be able to work, and he goes to college  
11 for four years. Now, for Che-Val, it probably won't be four  
12 years. If it's a four-year degree, it might be eight years  
13 for him to do it. But whatever it is, when he gets out of  
14 that -- and then you decide how long he would work, the loss  
15 that he would have -- the loss that Che-Val will have, if  
16 you look at sort of the midpoint of these different  
17 scenarios, and that will be something for you all to look  
18 at. I mean, it's got the tables, everything there. You can  
19 look at it and say, "Well, do I think he's going to work  
20 until he's 55, 62 or until he's 70," or however you want to  
21 do it; or "I think he's going to go to high school or  
22 college or finish high school," you make that decision.

23 But if you take a midpoint of that, the loss  
24 of earnings for Che-Val (counsel writes on the flip chart)  
25 is \$1,811,005. Now, that includes not just your -- not just

1 your earnings, but also the benefits that you get at work.  
2 And Dr. Smith will explain that -- you know, explain things  
3 that you would have. So that's what it's going to cost  
4 Che-Val because of his disability.

5 Now, with these things, the minimal life care  
6 plan, the earning lost, especially with the minimal life  
7 care plan, these are things that are really reimburse  
8 Che-Val because he's not going to make as much money to be  
9 able to work -- but then there's also one other thing that  
10 you really don't really think about or I -- I don't, but  
11 it's household services. And that's something else  
12 Dr. Smith will do. Household services are things you might  
13 kind of forget about but it's things you might do around  
14 your own house that you don't have to hire somebody to do.  
15 It might be clean the gutters, wash the car, fix the  
16 plumbing, things like that, that you just have the ability  
17 to do that Che-Val doesn't have the ability to do. So he's  
18 going to have to hire somebody. And the life care plan  
19 includes a few things kind of related to the medical.  
20 Dr. Smith includes really everything. So we deducted out,  
21 you know, that portion and -- and -- and that's the balance  
22 of what he's going to have. Now, with all of that amount,  
23 these numbers (counsel writes on the flip chart)  
24 \$11,317,609. That is what it will cost to fix what can be  
25 fixed and help what can be helped. But that's all it does.

1                   It doesn't make up for what Che-Val has gone  
2 through and what he will go through for the rest of his  
3 life. It does not make up for the fact that he does not  
4 have the use of his legs and will never walk again; that he  
5 will have multiple surgeries for the rest of his life; that  
6 he's got to deal with his bowels and his bladder. Every  
7 time he does one thing, he's got a problem with another. It  
8 will never make up for friendships that he never made in  
9 middle school and high school. Experiences that he never  
10 experienced, spontaneity, excitement, any of those things,  
11 he'll never get those or that time back.

12                   Now, this is money that pays for other  
13 people, other than the earnings. That does not make up for  
14 what Che-Val has gone through. And once you hear all the  
15 evidence, you will see why when we come back up here, the  
16 evidence will force us to include this amount and tell you  
17 to return a verdict of \$28 million. That's what it will  
18 take to take care of Che-Val and to make up for what he's  
19 all gone through.

20                   Because the harm to Che-Val is way greater  
21 than any of that combined, way greater than what he has  
22 got -- that is the greatest harm of all is that he is a  
23 young boy in a wheelchair.

24                   Now, Mr. Rios may -- his lawyer may stand up  
25 here and may very well accept responsibility for the



1 accident. And we certainly contend that he did cause the  
2 accident. But he didn't cause this injury. Che-Val would  
3 have been walking, just like his brother did, if he had a  
4 three-point belt. But alls he had was a lap belt.

5 We'll present the evidence for you. It is  
6 not for your sympathy. We'll show you how we calculated  
7 that number and ask that you keep an open mind and think  
8 about the difference, the chance, and the opportunity that  
9 Che-Val can have. Thank you.

10 THE COURT: Thank you.

11 Members of the jury, I think we'll take a  
12 little recess before we hear from the Defendants.

13 Again, during the break, please continue to  
14 abide by the instructions I've given you concerning your  
15 conduct. You're free to walk around the courthouse or go  
16 outside, if you would like. Wear your badges. We'll ask  
17 that you not come back into the courtroom, but rather  
18 reassemble in the jury deliberation room. Be back in about  
19 13 minutes. That will be 2:30 by the clock on the wall  
20 here. All right. The jury is excused.

21 Everybody remain seated, please, until our  
22 jurors leave.

23 (The jury was excused from the courtroom at 2:18 p.m.)

24 THE COURT: All right. Before we break,  
25 anything for the Plaintiff?

1 MR. EMISON: No, Your Honor.

2 THE COURT: For the Defendant Ford?

3 MS. EZELL: No, sir.

4 THE COURT: For the Defendant Rios?

5 MR. LEWIS: No, sir.

6 THE COURT: Counsel, the bailiff told me when  
7 the jurors return from lunch, one of them, Mr. 12 --  
8 Mr. 12 -- No. 12, Mr. Erving, stated he had a -- his  
9 daughter has a dentist appointment at 4 o'clock.  
10 Apparently, his wife is unavailable to take her. I've asked  
11 him to check with that juror to see what his drop-dead time  
12 is for leaving. I would like to start the evidence today,  
13 if we can. I will report back to you when we reconvene at  
14 2:30.

15 MS. EZELL: Yes, sir.

16 THE COURT: How long do you think it will be  
17 with your statement again?

18 MS. EZELL: Between an hour and an hour and a  
19 half. It just depends.

20 THE COURT: Well, by the time you do that and  
21 hear from Mr. Lewis, it may be academic anyway.

22 All right. We'll be in recess until 2:30.

23 (Court was in recess from 2:20 p.m. to 2:33 p.m.)

24 THE COURT: All right. Everybody ready then?

25 MS. EZELL: Yes, sir.

1                   THE COURT:   The bailiff tells me Mr. Erving  
2   says he's all right if he can leave at 3:45.  We'll do our  
3   best.  I mean, he may not.

4                   MS. EZELL:   Do you want me to continue until  
5   I'm finished, or you do you want me to stop at 3:45?

6                   THE COURT:   Continue until you finish.

7                   How long, Mr. Lewis -- I know you say not  
8   long, but what -- honestly, what would be your best  
9   estimate?

10                  MR. LEWIS:   10 or 15 minutes.

11                  THE COURT:   Well, you may give yours in the  
12   morning.

13                  MR. LEWIS:   That's fine, Your Honor.

14                  THE COURT:   Anybody have a strong objection  
15   to that?

16                  MS. EZELL:   No, sir.

17                  MR. TESSENER:  No, Your Honor.

18                  THE COURT:   All right.  You take the time you  
19   need, Ms. Ezell.

20                  MS. EZELL:   Yes, sir.

21                  THE COURT:   If you go past 4:00, you just go  
22   past 4:00.

23                  MS. EZELL:   Okay.

24                  THE COURT:   All right.  Everybody ready?

25                  MR. TESSENER:  Yes, Your Honor.

1 THE COURT: Bring the jurors in.

2 MS. EZELL: Yes, Your Honor.

3 (The jury entered the courtroom at 2:34)

4 THE COURT: All right. Our jurors are all  
5 back with us. And, Mr. Erving, the bailiff has made me  
6 aware of your appointment with your daughter and we'll do  
7 our very, very best.

8 All right. The jury at this time is with the  
9 Defendant Ford. Please give your attention to Ms. Ezell.

10 MS. EZELL: Thank you. May it please the  
11 Court, counsel.

12 Good afternoon, ladies and gentlemen of our  
13 jury.

14 THE JURY: Good afternoon.

15 MS. EZELL: If I were on the jury, my first  
16 question would be "Why are we here?" Why are we here? We  
17 are here today because Che-Val Batts, who is now 16 years  
18 old, was 11 years old at the time, was paralyzed in a tragic  
19 automobile accident. We all know how horrible we would feel  
20 if this were a friend or a loved one of ours who had been  
21 paralyzed in this kind of an accident. Naturally, we all  
22 have the greatest sympathy for Che-Val and for his family.  
23 This is true for the men and women at Ford Motor Company,  
24 and it's true for the men and women on this jury, I am sure.

25 But despite our sympathies, Che-Val and his

1 family -- for Che-val and his family, Ford believes that it  
2 is not responsible for this accident, and it is not  
3 responsible for these injuries.

4 And because it is not responsible, because  
5 Ford provided a safe car with a safe compliant seat belt,  
6 Ford believes it is unfair to place blame for Che-Val's  
7 paralysis on Ford.

