

1           So if you close your packets -- and actually,  
2 bailiff, if you could collect those so I don't  
3 forget to take them.

4           You may proceed.

5           MR. NEWSOME: May it please the Court,  
6 Counsel.

7           First, I want to thank you all. I want to  
8 thank you all profoundly for the last two and a  
9 half weeks. I know that it's been boring. It's  
10 been tedious. You all have spent way too much time  
11 downstairs. But as I told you at the beginning,  
12 this is an important case. And it's especially  
13 important for the Salliotte family. And so I very  
14 sincerely appreciate your time and attention and  
15 time away from your families and your jobs, because  
16 this matters a lot.

17           If we can start.

18           So for the next phase of this case -- this is  
19 the last time that the lawyers get to talk to you.  
20 What we're going to do is, I'm going to spend the  
21 next hour or so going through what the evidence  
22 shows. It's a summary of what you've heard and  
23 what this case is about.

24           This case is about rules. It's about rules  
25 for safety. Safety rules that protect people.

1 Safety rules that people come to expect when it  
2 comes to cars or when it comes to seat belts. And  
3 this is the first rule that I talked about at the  
4 very beginning of the case, is that a manufacturer  
5 must design a vehicle to have seat belts that are  
6 accessible for seated occupants to protect people  
7 from serious injuries or death.

8 The undisputed evidence in this case is that  
9 when Michalanne Salliotte came to the Church that  
10 day at 5:15 with Corinn, and got in the van, there  
11 was no seat belt buckle there. That is undisputed.

12 She got in. She pulled her harness across.  
13 She looked for it. But because Ford broke the  
14 rule, because of the faulty design, it was not  
15 accessible. It was not available. She did not  
16 buckle up. And if she had buckled up, if she had  
17 been wearing her seat belt, then she would not have  
18 died because Ford broke that rule.

19 This is the list of why this was a bad design,  
20 why this was a defective design. The first part is  
21 about seat belts, that buckles were predictably  
22 unavailable. Ford knew that.

23 We're going to go through the evidence, and  
24 we're going to go through that point by point. But  
25 the buckles predictably would fall to the floor

1 because of this defective design. Buckles became  
2 hidden from passengers because of the design.

3 Buckles were not attached to the seats. And there  
4 are many other options to keep the buckles on the  
5 seats.

6 But this was a bad design. So that day they  
7 weren't there, as people would expect. As people  
8 would expect, because people expect manufacturers  
9 to follow safety rules. And when they don't, bad  
10 things happen.

11 And then there's the bustle-back. And you've  
12 heard about Mr. Gilbert. And we're going to go  
13 through that. And Ms. Spagnoli is going to talk  
14 about that part of the case.

15 But the bad, defective design here was that  
16 because of this design, because of this compromise  
17 that Ford used, the rear axle was overloaded by  
18 design. The rear axle caused instability so that  
19 the back end slid out with expected steering input.  
20 It was unstable and unpredictable in emergencies.  
21 Extremely difficult for ordinary drivers, much less  
22 somebody with a CDL, to control with a rear tire  
23 failure. Did not operate as an ordinary consumer  
24 would expect because of no rear wheel. That's what  
25 we're going to go through and I just want to walk

1 you through it.

2 This is the second rule that we talked about  
3 at beginning of the case, which is that a  
4 manufacturer must design a vehicle so that it's  
5 stable and handles predictably as a driver would  
6 expect in all operating conditions, including  
7 emergency maneuvers.

8 Now, those two rules, those are agreed. Those  
9 are from either Ford policies or from these  
10 experts. These are not in dispute. Those are the  
11 two rules in this case. And the evidence you're  
12 going to have to consider in this case is whether  
13 those rules were broken and, if so, whether  
14 Michalanne would still be here today. And it's by  
15 the greater weight of the evidence.

16 Remember when I talked about -- the very  
17 beginning when we were going through those three  
18 very long days of jury selection, about the perfect  
19 scales and the feather? That's greater weight.  
20 Greater weight of the evidence, which is our  
21 burden. We have to prove greater weight of the  
22 evidence, just by a little bit, that someone is at  
23 fault.

24 Now, how are you going to do that? Well, we  
25 have four different parties that are going to be on

1 that verdict form, and you're going to have to  
2 weigh the evidence. You're going to have to weigh  
3 the evidence against Ford, First Baptist, Michelin,  
4 and Michalanne. But if by the greater weight  
5 there's enough evidence to show that some of these  
6 folks are at fault or one of them is, then you need  
7 to put some fault on them.