8 Now, part of an opening statement is to  
9 prepare you for the evidence that's going to come. So one  
10 of the things I need to do again -- and a number of you and  
11 I talked about this during jury selection -- is to ask you  
12 to please keep an open mind. You've heard for almost three  
13 hours today what the Plaintiff's evidence is going to be,  
14 and we have to hear all of that evidence before Ford gets an  
15 opportunity to put theirs on. So I would ask you to do as  
16 the Court, I believe, has already instructed you: Keep your  
17 mind open until you hear all of the evidence.

18 As you know, somebody has to go first in a  
19 trial, and Plaintiffs go first because they have the burden  
20 of proof. They have to prove everything that they have said  
21 all morning and this afternoon. Before we get to anything  
22 that Mr. Tessener talked about -- numbers, bills -- they  
23 have to prove their case. They have to prove Ford has  
24 responsibility under the laws of North Carolina.

25 The Defendant, Ford Motor Company, doesn't

1 have to prove anything in order to prevail in this case. If  
2 the Plaintiffs don't prove their case, the case is over. We  
3 don't even have to put on evidence, but we will.

4 Now, I've been using my notes for my opening  
5 statement, and I've got a big stack of them. And I'm going  
6 to get through them as quick as I can. But I estimate it's  
7 going to take me about 90 minutes to do that, although  
8 some -- candidly some of my information has already been  
9 covered. And I'm going to use notes, because as an officer  
10 of this court, I have an obligation to be precise and to be  
11 accurate in everything that I say to you during this opening  
12 statement. And I want to be able to look back at the end of  
13 this case, however many days or weeks it is from now, and  
14 look at this stack of notes and be able to tell you how Ford  
15 has brought the evidence to prove everything I'm getting  
16 ready to preview for you.

17 This is my water.

18 On behalf of the men and women who design,  
19 build, sell Ford vehicles, I want to thank you for your  
20 service. Without you, we cannot do what we must do in this  
21 case.

22 Once again, my name is Sandra Giannone Ezell.  
23 I along with my law partner Nate Colarusso, our good friend  
24 Mr. Chris Kiger, and our lead paralegal Ms. Hargrove-Banks,  
25 whom some of you met during jury selection, are going to all

1 work very hard to bring the evidence that you need to do  
2 your job in this case.

3 So we've talked about the facts of why you're  
4 here. But procedurally, how did you get here? All you have  
5 to do to have an opportunity to be heard in court is to file  
6 a document. This isn't it, but it look kind of like this.  
7 It's called a complaint. You file a complaint. And in that  
8 complaint, you state who you think did you wrong, what you  
9 think they did, and why you think you are entitled to be  
10 heard. And when you file your complaint, you pay a filing  
11 fee. Sometimes you pay a jury fee, if you want it to be  
12 heard by a jury. And that is all you have to do, ladies and  
13 gentlemen, to get where we are today.

14 By filing this document and paying this fee,  
15 the Plaintiff is entitled to a number of procedural access  
16 to Ford information, to information about the accident.  
17 They're entitled to have this courtroom space available for  
18 as long as is necessary. They're entitled to the court  
19 staff: Ms. Bragg, Ms. McDermott, Judge Lock, Sergeant Ricks  
20 and Officer Southard. All of those people are here because  
21 the Plaintiff filed this complaint.

22 Now, the most important people that they're  
23 entitled to are you. You are the peers, both to Ford and to  
24 the Plaintiff, and you will decide these issues.

25 Ford has no choice but to be here if it wants

1 to take advantage of the process that the United States  
2 provides to defend its products, and that's why we are here.

3 According to the Plaintiff's theory in this  
4 case, the reasons for Che-Val's paralysis -- it's very --  
5 it's cut and dry: It is all Ford's fault. We heard that 15  
6 times this morning. Plaintiff's counsel says Che-Val should  
7 have made it through this accident with only minor injuries,  
8 bumps and bruises, aches and pains; because although it  
9 wasn't a low speed, it was a low violence collision,  
10 according to Plaintiff's counsel. And the only reason, if  
11 you listen carefully, that they state that Che-Val is  
12 paralyzed today is because the lap belt paralyzed him. And  
13 the only thing Ford could have done to prevent this injury  
14 was to put a shoulder belt in that belt -- in that seating  
15 position. That's the Plaintiff's case.

16 And Ford was lax. They were unconcerned with  
17 safety. I believe that is the reason Mr. Emison stated why  
18 the seat belt was as it was in 1999.

19 And, ladies and gentlemen, if -- if this were  
20 the truth of what the evidence is going to establish, that  
21 would be very concerning indeed. That would be very  
22 concerning indeed. But the facts of this case are, in fact,  
23 quite different. The evidence is different, and I  
24 appreciate the opportunity to give you the rest of the  
25 story.



1           The truth is this was a high-speed accident.  
2   It was violent. It unleashed enormous forces on the six  
3   people that were involved; five in the Ford, one in the  
4   Jeep. And every one of them went to the hospital after this  
5   accident.

6           The collision was so violent that the Ford  
7   Escort was crushed like an accordion. And not just bumper  
8   damage in the front like you may have heard, but the  
9   undercarriage is also completely accorded because of the  
10   violence of this collision.

11          The force of this collision resulted in a  
12   number of injuries: Three broken legs. And, importantly,  
13   two people had broken backs: Che-Val and his mother. She  
14   also broke a portion of her back during this accident. The  
15   collision was so intense, Che-Val's mother will tell you --  
16   Nikita Stone is her name -- that she was sure she was going  
17   to die in this crash as it was happening.

18          The evidence will be that the truth is that  
19   Alejandro Ortiz Rios was seen by Raytrell, who has been  
20   referred to as Nicholas -- I believe he goes by Raytrell --  
21   that Raytrell saw him on his phone before, during and after  
22   this accident. But whether he was on his phone or he was  
23   just not paying attention, he received not one, but two  
24   citations at this accident --

25               MR. LEWIS: Objection.

1 THE COURT: Overruled.

2 MS. EZELL: -- for failing to heed the rules  
3 of the road, going through the stop sign and into the path  
4 of travel of the Escort.

5 Nevertheless, Plaintiff's counsel stood right  
6 where I'm standing -- maybe there -- and said "It is Ford  
7 and not Mr. Rios who is responsible." Interestingly enough,  
8 Plaintiff did not say that Ford was responsible for any of  
9 the other broken bones or injuries that occurred during this  
10 accident, but only those of Che-Val.

11 The truth is in this case, Che-Val was  
12 sitting in the middle seat of this Ford Escort. He was  
13 sitting in the middle wearing his lap belt. On either side  
14 of him were people who were unbelted. Perhaps Raytrell was  
15 belted. That's going to be an issue you're going to have to  
16 decide. The truth is he is sitting in his seat with his lap  
17 belt on. And this is very important. And let me put this  
18 slide up here for you so I can have you look at this while I  
19 tell you.

20 This vehicle was packed with human bodies. I  
21 am a large woman, and these people in the back seat were  
22 larger than I am. Nessie, who was seated on Che-Val's left,  
23 weighed 260 pounds. Che-Val, I thought was 127 pounds, but  
24 we've heard today that may or may not be accurate. We'll  
25 hear more on that later. Raytrell was 205 pounds. Che-Val

1 was literally squeezed in between these folks. He had his  
2 lap belt on. So if he got in and sat back like you heard  
3 earlier, he had his back flush up against the seat, what  
4 happened was because of the hips and his bulk around him, he  
5 slid down for comfort, and he played cards with his aunt who  
6 was seated right here. And when he did that, the lap belt  
7 also moved. Che-Val didn't just slump down and the lap belt  
8 went down with him. It went up into his belly.

9 And you've heard he's paralyzed from the  
10 bellybutton down. You've heard that people saw a seat belt  
11 sign at the point of his bellybutton. And that's because,  
12 ladies and gentlemen, this lap belt was in his belly at the  
13 time of this accident.

14 And seat belts are designed to catch bone.  
15 We all have bony structures. If you feel -- well, that's my  
16 Fit Bit, so ignore that. If you feel for them, you can feel  
17 your -- your bony structures right here on your pelvis. You  
18 also have a bone in your shoulder. Belts are designed to  
19 catch your bone in an accident. That's how it keeps you in  
20 place.

21 If the belt starts above the bone, the belt  
22 is going to keep going if there is enough force, like there  
23 was caused by Mr. Rios in this case, until it finds a bone.  
24 And the first bone that this belt touched was the spine of  
25 Che-Val because the accident forces were such that he's

1 slumped down, he's playing cards, and he gets hit. And  
2 when -- when you get hit, everything goes forward. So he  
3 goes forward, the belt catches him in his belly -- not on  
4 his hips -- and we've heard, it rips through his belly and  
5 his backbone.

6 We don't know what would have happened in  
7 this case if Che-Val had been sitting upright with the seat  
8 belt down on his hip bones, because that's not what the  
9 evidence will show.

10 The facts will also be that there were two  
11 positions in the rear that had three-point belts, Nessie's  
12 seat and Raytrell's seat. And if Che-Val had fit in a  
13 three-point belt, those seats were available because those  
14 belts were not being used.

15 Now, Plaintiffs have indicated repeatedly  
16 that if -- and I apologize. I want to show you some  
17 stuff -- that if Che-Val had just had a shoulder belt -- if  
18 he had just had a shoulder belt -- everything would have  
19 been fine; he would have walked away just like his brother.  
20 That's what you've heard a number of times. But the fact of  
21 the matter is if you get in a car and you slump down and you  
22 turn to play cards and there's a shoulder belt, if you're  
23 little, it's in your face or in your neck. But if you  
24 slump, the lap belt is still in your belly because you slide  
25 right underneath it.

1                   And so irrespective of whether or not he had  
2 a shoulder belt or not, his body was going to keep going  
3 until it ran into a belt. And one of two things were going  
4 to happen: Because of the force of this accident, the force  
5 that Mr. Rios caused, the belt in his belly was going to  
6 break his back or the belt in his neck was going to break  
7 his neck. And that's what the evidence is going to be, is  
8 that a three-point belt would not -- would not, ladies and  
9 gentlemen -- have guaranteed a better result. And it could  
10 have ended up in a worse result. A broken neck results in  
11 quadraplegia, an inability to use any musculature, any  
12 compartment of your body below the neck. That would be a  
13 completely different injury altogether and not any better.

14                   But there -- besides these facts about the  
15 belt not being where it needed to be to provide its optimal  
16 protection, besides the fact that the shoulder belt would  
17 have made no difference, there's another really important  
18 reason why Ford believes this lawsuit is unfair, and that is  
19 what I indicated to you earlier, which is the Plaintiff says  
20 Ford didn't care about safety.

21                   I listened very carefully and I did not hear  
22 a reason why Ford would just randomly not put a three-point  
23 belt in this vehicle. I didn't hear that. I didn't hear  
24 what Mr. Emison thought motivated Ford to make these choices  
25 that you heard about. But what I can tell you is that there

1 were important safety reasons why the one remaining lap belt  
2 in this car stayed in this car through 1999. There were  
3 safety considerations.

4 So the truth is, is that while shoulder belts  
5 were known to reduce injuries for adult occupants -- adult  
6 occupants -- they did not perform better for children. They  
7 could not be used to test child seats. Lap belts served a  
8 safety purpose, and the transition away from lap belts is a  
9 historical time period. And it was not something that  
10 should or was conducted overnight.

11 Now, what is the purpose of a belt? When lap  
12 belts came out, the main purpose of a lap belt was to keep  
13 you in a car. It was to keep you from being ejected from  
14 the vehicle. It kept you coupled to the vehicle.

15 The main purpose of a shoulder belt was to  
16 help prevent adults from receiving head injuries. Once seat  
17 belts went in and everybody had lap belts, it was clear they  
18 were staying coupled to the car, but they were -- their  
19 heads were going forward and they were hitting the dashboard  
20 or they were hitting the windshield or they were hitting the  
21 car in front of them. So the seat belts evolved just like  
22 safety evolved. We heard about the evolution of garage  
23 doors today. Safety of all types evolves, and the same is  
24 true for seat belts.

25 Ford decided against shoulder belts for this

1 vehicle with safety in mind. Now, you've heard this from  
2 Mr. Emison, and you'll hear it from Ford as well: The cost  
3 of changing this design is not an issue. It would have cost  
4 \$12 -- between 9 and 12 dollars to change from a lap belt to  
5 a shoulder belt. So cost was not a motivating factor. What  
6 was a motivating factor? Safety. Safety was. And you're  
7 going to hear that.

8                   Moreover, this lawsuit is unfair because Ford  
9 has been and continues to be today a leader in restraint  
10 systems that protect people and occupants. In 1956, Ford  
11 was the first manufacturer to provide lap belts in cars.  
12 The first restraint in America was a Ford restraint; and  
13 that was more than 10 years before they were required by  
14 law, Ford put those in there.

15                   Ford has continued to be a leader. After  
16 that, there was Ford -- you may or may not recall this --  
17 designed and sold their own car seats, the Ford branded car  
18 seat; wouldn't compare technologically to the car seats  
19 today, but it was the first one available for child  
20 protection.

21                   Ford also was a leader in working with the  
22 states to get laws, mandatory use laws, "Buckle Up or Click  
23 It or Ticket." Ford has been a leader in trying to get  
24 those laws enacted so the cars have a chance to give you as  
25 much safety protection as they can; because if you don't

1 wear your belt, it's not going to do you any good.

2           So Ford believes it's unfair to claim that  
3 Ford did not install lap shoulder belts in the middle rear  
4 seat position because they did not care about safety. And  
5 even the Plaintiff's counsel knows -- we didn't hear much,  
6 but we did hear some -- that it was Mr. Rios and not Ford  
7 who called -- who caused Che-Val's paralysis. And what is  
8 the proof? That Mr. Rios is in this case. That in the  
9 document where the Plaintiff sued who they thought did them  
10 wrong and what they thought they did wrong, they accused  
11 Mr. Rios of causing injury to Che-Val by his negligence in  
12 this accident.

13           Now, although Ford believes that these  
14 charges are unfair, Ford understands that you as a jury will  
15 make that decision. And to help you decide this, I want you  
16 to know that we have five major points that we'll be  
17 bringing evidence on over the course of this case. And once  
18 you have heard these five points, we believe you will have  
19 everything that you need to decide the case for yourself.

20           The first point is that the accident and  
21 injuries happened -- the accident and all of the injuries in  
22 this case happened because Mr. Rios was driving his Jeep  
23 Cherokee, talking on his cell phone or otherwise being  
24 distracted, did not follow the rules and caused this crash,  
25 this horrific crash.



1                   No. 2, Ford's lap belt did not cause  
2 Che-val's tragic paralysis. It wasn't in the right place.  
3 And most importantly, a shoulder belt would have made no  
4 difference. It wouldn't have made it better, and it may  
5 have made it worse. And that's really Plaintiff's case.

6                   In 1999, our third point is that Ford, along  
7 with the rest of the automotive industry, the rest of  
8 industry in 1999, overwhelmingly had vehicles that had a lap  
9 belt at that seated position. Not just Ford, as you have  
10 heard about all morning, but a number of companies, almost  
11 all of the companies had this same configuration.

12                  Our fourth point is that over the years in  
13 1999 before and since, Ford has been and continues to be a  
14 leader in designing and installing restraint systems. And  
15 because of that, it's unfair for Plaintiff to accuse Ford of  
16 ignoring safety and -- and misleading its consumers about  
17 the safety of lap belts.

18                  And, finally, because it was Mr. Rios who  
19 caused Che-Val's paralysis and Ford could not have prevented  
20 it, it is unfair to blame Ford for these injuries.

21                  Now, we should start out where this case  
22 started, which is talking about the crash. In this lawsuit,  
23 there will be some things that will not be disputed. There  
24 will be few, there will be far between, but there will be  
25 some.

1                   One thing that is not disputed in this case  
2                   is that Ford is in no way responsible for causing this  
3                   accident. Nothing on the Ford malfunctioned. Nothing on  
4                   the Ford broke. It was being driven by Ms. Nikita Stone,  
5                   and she made -- we'll hear testimony she may have veered;  
6                   but when she turned that steering wheel, the car did what it  
7                   was told. She may or may not have applied her brakes, but  
8                   there was nothing wrong with those brakes; so whatever she  
9                   told that car to do, it did.

10                  This car had some wear and tear on it, almost  
11                  200,000 miles, but it was still going. And on the day of  
12                  this accident, it had no role in causing this crash. That  
13                  was all Mr. Rios.