8 And we said since the beginning that this is a  
9 case of shared responsibility. Shared  
10 responsibility, including Michalanne, that you're  
11 going to have to weigh. Responsibility for Ford,  
12 First Baptist Church, Michelin, and Michalanne,  
13 that all were contributing causes to this tragedy  
14 and to her death.

15 Legal cause. This was the instruction. Just  
16 to focus on this. Legal cause -- it says that  
17 negligence in the design or a defect is a legal  
18 cause if it -- a continuous sequence contributes  
19 substantially. It doesn't mean all, but  
20 contributes substantially to the loss, in this  
21 case, to the death.

22 Contributes substantially. All four of these  
23 parties contributed, shared responsibility. And  
24 this is another one, concurring cause. I'm not  
25 going to dwell on this too much, because the Judge

1 read it.

2 But this is the law, that in order to be  
3 regarded as a legal cause, if the death in this  
4 case or the -- or damage -- of course she died in  
5 this case. If the negligence of the defect, need  
6 not be the only cause. The four scales, shared  
7 responsibility -- such that if the negligence or a  
8 defect in a product may be a legal cause to injury  
9 or damage, even though it operates in combination  
10 with the acts of another. That's the concept of  
11 shared responsibility.

12 So weighing this evidence and looking at all  
13 four. And the percentages is your job in this  
14 case. And at end of this, when you go in the jury  
15 room, it's in your hands. It's in your hands to  
16 weigh and decide percentages of fault.

17 So these are the four scales, and throughout  
18 the next -- with that introduction -- with that  
19 brief introduction, for the rest of our time, we're  
20 going to walk through what the evidence is, and at  
21 the end of this, go through the verdict form.

22 Can I get a copy of the verdict form?

23 We'll walk you through it. It's one of the  
24 reasons we took so much time here today. But we've  
25 got a verdict form that you'll be given at the end

1 of the case. And you're going to have to fill it  
2 out. You're going to have answer who, by the  
3 greater weight of the evidence, bears some  
4 responsibility, and then actually assign  
5 percentages based upon the evidence and based upon  
6 your consideration of having weighed it at the  
7 conclusion of the case.

8 So with that, I'm going to ask that  
9 Ms. Spagnoli come up and talk about the first part  
10 of this case which is the bustle-back.

11 MS. SPAGNOLI: Thank you.

12 Good afternoon.

13 My plan this afternoon is to go through with  
14 you, both the law that the Judge read to you  
15 through the jury instructions, and the evidence  
16 that you heard in the courtroom that applies to  
17 each of the plaintiffs' claims and how you --  
18 suggest to you how to consider that evidence when  
19 you're evaluating whether to assign fault to Ford  
20 Motor Company, specifically on two of the three  
21 claims that the plaintiff has in this case.

22 Back at the beginning of the instructions, the  
23 Judge read to you what the various claims are, and  
24 there are three as they pertain to Ford.

25 The first is that the van was defectively

1 designed to have a single rear wheel bustle-back.

2 The second is that Ford was negligent in the  
3 way it designed the van to have a single rear wheel  
4 bustle-back.

5 And the third relates to the seat belts and  
6 whether the seat belts were defectively designed.

7 When I'm finished talking about the van and  
8 the bustle-back, Mr. Newsome is going to come back,  
9 and he will be talking to you about the third  
10 claim. And he will be talking to you about the  
11 negligence of the First Baptist Church as well as  
12 the damages in the case.

13 So I'm just going to be talking about these  
14 first two claims. And the first thing that we're  
15 going to do -- you've already heard a little bit  
16 about the law in terms of greater weight of the  
17 evidence -- is to go over some of the key  
18 instructions, what the law is that applies to  
19 evaluating this van's design, and whether that  
20 design was a substantial contributing factor in  
21 causing this crash and the death of Michalanne  
22 Salliotte.

23 So in the packet, when you get back and you  
24 get the instructions, you're going to see  
25 Instruction 5. And it's got a couple of parts to

1 it, so I broke them down separately to talk about a  
2 little bit.

3 The first instruction on product defect is,  
4 was the -- product is defective in design if it is  
5 in a condition that is unreasonably dangerous to  
6 the user. We're going to come back to that in the  
7 next instruction.

8 What does that mean? What does the law say it  
9 means to be unreasonably dangerous?

10 The second is that the product is expected to  
11 and does reach the user without substantial change  
12 affecting that condition.

13 Let me stop there.

14 You have heard no testimony, you've been given  
15 no evidence in this case that the van's design,  
16 when it left Ford's hands in 2002 and was sold to  
17 the New Port Richey First Baptist Church, that  
18 since that day, that anything has changed with  
19 respect to how that van performs when it's out on  
20 the road and being driven, the condition of the van  
21 in terms of how it responds to the driver's  
22 steering inputs. And that's the condition that  
23 we're going to talk about that comes about as a  
24 result of the bustle-back.

25 So you've heard nothing. In fact, you heard

1 from Mr. Gilbert specifically that when he  
2 inspected that van, there were no modifications to  
3 the van in any way that would have changed how that  
4 van handled since it left Ford's hands in 2002.

5 I believe you also heard that from Mr. Tandy.  
6 There was nothing that anyone saw that would make  
7 this van different, some change that affected its  
8 condition. So No. 2 here, undisputed.

9 So that takes us to, what does design defect  
10 mean as far as being unreasonably dangerous? And  
11 the Court gave you two options, two ways to look at  
12 the evidence. And I'm going to walk you through  
13 the evidence and talk about how that evidence fits  
14 under either one or both of these descriptions.

15 The first is, did the product fail to perform  
16 as safely as an ordinary consumer would expect when  
17 used as intended or when used in a manner  
18 reasonably foreseeable to the manufacturer?

19 So ordinary consumer safety expectations, were  
20 they met? Did this van respond in such a way that  
21 the drivers of the vans and the consumers in the  
22 vans would have a predictable response when they  
23 did something that was clearly foreseeable to Ford  
24 Motor Company? When they steered the van in  
25 response to an emergency, did that van perform as

1 safely as an ordinary consumer would have expected  
2 it to perform, or did it have a surprise?

3 Did it have a response that was not expected,  
4 and that contributed substantially to this crash?

5 The second way that the van could be  
6 unreasonably dangerous is if the risks of danger in  
7 the design outweighs its benefits. So that means  
8 if you have a single rear wheel bustle-back -- and  
9 there's some benefit to having that because you can  
10 put more people in it and put more cargo in it, but  
11 if you do that, it creates a greater risk of loss  
12 of control because you're putting too much weight  
13 in the back, that leads to the van slipping out  
14 when the driver is doing something expected.

15 You have to evaluate the risks of that loss of  
16 control from that design, that choice Ford made,  
17 compare it to the benefit, and whether there is  
18 another way to do it that would have eliminated the  
19 risk and still accomplish the objective of the  
20 design, which was to put more people in it.

21 So with those instructions, let me also talk  
22 about the negligence instruction, because they're,  
23 again, two separate claims.

24 Design defect, negligence. What is  
25 negligence? Again, this is an instruction you will

1 have. It's the failure to use reasonable care,  
2 which is the care that a reasonably careful  
3 manufacturer would use under like circumstances.

4 Negligence is doing something that a  
5 reasonably careful manufacturer would not do under  
6 like circumstances or failing to do something that  
7 a reasonably careful manufacturer would do. So the  
8 difference between design defect and negligence,  
9 think about it this way: The design focuses on  
10 what it looks like, how it performs, what it does,  
11 and whether it's an expected outcome to the  
12 consumer; whereas, the negligence focuses on what  
13 did Ford know, what choices did it make when it put  
14 this vehicle on the market, and were those design  
15 choices reasonable? Did they make sense under the  
16 circumstances of what they knew?

17 MR. CONROY: Excuse me, Counsel.

18 May we approach sidebar?

19 (The following discussion was held at sidebar  
20 outside the presence of the jury:)

21 MS. LUMISH: Your Honor, I'm sorry to  
22 interrupt, but we had the whole discussion  
23 yesterday about the different -- can a negligence  
24 claim have a defect. She's just reading the  
25 instructions, picking pieces and saying it's a

1 separate charge, it's a separate cause of action.  
2 And as we know, it's not a separate cause of  
3 action. They have to prove the defect first.

4 So we object to her using instructions in this  
5 manner. Your Honor is going to instruct them on  
6 the law, and I think this is creating a wrong  
7 impression on what the law is.

8 THE COURT: Okay. You may continue.

9 MS. SPAGNOLI: Thank you.

10 (The following proceedings were held in open  
11 court:)

12 MS. SPAGNOLI: So as I was saying, the  
13 negligence focuses on the knowledge that Ford had  
14 and the design choices they made. And if those  
15 design choices end up with a defective van that  
16 does something that surprises the consumer, the  
17 ordinary consumer who is driving it, then that  
18 negligence is a substantial contributing factor.  
19 Okay?