14                  Now, what was going on on the day of this  
15                  crash? So on the morning of August the 16th, 2010, Che-Val  
16                  and his mom and his Aunt Nessie started off at Che-Val's  
17                  home. I'll point on here so everybody can -- can see.  
18                  Started off at Che-Val's home, which is right here. The  
19                  first thing they did that morning was they drove, dropped  
20                  off Mr. Batts at work. He wanted to be picked up again at  
21                  lunch so they could go to Pizza Hut.

22                  So instead of going all the way back home,  
23                  they went to grandma's house, which is right here. They  
24                  stayed there throughout the morning and they played UNO.  
25                  They played UNO. Around lunchtime, 12:25, 12:30, they got

1 back in the car. They picked up Mr. Batts. They drove here  
2 to the Foy Mart where they stopped. Mr. Batts got out. He  
3 put gas in the car. By this time, Raytrell had decided he  
4 wanted to go and grab lunch with them as well, so the car is  
5 completely full. Every seating position has somebody in it.  
6 And we know Ms. Stone was wearing her seat belt, and we know  
7 Che-Val was wearing his seat belt. Other than that, it is  
8 disputed as to whether or not the rest of the folks were  
9 wearing their seat belts.

10 Right after they left the Foy Mart, they had  
11 the accident that we're here about today. And you've heard  
12 that this was a bad wreck, and you've heard from me about  
13 what the evidence is going to be about the damage to the --  
14 to the vehicle.

15 Let me just show you this picture. This is  
16 sort of a zoom-in on the wreck -- on the wreck. So this  
17 represents Mr. Rios. This is where he was supposed to stop  
18 (indicating). This is (indicating) the car, the Escort  
19 coming down the road. Mr. Rios is going to make a turn. He  
20 either rolls through this stop sign or stops or doesn't  
21 stop. In any event, he will tell you he didn't see this car  
22 coming, and he goes into its lane of travel. The wreck  
23 happens there, and the vehicles both end up on the opposite  
24 side of the road. So there's your accident.

25 And you'll be given evidence from a number of

1 different people about what happened in this accident.  
2 People who were there on the scene will come and testify.  
3 People who were in the car will come and testify. The  
4 trooper who investigated it will be here. And paid experts,  
5 like Mr. Burton and Mr. D'Aulerio, whose photos you saw  
6 earlier today, have been asked also to look at this  
7 accident. Ford also will bring experts to talk about what  
8 happened in this accident. You heard about one of them, Joe  
9 Kent, who's an accident reconstructionist.

10 Now, what do we know about this accident?  
11 Mr. Emison said he couldn't describe Delta-V to you.  
12 Delta-V is the force that occurred during the accident. I'm  
13 going to try it. Delta-V just means your change in  
14 velocity. It just means a change in velocity. But the  
15 importance is how quick your velocity changes. This  
16 accident happened in less time than it takes to blink your  
17 eyes. That's it (indicating). That's it. The accident was  
18 over (clap) quicker than that. The accident was over.

19 So what is change in velocity? You're  
20 driving down the road going 25 miles an hour. You see a  
21 stop sign. You got plenty of time to brake. You brake over  
22 a minute, 30 seconds. Maybe you come to a nice stop.  
23 You've changed your velocity from 25 to 0. That's a Delta-V  
24 of 25. But you've done it over a huge amount of time, so  
25 there's no negative impact on your car.

1                   New scenario: You're driving down the road.  
2   You don't know there's a stop sign. You see it. You slam  
3   on the brakes. Everything in your car flies forward. The  
4   papers on the seat next to you flies forward. Your cell  
5   phone flies forward maybe into the footwell. Your  
6   pocketbook spills, and that's because you've braked in a  
7   number of seconds. And everything flies forward because the  
8   car stops, and anything not attached to the car keeps going.

9                   In a car accident of this nature, the  
10   accident happens in 100 milliseconds (clap), right? Blink  
11   your eye. So you're driving down the road at 25, and it's  
12   like somebody puts up a wall, and you just crumble into the  
13   car. And every -- into the wall, and nothing that's not  
14   attached to the car stays with the car; so everything flies  
15   forward.

16                  And in this case, what flew forward? All of  
17   the occupants. Every part of their body that wasn't  
18   attached to the car flew forward. What else flew forward?  
19   We heard about the tire that was in the trunk. It wasn't  
20   screwed down; and it had just been changed recently, so the  
21   doughnut tire was in the trunk. It flew forward. The seat  
22   backs that were behind Raytrell and behind Che-Val and  
23   Nessie, those came forward. They were dislodged during the  
24   accident, maybe from the -- from the tire. And everything  
25   in this -- you know, all the papers and stuff, you'll see,

1 it's a mess, because everything goes forward. And that  
2 happens in an instant. And when that happens, the only  
3 thing that keeps you attached to the car is your restraint,  
4 unless you have an airbag in front of you, which the front  
5 seat passengers did.

6 So that's what change in velocity is. It's  
7 going from 25 down to 0. And what's important is how fast  
8 it happens. And if it happens this fast, then very  
9 substantial damage happens to the body of the car and all of  
10 the bodies inside the car.

11 And who caused this car to go from 25 miles  
12 an hour to 0 in a blink of an eye? Mr. Rios. Not Ford.  
13 That's not disputed. That's not disputed.

14 Now, Che-Val was not ejected during this --  
15 during this crash. He was wearing his lap belt, and it kept  
16 him coupled to the vehicle.

17 Now, you've heard that we're going to have  
18 Ms. Fulcher come in and Mr. Taylor, and they're going to  
19 tell you that the -- the belt was tight on Che-Val. They're  
20 going to tell you that. And they're going to tell you that  
21 the seat back was up against his back. This evidence is  
22 what they saw after the crash, after the seat back dislodged  
23 and moved forward. This is not evidence of what Che-Val  
24 looked like before the crash. What he looked like before  
25 the crash is going to come from the people -- can only come

1 from the people who were in the car; his Aunt Nessie, who  
2 says he was turned sideways playing cards, and the physical  
3 evidence on his body. And where is that going to come from?  
4 That brings me to our second point -- well, let me finish my  
5 first point before I go to my second point.

6 And I mention this -- I don't have a  
7 PowerPoint, so I'll have to make due. Here we go. I  
8 mentioned this earlier. These are all of the injuries which  
9 occurred during this accident caused by Mr. Rios. Mr. Rios  
10 caused injuries to Nikita Stone. She had two fractures in  
11 her back at the thoracic level. She had a left knee  
12 laceration, eventually had a repair to her knee done. She  
13 had pain.

14 Teresa Durham was -- everyone was so shaken  
15 by this accident. They were. They were scared to death and  
16 they were shaken. Teresa -- Nessie -- Nessie will tell you  
17 that she tried to get out of the car because of the  
18 accident. She wanted to get out of the car. And when she  
19 did, her legs didn't work. So she basically just slid out  
20 of the car, and she was just laying there and her feet were  
21 still in the car.

22 Mr. Batts: Mr. Batts right here  
23 (indicating), he -- same thing. He -- his door was jammed  
24 because of the force of the accident, and it accordioned  
25 into his door. But he pushed the door and pushed the

1 door -- he's a big guy -- and eventually he got it open.  
2 And he went to get out of the car, fell right down. He'll  
3 tell you that his fracture from this accident was so bad  
4 that the bone came through his leg.

5 The amazing thing about accidents is  
6 sometimes people like Raytrell are just -- they're just  
7 blessed that day. He was unbelted and most -- most likely,  
8 and he will tell you he thinks he hit his head on the roof  
9 of the car. But he got out of the car afterwards and  
10 he'll -- he'll tell you, you'll hear this, he was dazed. He  
11 was shocked. He was upset. He was worried about his  
12 brother. But he didn't -- he was fine. He went to the  
13 hospital, he got checked out, and he was fine. And then you  
14 all have heard and know by now what happened with Che-Val.

15 So this is actually what Mr. Rios caused.  
16 This, all of these accidents -- all of these injuries to  
17 Nikita, to Nessie, to Raytrell, to Thomas, and to Che-Val.

18 Now, what about our second point? Which is  
19 that Ford's lap belt did not cause this tragic paralysis.  
20 And Ford could not have prevented paralysis with an adult  
21 belt. That's our second point.

22 So what is the evidence going to be on that?  
23 It's important for me to point out to you that the seat belt  
24 issue in this case really boils down to whether or not a  
25 three-point adult belt would have made a difference, would



1 have permitted Che-Val to be like Raytrell and just walk  
2 away. That's what Plaintiffs are saying. That's what their  
3 claim is. What is the evidence going to be?