20 So what is the evidence? We go back all the  
21 way to 1974. This is Exhibit 17. And what you'll  
22 see -- what I did on the slides is I put down the  
23 exhibit number. So you're going to get those  
24 exhibits when you go back into the jury room. And  
25 I've also got some testimony of various witnesses,

1 and I wrote the page numbers so that if you want to  
2 hear back the testimony, that's something that can  
3 be -- you can ask the Judge to hear it. But I'm  
4 presenting to you what the testimony was that was  
5 in this courtroom.

6 So the first exhibit that really talks about  
7 this design of this van and how we ended up where  
8 this van was in 2002, goes all the way back to  
9 1974. This is when the Ford managers were trying  
10 to decide how they were going to get a van on the  
11 market to compete with this Dodge Maxivan, to have  
12 more people in it.

13 And back then, and even up until 2002, Ford  
14 wanted to have a van that carried people, but also  
15 had this alternative option of taking out the seat  
16 and carrying cargo. So they wanted this  
17 dual-purpose, cargo and people. But really, what  
18 they wanted to do at the time was put more people  
19 in the van.

20 So they were considering, how do we do that?  
21 What do we design? What is our choice? And back  
22 in '74, they said, okay, well, if we're going to do  
23 this, we're going to add people, we could go with  
24 the bustle-back by adding 18 inches behind the axle  
25 and another row of seats, or we can make the

1 wheelbase longer. And they said, engineering  
2 resource priorities requires that the program be  
3 deferred to 1977.

4 This memo, in combination with the next memo,  
5 is key as to Ford's design choice. Ford, back  
6 then, said a 158-inch wheelbase -- so 20 inches  
7 more than what was existing, cutaway has been  
8 approved as an added starter and will require  
9 increased capacity dual wheels. This is  
10 Exhibit 21.

11 So between these two memos, we have Ford  
12 management saying, if we're going to put another  
13 row in that allows us to put four more people back  
14 there behind the axle, we need to have a longer  
15 wheelbase, and we need to have dual rear wheels.  
16 But, we're not going to do it right away. We're  
17 going to defer it. That was back in 1974 and '75.

18 But here's what we ended up with: In 2002  
19 when this van went on the market and was sold to  
20 the Church, it had a wheelbase of 138 inches, and  
21 it had the bustle-back, which was an additional  
22 20 inches length. And that's all that is, is that  
23 sheet metal and that seat that holds four more  
24 people. And we know from just the math that if you  
25 filled that van up to its gross vehicle weight,

1 that you have one-third on the front weight, and  
2 two-thirds on the back.

3 And if you only had ten people in it, which we  
4 had in this case -- you heard from Mr. Gilbert,  
5 because he tested that almost exact scenario, that  
6 with ten people in it, you had 45 percent on the  
7 front and 55 percent on the back.

8 And that's the condition that creates this  
9 handling steering response that's unexpected to the  
10 operators, because when you put that weight behind  
11 the axle or spread it out -- even Mr. Tandy said,  
12 when you put people in it, the center of gravity  
13 goes up and it moves rearward.

14 And why is that important? Because they don't  
15 all have to be sitting in the back to have the  
16 weight be distributed imbalanced front to rear.  
17 When you have that imbalance, you get the back end  
18 slipping out when steering inputs are put in. And  
19 that slipping out is something called oversteer.

20 So here is the timeline of this decision that  
21 Ford made. 1974, they deferred the preferred  
22 alternative. And instead of doing dual rear wheels  
23 with either a 138-inch wheelbase or 158-inch  
24 wheelbase, they did a 138-inch wheelbase with  
25 single wheels. They did the bustle-back with the

1 single rear wheel. That's when that decision got  
2 made. And we know they put the first version of  
3 their 15-passenger van, E350, on the market in the  
4 19 -- mid-1970s, more than 40 years ago.

5 Then they came up with the VN58, which we  
6 heard both from Mr. Tandy and from Mr. Gilbert that  
7 this generation -- the second generation of the  
8 15-passenger van still had the bustle-back. It  
9 still had the rear single rear wheel, and it still  
10 had the extra 20 inches in the back.

11 And then we had the VN127, which is our van.  
12 That fits within this group, '97 to 2005. So the  
13 2002 van continues to have the same design, the  
14 bustle-back, the extra 20 inches, without duallies,  
15 going all the way back to that first decision to  
16 defer that preferred alternative. And we know that  
17 the Church purchased this van in July of 2002.

18 So in understanding how the vehicle should  
19 perform and whether it was dangerous by having this  
20 condition where the back end slips out because it  
21 didn't have dual wheels -- this is Ford's own  
22 engineering guidelines.

23 They said their objective was to have the van  
24 remain stable under all operational conditions --  
25 this is Exhibit 19 -- including accident avoidance

1 maneuvers. The vehicle should respond in a  
2 predictable manner and give the driver perceptible  
3 signals that the vehicle is at its limit.

4 So what that means is, Ford knew you shouldn't  
5 surprise a driver by having the van respond in a  
6 way that they're not expecting. And if you're  
7 driving down the road, and you put in an emergency  
8 steer, whether it's because the ladder falls off  
9 the truck in front of you, someone slams on their  
10 brakes, or you have a tire failure and you have to  
11 steer, that steering should be something that  
12 doesn't cause your van to go out of control. The  
13 van should not overreact to your steering. It  
14 should not over-respond to what you ordinarily  
15 would expect it to do when you put in steering to  
16 get around an object or make a quick change.

17 So Ford knew that.

18 And Mr. Tandy told us that he considers a  
19 tread separation on a rear of a vehicle like this  
20 to be an emergency. So what do we know about how  
21 this van actually performs? You saw these slides  
22 with Mr. Gilbert. And they're really just a simple  
23 explanation of the difference between a good design  
24 and a bad design.

25 Good design is understeer. That means the

1 front tires lose grip before the rear tires when  
2 you're turning, when your cornering.

3 Oversteer is when the back end slips, and  
4 that's more dangerous. And we know that from  
5 Mr. Gilbert, we know it from Mr. Tandy, and we also  
6 know it from Mr. Vondale, who, as you know, came  
7 here by video. His deposition was taken. We  
8 played his deposition. And here's what he had to  
9 say about oversteer.

10 (Video played.)

11 MS. SPAGNOLI: Do I need to click it to get it  
12 to run?

13 Q. "And why would oversteering not be a desirable  
14 characteristic? What does it do to the ability of the  
15 driver to maintain directional control of the vehicle?

16 A. "Oversteer, as I understand it -- and I'm not  
17 an expert -- but based on the information I have,  
18 oversteer makes the vehicle more difficult to control.

19 Q. "And more likely to slide out in a steering  
20 maneuver, right?

21 A. "Yes, it would slide out.

22 Q. "And if it slides out, it can get in a  
23 position to roll over, right?

24 A. "It can. It can also just slide out.

25 Q. "Right. But you want to have the driver be

1 able to maintain directional control and not have  
2 oversteer that's going to make it easier to slide out,  
3 right?

4 A. "Sliding out, in and of itself, is not, in my  
5 mind -- you -- sometimes sliding out is the appropriate  
6 way the vehicle is going to behave based on the maneuver  
7 and -- and it may not be dangerous. It may be something  
8 that is a desirable characteristic of the vehicle.

9 Q. "But Ford's design objective is to have a  
10 vehicle that's understeer in some degree, rather than  
11 oversteer, right?

12 A. "That's correct. Our design philosophy in  
13 this vehicle is understeer."

14 MS. SPAGNOLI: Well, what does the evidence  
15 tell us about whether that objective came true with  
16 the single rear wheel bustle-back?

17 Here we go.

18 We have Mr. Schettler. We played  
19 Mr. Schettler's testimony. He was a test driver  
20 who, in 1990, was driving an E350 15-passenger van  
21 on a Ford test track when it began to slide out on  
22 him. He describes it as, the back end would come  
23 around. The rear of the vehicle would come around  
24 in one direction as -- only at the point, as  
25 opposed to doing a fishtail. And these are his

1 words.

2 And he's asked, "So you felt the rear end  
3 coming around, and you were turning it more and  
4 more each time, and it was coming around more and  
5 more each time. Is that what happened?"

6 "Logic would say that would probably be  
7 reasonably close."

8 So here is a test track driver who rolls the  
9 van over on the test track, because he's putting in  
10 steering and the back end is coming around on him  
11 in 1990.

12 What happens? That's a red flag, according to  
13 Mr. Tandy. It shouldn't happen. And we -- I'm not  
14 going to play this whole clip of Mr. Vondale in the  
15 interest of time. But you'll see -- we played for  
16 you pages 86, 5 to 88, 24 of his testimony about  
17 Mr. Schettler. And we went through some testimony  
18 of a driver named Mr. Thrasher who said, "Hey, if  
19 you go up on two wheels and you roll over on the  
20 test track, that's a fail. A vehicle should not  
21 get a pass."

22 And yet, Mr. Thrasher says, "Oh, our vehicles  
23 don't roll over."

24 But Mr. Vondale agreed, "Well, what  
25 Mr. Schettler describes certainly was a rollover."

1           And it happened because the back end came  
2 around on Mr. Schettler. But no report was  
3 written. No red flag was responded to. Nobody  
4 knew about it. No documentation of that rollover  
5 exists.