4 We talked about it a little. People's bodies  
5 are made of many things, including bones. This is a  
6 picture -- and everybody's different. So if you stood next  
7 to your neighbor, where your bones are, are going to be  
8 higher or lower, not even necessarily dependent on your  
9 size. I come from a short-legged family. Other people have  
10 long legs. So where your bones are on your height is going  
11 to be different, but this basic anatomy is the same.

12 And a seat belt, if its properly put on the  
13 body, is going to catch the hipbone. It's going to catch  
14 this hipbone (indicating). What we know in this case is  
15 that it didn't. It didn't get the hipbone because it didn't  
16 start in front of the hipbone. It went straight through,  
17 and we heard about this. Mr. Tessener told us all about  
18 this. It went straight through the belly. It went straight  
19 through the muscle. It went straight through until the  
20 first bone it found was the spine, which is not designed to  
21 catch a load from a seat belt. But it got to that spine and  
22 it -- it fractured the spine and it damaged the spinal  
23 column, and that's why we're here today.

24 And how do we know this? How do we know  
25 after the fact where this injury occurred? A number of

1 places. You'll hear from Nddidi Azikiwe, Dr. Azikiwe. She  
2 was asked at her deposition to draw where on Che-Val's body  
3 this injury was, this seat belt mark. And you'll see it.  
4 We'll show it to you. There's a drawing that she made at  
5 her deposition. It cuts right across his belly, touches  
6 his -- the bottom of his bellybutton; touches the bottom of  
7 his bellybutton.

8 The EMT, who you will hear from, was also  
9 asked to draw the same drawing. His drawing is not down on  
10 the hips. It's up right at the bellybutton, touches the  
11 bellybutton.

12 But we didn't stop there. Ford will also  
13 bring you Dr. McNish, and he is a medical doctor who  
14 specializes in studying the human body after force has been  
15 applied to it. So just like you can look at a car -- if you  
16 ever look at CSI, you know, they look at evidence and they  
17 figure out what happened before. You can look at a car, you  
18 can figure out what kind of accident it's been in. You can  
19 look at a body and figure out how it got broken in the way  
20 that it is. And he's done that with Che-Val.

21 He started with the pictures that I've told  
22 you that the EMT and Dr. Azikiwe provided, he started with  
23 those. He got the medical records and he looked at exactly  
24 where on the body the injuries were. The injuries weren't  
25 in the pelvis region. They're in the lumbar spine and in

1 the tissue in front of the lumbar spine, as you would expect  
2 given the belt placement.

3 He then did something called a surrogate  
4 study -- and you'll see this when he gets here -- where he  
5 took someone the approximate size of Che-Val -- and if  
6 you'll hear Plaintiff, somebody smaller than Che-Val --  
7 but -- but based on the medical records, the size he thought  
8 Che-Val was, which was 5 foot, 127 pounds, and he put him in  
9 the back of an Escort. And then he put two people in who  
10 were the same approximate size as Nessie and Raytrell, and  
11 he did this to demonstrate to you all how crowded this back  
12 seat was; and that by doing this, this one little movement,  
13 Che-Val could get more space. He could get more space for  
14 his hips. He could get more space for his game.

15 So Dr. McNish took the medical records, the  
16 photographs from the EMT, the -- the photograph that was  
17 drawn on by the doctor. He -- he tracked the path through  
18 the body of the injury. He took the MRIs that had been done  
19 and the CT scans, and he built a 3D model of the body to  
20 bring to you and show you -- it's not actually like a 3D  
21 model. It's like a clay model. But there's pictures of it  
22 to show you where on Che-Val's body this injury was.

23 Now, you'll see pictures of Che-Val after --  
24 months after these injuries, and the scar is not at the  
25 bellybutton. I can tell you that right now. The scar where

1 his surgery was done is lower. But the injury path, the  
2 evidence on the day of the accident -- not where the doctors  
3 sewed him together -- you will hear that is the evidence  
4 that matters.

5 Plaintiffs will also bring you -- they showed  
6 a picture of him, Dr. Burton, and he -- he is critical of  
7 two-point belts, of belts like we have here. He is also  
8 critical of three-point belts. He will tell you -- he will  
9 tell you -- Plaintiff's expert will tell you -- that a  
10 three-point belt, which is a belt that has a shoulder strap.  
11 Y'all are now experts -- Dr. Burton, Plaintiff's expert will  
12 tell you that a three-point belt used on a child of this  
13 age, someone smaller, but -- not all 11-year-olds are as  
14 large as Che-Val -- but an 11-year-old child is at great  
15 risk in a three-point belt because that belt is too big for  
16 a child.

17 And he will tell you that when you have a kid  
18 who is too small in a belt, they are at risk of getting  
19 quadraplegia, loss of use of all limbs, because of the  
20 possibility of your head being stopped going forward while  
21 your neck is stopped. That's what Plaintiff's own expert  
22 will tell you about the dangers associated with three-point  
23 belts.

24 Our third point -- well, as we conclude this  
25 second point, nothing so far that you have heard as it

1 relates to the crash or as it relates to the belt placement  
2 will shift the blame in this case from Mr. Rios, where it  
3 properly belongs, to Ford. Nothing about that evidence will  
4 shift the blame.

5               So let's consider the third issue. The third  
6 issue or the third point is that Ford and the rest of the  
7 automotive industry in 1999 overwhelmingly decided that in  
8 the interest of child safety so that booster seats, infant  
9 seats and small children who did not sit in booster seats  
10 would have the best opportunity to do well in an accident,  
11 Ford decided not to put a three-point belt in there.

12              Now, you've heard about this at great  
13 lengths. The Federal Motor Vehicle Safety Standards, this  
14 book right here, is made up almost exclusively of the  
15 Federal Motor Vehicle Safety Standards; the rules. This is  
16 the book that all car manufacturers have to follow.

17              The Plaintiffs keep telling you these are  
18 minimum standards. What they are, are minimum standards and  
19 maximum standards. What they are, are the standards that  
20 the government has decided are the minimum standards  
21 necessary to guarantee the safety -- I said "guarantee."  
22 I've told you there's no guarantee to -- to -- and now I  
23 can't remember it -- but, anyway, to look to the safety of  
24 the motoring public. And the motoring public does not just  
25 include the one person who was hurt in this case.

1                   If you look, ladies and gentlemen, just at my  
2 trial team --

3                   Would you all stand up for just a minute for  
4 me?

5                   -- now, Ms. Hargrove-Banks is 4-foot-8. She  
6 needs to be protected in this car. Mr. Kiger is over 6 feet  
7 tall. Mr. Colarusso is in between. I have to be protected.  
8 You have to be protected.

9                   Thank you, guys.

10                  Mr. Colarusso's 1-year-old baby daughter has  
11 to be protected. And when Ford designs its vehicles, it  
12 doesn't know that Che-Val is going to be sitting in this  
13 seat. Ford has to consider the safety of all potential  
14 occupants. And when it did that in 1999, when it followed  
15 the rules, it put a two-point belt in this car.

16                  And this is another thing that will not be  
17 disputed -- will not be disputed in this case, that this  
18 vehicle, this 1999 Escort, was fully compliant with the  
19 Federal Motor Vehicle Safety Standards.

20                  And this book does not just cover seat belts.  
21 It's a bumper-to-bumper book. It covers the fuel systems.  
22 It covers your headrest. It covers your seatback. It  
23 covers all nature of child restraints and how they're going  
24 to be connected to the car. It covers your windshield  
25 wipers. It covers how to protect a car in a rear impact.

1 This book literally covers it all.

2 And Mr. Emison talked about safety  
3 improvements in a lot of these areas. He said the fuel  
4 systems are a lot safer than they used to be. It's true.  
5 And that's because the rules have changed. The rules have  
6 changed, and the car manufacturers have kept up; and, of  
7 course, they follow the rules.

8 And there will be no evidence in this case  
9 that this seat belt did not comply with those standards.

10 Now, you heard this information about how if  
11 you can't fix a problem, you need to warn about it. Well,  
12 in this case, there was a part of this car that -- that  
13 Ms. Stone never looked at. That was the owner's guide. She  
14 never looked at it. If she had, what she would have read  
15 was the lap belt -- the lap belt should be worn as close to  
16 the hips as you can get it and not in the belly. So to the  
17 extent that Ford could offer help for somebody, it's in the  
18 warnings. And this seat belt was not used in accordance  
19 with those warnings.