6           I'm going to skip that.

7           And we have Mr. Tandy's memo from 1995, and  
8 he's describing driving a van. And he's trying to  
9 see, can we do something to improve the VN127 in  
10 1995?

11           He says, "The version of VN58, marked  
12 improvement over the oldest one, but customer  
13 expectations were not fully met. These issues are  
14 related to the design, not development of the  
15 suspension. And we'll continue with the VN127  
16 program since the chassis is a carryover.  
17 Suspension and steering changes must be made to get  
18 a significant improvement in customer wants, such  
19 as steering, handling and warranty."

20           So back when Mr. Tandy was an employee of Ford  
21 Motor Company, he actually wrote his opinion about  
22 this vehicle and whether it was giving the customer  
23 what it wanted and what the customer expected.

24           Mr. Tandy tried to tell you, "Oh, no, we  
25 changed it." Well, he admitted they didn't change

1 the suspension. They didn't change it.

2 And then we have the test driver who's driving  
3 in 2000, a VN127, a 1999 E350 extended wagon, and  
4 he's testing new tires for that vehicle. And  
5 what's happening? He's getting a large oversteer  
6 response in the tire A.

7 B is better. It's more forgiving. More  
8 progressive in oversteer and understeer and easier  
9 to maneuver.

10 Tire construction C was rejected for the same  
11 reasons as A.

12 A was unacceptable. Large oversteer response.

13 This is telling them, Ford, that this vehicle  
14 is not behaving in a safe manner for their test  
15 drivers, let alone people buying these vehicles.

16 And then we have -- these are the litigation  
17 recreation tests of P6101. These are the outtakes.  
18 Because when Mr. Tandy was here, he showed you the  
19 compilation that had the labels on it and the runs,  
20 that they basically had a bunch of tests that they  
21 did, outside experts to come up with a package to  
22 show juries in lawsuits about how this van  
23 performs. And they kind of cherry-picked the good  
24 ones. These are some ones that got left behind  
25 that we had, and we showed you a few minutes of how

1 this van handles when their test drivers are  
2 driving them on their test track.

3 (Video played.)

4 MS. SPAGNOLI: And you're watching -- the  
5 rear-end is coming around, and the driver stops the  
6 test in that one.

7 The front and rear tires are not tracking in  
8 these turns.

9 Back end is slipping.

10 This is Exhibit 20. You have all seven  
11 minutes on a video, if you want to watch it.

12 We didn't take speeds off of this. You heard  
13 Mr. Tandy acknowledge that.

14 This was the raw footage. And in order to get  
15 the speeds and all the instrumentation, they put  
16 that package together when they do their  
17 presentation.

18 This is a skilled driver who is managing to  
19 keep it together. Imagine this van in the hands of  
20 an unskilled test driver -- a consumer, not a test  
21 driver.

22 What else did Ford know about this van? Here  
23 is Mr. Vondale again.

24 (Video played.)

25 Q. "Again, going back to the events occurring in

1 this spring of 2001 about the 15-passenger van that you  
2 were called upon to address, you mentioned several times  
3 that there was a consumer advisory issued by the  
4 National Highway Traffic Safety Administration. If you  
5 go to tab 20, we see that advisory. And you understand  
6 that this document -- this consumer advisory was issued  
7 by the government after the analysis that had been done  
8 concerning the potential for rollover crashes involving  
9 15-passenger vans, right?

10 A. "Yes. And NHTSA has issued a number of  
11 consumer advisories since then, including one that was  
12 released, I believe, in March of this year."

13 MS. SPAGNOLI: And this is that advisory.  
14 April 2001, a year before the van in this case was  
15 sold to the First Baptist Church. And one of the  
16 statements says that the shift in center of gravity  
17 will increase the potential for loss of control in  
18 panic maneuvers.

19 That's what we've been talking about. That  
20 rear weight shift when you put people in it. What  
21 happens? More weight on the back, increase for  
22 potential loss of control. That's something Ford  
23 knew as a result of getting this advisory.

24 And they also were aware that there was this  
25 computer simulation that predicted oversteer. You

1 heard some talk about that from Mr. Tandy.

2 He says -- I asked him on cross-examination,  
3 "Mr. Tandy, that NHTSA has not just used a computer  
4 model to test the E350 15-passenger in a slowly  
5 increasing steer test and efficient test?

6 "ANSWER: This timeframe, it's true."

7 Back in 2001.

8 Later, they went and tested a real vehicle.

9 "QUESTION: And when they testified a real vehicle,  
10 they got oversteer?

11 "ANSWER: They got it to slide, like I said."

12 And then Mr. Vondale, again, was asked in his  
13 deposition about another investigation about tires  
14 that the government did, and whether the vans were  
15 contributing to loss of control and tire failures.  
16 (video played.)

17 Q. "If we look at page 4, again, the government  
18 states, quote, as with prior ODI tire investigations,  
19 the crash data showed that some classes of vehicles are  
20 more sensitive to the loss of stability with  
21 catastrophic tire failures, particularly tread  
22 separations involving a rear tire. In this instance,  
23 both size vans are disproportionately involved in severe  
24 crashes. As has been previously noted in prior ODI tire  
25 investigations, parentheses, PE9-025 Michelin LT225/75

1 R16 tread separation/blowout; PE00046 Goodyear load  
2 range E, closed parentheses. And other analytical work  
3 by NHTSA, fully loaded 15-passenger vans present a  
4 unique set of risks for loss of stability in rollover,  
5 whether triggered by a tire failure or not. Have I read  
6 that correctly?

7 A. "You have.

8 Q. "And again, this is something that you were  
9 aware of, at least that the government believed as of  
10 April 2002, right?

11 A. "Yeah. It's not inconsistent with the  
12 consumer advisory and research that they sent us, which  
13 I indicated several times that we had significant  
14 concerns about."

15 MS. SPAGNOLI: April 2002, several months  
16 before the van is sold to the Church, Ford had this  
17 information, but they sold the vehicle and  
18 continued to make the vans without dual rear wheels  
19 despite that knowledge.

20 We talked about this testing program or  
21 testing procedure, J266. And there was a lot of  
22 discussion about this, and I don't want to get too  
23 in the weeds on it. But there's a couple of  
24 different kinds of tests that can be done to  
25 evaluate understeer and oversteer in vehicles.

1 That's what the J266 test procedure is. And  
2 there's five methods that are described in this  
3 exhibit that you'll see. And the one that Ford  
4 uses is the constant radius test that, basically,  
5 Mr. Tandy told you they get in a vehicle, they  
6 drive it around a circle. They don't control the  
7 steering, and they don't control the speed. It's  
8 up to the driver to do that.

9 And Mr. Gilbert told you, "Well, that's not  
10 really testing the vehicle, because it's too  
11 dependent on the path-keeping ability of the  
12 driver."

13 But when Mr. Gilbert did the testing, he did  
14 the control testing, where he controlled both on  
15 one set of tests, the speed, and in the other, the  
16 steering input to see what happens.

17 And this is -- the evidence he talked about,  
18 we spent a lot of time with him on this. And this  
19 is the steering controller he used. And you saw --  
20 I showed you that clip of this -- him holding the  
21 wooden wheel, but the steering controller is  
22 putting in the steer. So it's not dependent on the  
23 driver steering.

24 And what he found was, both in the stock  
25 condition and -- lightly loaded and ten-passenger

1 loads, the van spun on increasing steer tests run  
2 at 50 miles an hour. It spun at low speeds on the  
3 increasing speed circle test, the J266 test, at  
4 34 miles per hour.

5 It was an oversteer response from  
6 Mr. Gilbert's testing.

7 And what you have to remember about this,  
8 because there was a lot of time spent on  
9 cross-examination about that testing and that test  
10 track, the Uvalde test track. Do you remember all  
11 of that?

12 Think about this: Go back to that slide,  
13 understeer or oversteer. You've got four tires.  
14 They're all running on the same test track, the  
15 same surface. Whether it's got a high coefficient  
16 of friction or a low coefficient of friction, it's  
17 all four tires are on the same surface. If the  
18 vehicle is understeer, the front tires are going to  
19 go first and lose grip. If the vehicle is  
20 oversteer, it's going to be the back.

21 They're all on the same surface. And he got  
22 slippage on the back.

23 When he tested the duals, it fixed the  
24 condition. It did not oversteer in any circle test  
25 up to 53 miles an hour in any loading condition.

1 The true limit behavior of the van couldn't be  
2 fully documented, because they didn't have enough  
3 space. They ran out of space.

4 And again, same test track. Common sense. If  
5 you've got tires on the van and they're on the same  
6 track and you've got now a dual rear wheel vehicle  
7 on the same track, if it's going to spin, the tires  
8 are going to lose grip at the -- the same way they  
9 would with the single rear wheel, unless you fix  
10 the problem.