20 Now, we will bring another witness for you,  
21 and he's not a paid expert. I mean, he gets paid by Ford  
22 every day whether he testifies or not, and his name is Roger  
23 Burnett. His picture was put up earlier. And he has worked  
24 at Ford for a number of years, and he'll tell you all about  
25 his history. But he's an interesting engineer, because

1 unlike people who mostly testify for a living, he's actually  
2 been involved in the building and the designing of restraint  
3 systems at Ford. He has -- he's a hands-on engineer, not a  
4 sort of 30,000-foot-level engineer. And he's going to tell  
5 you a few things.

6 He's going to tell you that Ford strives to  
7 be at the front -- forefront of safety design; that the  
8 Escort in this case was designed and built using state-of-  
9 the-art technology and safety, and that retractors on this  
10 seat belt -- you heard a little bit about that -- would have  
11 made no difference. And most importantly, as it  
12 relates -- and let me just go into that issue really quick.  
13 I'm -- I'm about a whack-a-mole over here.

14 So Mr. Emison said there was retractors in  
15 every belt in this car except Chev's and they should have  
16 put a retractor in. So how does this belt work? Like an  
17 airplane belt; you put it on, tighten it to whatever  
18 tightness you need. And then during an accident, wherever  
19 it is, it stays and it grabs. And we've talked about that.

20 But if you get in a car and you slouch down,  
21 the belt goes with you. A retractor is not going to pull  
22 you back up. That's not the purpose of a retractor. That's  
23 not going to happen. This retractor didn't do it. The  
24 retractors in the other seat belts wouldn't have done it.  
25 That's not the purpose of a retractor. The purpose of a



1 retractor is if you're sitting up and you happen to have  
2 some -- some belt, it will pull the belt in. But it's not  
3 going to pull a body with it. So this whole notion that a  
4 retractor would have made a difference is not going to be  
5 borne out by the evidence.

6               So in 1999, Ford made the same decisions as  
7 the rest of the automotive industry. The following  
8 vehicles -- the following vehicles -- are all in this same  
9 class. So there are vehicles outside of the sort of small  
10 sedan, which is what this class is. But the Ford Escort,  
11 the Chevy Cavalier, the Chrysler Cirrus, the Daewoo Leganza,  
12 the Dodge Neon, the Honda Civic, the Hyundai Accent, Kia  
13 Sephia, Mercury Tracer, Mitsubishi Mirage, Nissan Sentra,  
14 Plymouth Neon, Pontiac Sunfire, Saturn S, Subaru Impreza,  
15 Suzuki Esteem, and the -- well, that's it. All of those  
16 vehicles, same size as the Escort involved in this case; all  
17 of those vehicles in 1999, same belt.

18              Ford was doing the same thing -- following  
19 the same rules and doing the same thing as the rest of the  
20 automotive industry in 1999, and that's what the evidence is  
21 going to be.

22              Did Ford have a few vehicles that had already  
23 sort of migrated to this new strategy? Yes, it did. But  
24 overwhelmingly, the industry had two-point belts at that  
25 seating position and so did Ford in this case.

1                   Now, Mr. Emison showed you a number of  
2 documents or talked to you about a number of documents.  
3 And, basically, what the evidence is going to show is that  
4 Ford is a big company with a number of engineers. And when  
5 you have a number of engineers, you empower them to state  
6 their position. You want to have a diversity of input.  
7 That's how you get the best results. So in any discussion,  
8 there's always going to be people who have the opinion that  
9 does not carry the day. Those documents do not define the  
10 history of this debate.

11                   However, if we are looking at the history of  
12 this debate, I think there are some important things which  
13 Mr. Emison did not mention. The history of seat belt  
14 evolution is divided into three very distinct time periods  
15 (counsel writes on the flip chart.) In 1968, that was the  
16 year that the -- so here is our car. And just for  
17 reference, these are the rear seats. Here's the steering  
18 wheel. These are the front seats, and this is the rear  
19 center seat. Okay.

20                   In 1968, NHTSA, who writes the rule book,  
21 said you have to put three-point belts in those two front  
22 seats, the front seats. NHTSA was also considered, as you  
23 saw by all of those documents that Mr. Emison discussed with  
24 you, that they were also -- some people thought, "Well,  
25 let's just put them in every position." But that was

1 decided by the automotive community, by the government  
2 regulators, by the American Academy of Pediatric Physicians.  
3 Everyone who weighed in on that debate said, "No, 1968 is  
4 not the right time to put three-point belts in the rear  
5 seat." There's no child seats. There's a lot of issues  
6 that weren't true later.

7               So then in 1989 -- now, you may remember this  
8 from Mr. Emison's discussions with you earlier. He  
9 mentioned some 1978 testing, some 1985 testing, a 1986  
10 safety study, 1988 sled test. All of these discussions were  
11 had because before the government comes out with the  
12 regulation, they ask people to comment. In 1989, the  
13 government passed a rule that said the rear outboard  
14 seats -- rear outboard seats, those are the seats that they  
15 were talking about prior to 1989. Did some people say,  
16 "Well, let's go ahead and throw them in every position?"  
17 Yes, they did. But when the industry as a whole considered  
18 the benefits and the disbenefits of that approach, they  
19 decided not to do it. I just read you a list of all of the  
20 people who in 1999 still had not done it.

21               Well, certainly, you're thinking that they  
22 must have made it mandatory at some point. It's true, they  
23 did. And that, ladies and gentlemen, was in 2004 for 2008.  
24 What does that mean? So the law is passed in 2004 and it  
25 says, "Okay, it's time. We've -- we've solved the problems

1 with booster seats. We've solved the problems with -- with  
2 infant seats. We've solved the problems with testing. It's  
3 time. We can go ahead and make our primary focus the  
4 protection of adults in these seating positions because we  
5 expect that children are already going to be protected by  
6 other systems."

7 So in 2004, the government said, "By 2008,  
8 every vehicle needs to have a three-point belt at their  
9 middle rear seating positions"; almost ten years after this  
10 car was manufactured.

11 Now, there is always going to be somebody who  
12 says you could have done it safer, you could have done it  
13 better, you could have done more. The law does not require  
14 safer, better, more. It requires reasonable decisions being  
15 made by Ford.

16 And we've come to the end of our point No. 3,  
17 and there's not going to be any evidence in this case that  
18 Ford did anything other than follow the rules, make  
19 reasonable safety decisions, and act like everybody else in  
20 their industry.

21 Now, the fifth -- sorry -- the fourth point  
22 is that over the years since 1999, before and since, Ford  
23 has been an innovator. They have been an innovator in  
24 safety. And why does that matter? Because designs evolve.  
25 Safety evolves. As -- as we learn more, we can do more.

1 Can we see that? Let's see. Well, all right. We're going  
2 to test my prowess here. Let's see. That's about as best  
3 as we can do.

4 So Ford has been first as it relates to a  
5 number of automotive safety innovations. In 1970s, Ford was  
6 the first to offer three-point automatic seat belts with the  
7 ALR retractor. Passive belts came out in the mid to late  
8 1980's. We talked a little bit about this in jury  
9 selection. 1995, the adjustable shoulder height came out  
10 with Ford. In 1992, Ford came with this integrated child  
11 seat. Chrysler beat them by about six months. I'll tell  
12 you that they weren't first, but they were in the beginning.

13 The latch program -- and we've talked about  
14 this. This is a system that doesn't use your -- your seat  
15 belt to attach child seats to the car. That is a system  
16 that Ford has come out with. So this has been the evolution  
17 of seat belts. So this is the tether portion of the latch.  
18 This is the anchor portion where you show the little  
19 alligator clips.

20 We talked about this in 2013, now there are  
21 airbags in seat belts to protect you in the event of a  
22 collision to even more couple you and more protect you. Is  
23 every vehicle that doesn't have an airbag in its seat belt  
24 defective? No. No.

25 And then right here, these are interesting to

1 me (indicating) as far as this case goes, the 2002. In  
2 2002 -- and there will be evidence about this -- there was a  
3 tragic accident involving a NASCAR driver who had a frontal  
4 collision, higher speeds -- 45 miles an hour, not 25 miles  
5 an hour like we have in this case -- higher speeds -- and he  
6 was wearing a five-point harness and he died. And the  
7 reason that he died is because even though his body was  
8 attached to the vehicle, his head kept going. And because  
9 his head kept going, he died. He had a brain injury. And  
10 after that, they came out with six-point belts and they came  
11 out with HANS units.

12 Now, nobody drove to court today or will  
13 drive to court or anywhere else anytime soon with a HANS  
14 unit or a six-point racing harness in their vehicle. It  
15 doesn't mean that they're not better in some circumstances.  
16 It means that they're not necessary for reasonable safety.  
17 And there's nothing wrong with your three-point belts and  
18 there's nothing wrong with your two-point belts just because  
19 six-point belts exist.

20 Now, what else do we know about safety and  
21 Ford? Plaintiffs have said that Ford just disregarded  
22 safety. But if we look -- if we just focus on the 1999 Ford  
23 Escort, in the ten years leading up to 1999 -- so from 1989  
24 to 1990 -- Ford added the following to their vehicles:  
25 Driver's front airbag, passenger front airbag, integrated

1 child reseat -- child seats, de-powered airbags, the fuel  
2 pump inertial cutoff, the adjustable D-ring that we've shown  
3 down there, antilock brakes, engine diagnostics, rear door  
4 child safety locks to keep your kids in when they need to  
5 stay in, and remote keyless entry for -- for safety in a  
6 parking lot. That's -- all of that was done for this car in  
7 this vehicle.

8 But Ford didn't stop there. In the ten years  
9 after that, between the time that this car was manufactured  
10 and the time of this accident, they added child seat  
11 anchors, child seat tether anchors, side impact head and  
12 thorax airbags, rear seat head restraints, pre-tensioners in  
13 your seat belt so it would sort of fire a little pyrotechnic  
14 and anchor your seat belt down -- that came out in the ten  
15 years after this vehicle was -- was introduced. Dual stage  
16 airbags, seat position sensors so that if somebody small or  
17 nobody is sitting in your -- in your passenger's side, your  
18 airbag doesn't go off; traction control, electronic brake  
19 force redistribution, panic braking, boosters.

20 So Ford has always been trying to improve the  
21 overall safety of its vehicles. And Plaintiffs in this case  
22 would have you believe that Ford disregards safety. If you  
23 just look at the Escort and you don't look at the rest of  
24 their vehicle line, if you don't look at what else they've  
25 done since then, they have been constantly improving the

1 safety of their vehicles.

2 Ford has also created unique technology. In  
3 1999, they created the belt minder. In 19 -- 2002, they  
4 created the safety canopy, which is an airbag that comes out  
5 during a rollover. It doesn't mean that any of the cars  
6 before that had a problem; it was just the newer, safer,  
7 better.

8 Ford has offered roll stability control. It  
9 was the first car maker to put -- and this may seem  
10 inconsequential to somebody until it's important. They put  
11 the emergency trunk releases in so if a little kid gets  
12 locked in the trunk, there's a glow-in-the-dark latch that  
13 they pull and they can get out of the trunk saving numbers  
14 of lives.

15 So Ford has not for this car, for this case,  
16 for -- for its car line ignored safety. It has put safety  
17 at the forefront of its automotive decisions. And for the  
18 Plaintiffs to claim otherwise in this case is not borne out  
19 by the evidence.

20 It brings us to our last point. The facts in  
21 this case are actually quite straightforward. The accident  
22 happened because Mr. Rios was not paying attention to the  
23 activity of driving, as was his responsibility. He  
24 accelerated quickly into the path of the Escort and caused  
25 this catastrophic crash. Both vehicles were totaled. All



1 occupants were transported to the hospital.

2           Despite the fact that Mr. Rios caused the  
3 accident and the injuries, the Plaintiff wants you to blame  
4 Ford for Che-Val's paralysis. But you will see, there's no  
5 evidence that Ford's lap belt caused these injuries. The  
6 injuries in this case -- and those injuries would not have  
7 been prevented -- there will be no evidence that they would  
8 have been prevented on this day in this wreck with this kid  
9 in this belt playing this game with a shoulder belt. That  
10 evidence will not be brought to you.

11           And so there's no basis for Plaintiff's claim  
12 that Ford, rather than Mr. Rios, should be blamed for all of  
13 the injuries in this case, including Che-val's.

14           Ladies and gentlemen, because Ford did not  
15 cause this accident, could not have prevented the paralysis  
16 with a shoulder belt and does not ignore safety, at the end  
17 of the evidence, Ford will stand here in this same place --  
18 or over there or wherever I land -- sorry about all the  
19 moving around today -- and we will ask you to use your  
20 common sense to apply the law, to set aside your sympathy  
21 and to do justice by rendering a complete defense verdict  
22 for Ford Motor Company. Thank you.

23           Thank you, Your Honor.

24           THE COURT: Thank you.

25           MS. EZELL: Are we going to move? Do you

1 want me --

2 THE COURT: That's fine.

3 MS. EZELL: All right.

4 THE COURT: Members of the jury, so that  
5 Mr. Lewis will not be rushed and in light of Mr. Erving's  
6 conflict, I think what we'll do is just go ahead and break  
7 for the day a little before 4:00.

8 When we reconvene in the morning, of course,  
9 we will hear from Mr. Lewis on behalf of the Defendant Rios,  
10 and then we'll proceed forthwith with the evidence on behalf  
11 of the Plaintiff.

12 Now, during the evening recess, please  
13 remember and abide by my instructions. Don't discuss the  
14 case among yourselves or with anyone. Don't allow anybody  
15 to discuss it with you or in your presence. Keep your minds  
16 open. You still have not heard any evidence. Don't do any  
17 research on your own into this matter. Just leave your  
18 badges in your seats --

19 Is that the best thing, sheriff?

20 THE BAILIFF: Yes, sir.

21 THE COURT: -- and we'll pass those out to  
22 you in the morning.

23 Let me stress this to you, please: We're  
24 going to start at 9:30 sharp. Please be on time. I know a  
25 couple of you have had some conversations with the bailiff

1 about some transportation issues. Please talk with the  
2 bailiff again before you leave to make sure that those are  
3 worked out and we'll make sure you get here if we need to.

4 And you can expect we'll go to 5 o'clock  
5 tomorrow. All right. Have a good evening, folks.

6 Everybody remain seated until our jurors  
7 leave.

8 See you folks in the morning at 9:30. Just  
9 go straight to the jury deliberation room in the morning.

10 (The jury was excused from the courtroom at 3:43 p.m.)

11 THE COURT: All right. The record should  
12 reflect all jurors have departed the courtroom.

13 Counsel, this week is going to be -- well, we  
14 may have to --

15 MS. EZELL: No different than any of the  
16 other weeks.

17 THE COURT: There you go. No different than  
18 the previous two weeks. We'll be recessing early Wednesday  
19 because of the funeral I have to attend and Friday to  
20 accommodate Ms. Pittman, who has told the bailiff she needs  
21 to leave at noon in order to catch her ride with the church  
22 van at 1:00. I'm going to talk with her about that tomorrow  
23 and see if it's possible for her to leave just a little  
24 later. If she insists on that noon departure, I may want to  
25 start at 9 o'clock instead of 9:30.

1                   And all weeks hereafter, I'm going to talk to  
2 the jurors about trying to schedule any personal matters  
3 first thing in the morning at 8 o'clock or so so they can  
4 get here by 9:30, or I may offer to recess an hour or two  
5 early on Friday afternoons for them to attend the banking  
6 business and trips to the pharmacy and things like that.  
7 But I'll try to keep us on schedule full days between now  
8 and the end of the trial.

9                   All right. During Ms. Ezell's opening, she  
10 made a reference to the fact that Mr. Rios received two  
11 citations as a result of the collision. There was an  
12 objection from Mr. Lewis. The Court overruled the objection  
13 having made a quick decision. Frankly, I -- I don't know,  
14 and I'm asking at this time: Did your client plead guilty  
15 to those charges?

16                   MR. LEWIS: No, sir.

17                   THE COURT: What -- what was the disposition?

18                   MR. LEWIS: In fact, he -- he was charged  
19 with no operator's license --

20                   THE COURT: All right.

21                   MR. LEWIS: -- and I -- I think safe movement  
22 type violation.

23                   THE COURT: All right. So at least one  
24 offense that I guess can be characterized as an offense that  
25 gave rise to the -- to the collision in violation of the

1 rule of the road, but there was not a guilty plea. Is that  
2 correct?

3 MR. LEWIS: That is correct.

4 THE COURT: What was the disposition?

5 MR. LEWIS: I don't think it's been disposed  
6 of. I think he hired an attorney. There's a lawyer's name  
7 on his shuck. And I don't really know what happened with  
8 it; but, apparently, he was called and failed. But there is  
9 no order for arrest out or anything of that nature that I'm  
10 aware of.

11 THE COURT: All right. What says the  
12 Plaintiff as to the disposition of that collision -- of that  
13 ticket?

14 MR. TESSENER: Your Honor, my understanding  
15 is that -- that he did not show and it was called and  
16 failed. That it -- that the actual summons was -- that the  
17 charge was attempted to be served on him several times,  
18 and -- and -- and it never happened. So that's the extent  
19 that we know of it.

20 THE COURT: So do you contend, Mr. Tessener,  
21 that you could introduce evidence of that disposition and  
22 that it not result -- that citation did not result in a  
23 guilty plea, which ordinarily is received as an admission  
24 under the law of this state?

25 MR. TESSENER: Yes, Your Honor. I -- I think

1 we should be able to put on evidence as to what has happened  
2 with the disposition. I don't think he should be able to  
3 evade a criminal action or -- or infraction and then be able  
4 to hide behind it at the same time.

5 THE COURT: All right. Do you have some case  
6 law you can produce for me in the morning on that point?

7 MR. TESSENER: I'll look at it, Your Honor.  
8 I have not looked, but I will look.

9 THE COURT: All right. Do you have any,  
10 Mr. Lewis?

11 MR. LEWIS: I'll do the same thing, Your  
12 Honor.

13 THE COURT: Please do. I'll reconsider the  
14 objection. If I think I was erroneous, if I conclude that  
15 the objection should have been sustained, I will, if you  
16 want me to, give some sort of instruction. You may decide  
17 you don't -- don't want it. I don't know. And -- and  
18 indeed, the ruling that I made during her opening may have  
19 been correct. I, frankly, need to think about it a bit  
20 myself. All right.

21 MR. TESSENER: Yes, Your Honor. We'll take a  
22 look for you.

23 THE COURT: Anything for the Plaintiff, then,  
24 before we recess?

25 Yes, sir, Mr. -- Mr. Emison.

1 MR. EMISON: Your Honor, I just wanted to  
2 mention that tomorrow, I -- I was unsure until -- I'm still  
3 a little bit unsure whether Mr. D'Aulerio will be able to  
4 get here. There was an ice storm in Philadelphia. So I  
5 believe he does have a flight. I believe he will be here  
6 tonight, and I believe he will testify tomorrow.

7 We would like to have a hearing -- and I -- I  
8 would suggest over the lunch hour -- on other similar  
9 incidents, other accidents, to be able to establish  
10 substantial similarity. And I will be as brief as possible.  
11 I will be to the point. And -- but -- but I would like to  
12 do that over the lunch hour tomorrow so there's no delay in  
13 the morning when we get started.

14 THE COURT: That was the motion in limine No.  
15 3; was that correct? We're talking about Ford's motion?

16 MS. EZELL: Yes, sir.

17 THE COURT: All right. Well, we certainly  
18 will give you the chance to make your offer and to hear the  
19 matter. Now, I am going to take lunch myself; but we'll  
20 certainly do that, yes, sir, outside the jury's presence.

21 MS. EZELL: Until just now, I have received  
22 Mr. D'Aulerio's exhibits, and I do not see exhibits  
23 consistent with any more than one other incident. So to the  
24 extent that there are exhibits with regard to that, I would  
25 ask that those be provided in advance so that I can be

1 prepared.

2 THE COURT: All right.

3 MR. EMISON: I don't believe they are trial  
4 exhibits, but I'll certainly provide the other incidents  
5 that -- that we intend to talk to Mr. D'Aulerio about.

6 THE COURT: All right. Thank you. All  
7 right. Anything else, then, for Plaintiff?

8 MS. EZELL: No, Your Honor.

9 THE COURT: Anything else for the Defendant  
10 Ford?

11 MS. EZELL: No, sir.

12 MR. EMISON: Your Honor, I am sorry.

13 THE COURT: Yes, sir.

14 MR. EMISON: There is one thing I have been  
15 meaning to bring up. That is the jury view of the vehicle.  
16 And Ford has requested that. You have indicated that you  
17 would probably allow it. I -- I don't know if you said that  
18 or not, but let me put it this way: If you allow it, we  
19 want it to be -- the jury view to be in -- in our case, our  
20 case in chief. And so we would like that jury view probably  
21 to be this week sometime. So I would like to address that  
22 at your convenience.

23 I know you have to leave here right away, so  
24 I'm not saying address it right now. But I would like to  
25 address if we're going to have a jury view, how the view --



1 the jury view is going to be conducted and that the jury  
2 view be done during our case in chief.

3 THE COURT: Well, I -- I don't know that  
4 anybody said they were going to request it. I was just  
5 alerted to the fact a party might request it. And I think I  
6 said if it were requested, I would consider it but I've  
7 never done one in a civil case, but that I certainly  
8 believed it would be in my discretion.

9 Now, are -- is the Plaintiff requesting one?

10 MR. EMISON: We are not.

11 THE COURT: Well, if you're not requesting  
12 one, then how can it be done during your case in chief?

13 MR. EMISON: Well, I would like -- we don't  
14 believe a jury view is needed with all the photos. If a  
15 jury view is done, and I guess if we have to request it to  
16 have it in our case in chief, I want to request it.

17 THE COURT: All right.

18 MR. EMISON: Because we have the burden of  
19 proof. And if the jury sees it, I think, you know, we want  
20 the -- the view of the vehicle in our case.

21 So I'll leave -- I'm leave it at that, Your  
22 Honor. I -- I would like to be more definitive, but that's  
23 where we stand.

24 MS. EZELL: And, Your Honor, just so you  
25 know, I subpoenaed the vehicle. I too would like to have

1 the vehicle viewed during my case so that the jury can hear  
2 the testimony of my witness and then go and compare it to  
3 the vehicle. I think that in fairness to the parties, it  
4 should be done maybe at the close of all the evidence so  
5 that they have all of the information about the vehicle.  
6 And if -- unless we're going to have two, I think that maybe  
7 doing it at the end is probably best.

8 THE COURT: So you're telling me that Ford is  
9 going to be requesting a jury view?

10 MS. EZELL: Yes, sir. Once -- yes, we are.  
11 We are requesting it, and I did subpoena it for that  
12 purpose.

13 THE COURT: Well, I -- I will think about it.

14 MS. EZELL: Thank you.

15 THE COURT: I'll also think about when it's  
16 done. I also will be calling upon counsel for the parties  
17 to persuade me that a jury view can accomplish what cannot  
18 be accomplished through the use of multiple photographs, and  
19 I'm assuming somebody may have actually videotaped the  
20 vehicle, the interior of it, although I don't know. I -- I  
21 will hear from you regarding the necessity of a jury view.

22 We'll do that sometime in the next day or so.  
23 Just don't let me forget.

24 MS. EZELL: Yes, sir.

25 THE COURT: All right. How long do you think

1 it's going to take given our shortened days this week for  
2 the Plaintiff's evidence in the case?

3 MR. TESSENER: Your Honor, we thought,  
4 without knowing any of this, that we would be finished on  
5 Monday of next week. With this now, I think it's -- it may  
6 very well be Wednesday of next week.

7 THE COURT: Okay. All right. Anything else  
8 for the Plaintiff?

9 MS. EZELL: No, Your Honor.

10 THE COURT: Anything else for Ford?

11 MS. EZELL: No, sir.

12 THE COURT: Anything else for Mr. Rios?

13 MR. LEWIS: No, sir.

14 THE COURT: All right. Folks, hope you have  
15 a good evening. We'll see you in the morning at 9:30,  
16 sheriff.

17 (Court recessed on Monday, March 2, 2015 at 3:54 p.m. until  
18 Tuesday, March 3, 2015 at 9:30 a.m.)

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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the March 2, 2015 Special Civil Session of Nash County Superior Court, is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 2nd day of March, 2015.

A handwritten signature in dark ink, reading "Ranae McDermott". The signature is written in a cursive style with a large initial "R" and "M".

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RANAE McDERMOTT, RMR, CRR  
Official Court Reporter  
PO Box 2314  
Garner, NC 27529  
919.602.2110

Ranae McDermott, RMR, CRR  
Official Court Reporter