11 So the test track is the same. It's apples to  
12 apples. And it doesn't spin when you test it with  
13 duals.

14 And this is that test that shows the vehicle  
15 not spinning with dual rear wheels on that test  
16 track in this test. That complies with J266.

17 As Mr. Gilbert explained to you, when you're  
18 doing this test where you're controlling the  
19 steering or you're controlling the speed, you don't  
20 stop the test, as the driver. You wait for the van  
21 to do something in response. That's when the test  
22 is supposed to end.

23 Whereas, the way Ford does it, it's when the  
24 driver feels like they want to stop it, they stop  
25 it.

1           And it plows.

2           And you have these graphs. There's one for  
3 each type of test, comparing what happens with the  
4 single rear wheel bustle-back that spins versus the  
5 duals that just stays nice and steady and  
6 predictable and stable.

7           This is the circle test. This is the J turn  
8 test. Same thing. This is the fish hook test.  
9 Same thing. We're seeing much different results.  
10 Duals solve the problem, and he's not the only one  
11 who thinks that.

12           Mr. Tandy thinks that. He says, "Well,  
13 sir" -- I asked him, "This vehicle with dual rear  
14 wheels in a rear tread separation, you would agree,  
15 more likely than not that a loss of control would  
16 not occur, correct?"

17           "ANSWER: Correct. Yes, it makes a  
18 difference.

19           "And you would agree, Mr. Tandy, if you had  
20 dual rear wheels on this vehicle, it would improve  
21 the handling of the vehicle in response to a rear  
22 tread separation?"

23           "ANSWER: I could envision where sometimes  
24 that can happen, yes."

25           And Mr. Tandy struggled to come up with the

1 downsides to dual rear wheels. And he said, "Well,  
2 they're harder to pull through the drive-thru.  
3 They're harder to park."

4 Risk/benefit. If the risk with only a single  
5 rear wheel is loss of control and rollover from the  
6 design and the benefit is it's easier to park,  
7 where do you come at? Risk versus benefit.

8 So that takes us to this crash and the tire  
9 marks that tell us back here, back on the roadway,  
10 that first of all, the left rear tread separates.  
11 The driver steers to the right. The van doesn't  
12 spin and yaw from the left side tire not having  
13 tread on it.

14 It starts going towards the median, and the  
15 driver steers back to the left. That is when the  
16 loss of control occurred. That is when the back  
17 end started to slip.

18 So we have these tire marks that you recall I  
19 went over with Dr. Carter, who was here, and we --  
20 this is his diagram, and we focused on these tire  
21 marks that are on the pavement. They start before  
22 the fog line, and they go off to the shoulder. And  
23 this is the right side tires. Tires that are good  
24 tires. They're starting to slip. They're starting  
25 to yaw. And at that point, the driver can't keep

1 the van from sliding out, going sideways into the  
2 median and rolling over.

3 This van's design, the bustle-back with the  
4 single wheels, caused that loss of control. The  
5 tread separation was on the driver's side tire. He  
6 steered to the right. I just went through this.

7 The tire -- the counterclockwise yaw begins  
8 before the van goes into the dirt median.

9 And what does Mr. Tandy say about this event  
10 and whether a tread separation is what causes the  
11 loss of control? He actually said, "Tread  
12 separations are controllable events."

13 And I asked him, "Does a rear tread separation  
14 cause forces that force the E350 15-passenger van  
15 out of control?"

16 "ANSWER: No. No. When the tire is  
17 separating, it creates a drag force due to the  
18 energy needed to throw the tread off. That drag  
19 force, if it was one wheel, it's going to go  
20 rearward and it's going to pull a little bit. It's  
21 going to put a moment of torque about the CG. In  
22 order to counteract that, if it's your left rear,  
23 you're pulling on it with your left, you've got to  
24 put some steer to the right.

25 We're not talking -- now, we've got video. So

1 we're not talking steer to the right. We're  
2 talking steer to the right to maintain your lane.  
3 Once the tread comes off, pull away and you can  
4 steer straight."

5 According to him, it's a controllable event.  
6 You shouldn't end up with this event, but I think  
7 you're going to hear it's all the tire's fault.

8 But in this case, we know the driver did not  
9 lose control of that vehicle from that initial  
10 right steer after that tread separation. He lost  
11 it after he turned left.

12 Mr. Gilbert says that that left steer was not  
13 an unreasonable steer, but the van surprised the  
14 driver. It overreacted to his steer input, which  
15 was much less than what Mr. Tandy says. I think  
16 Mr. Gilbert said it was less than 40 degrees steer;  
17 whereas, Mr. Tandy said had to be 90 or 180 -- I'm  
18 sorry -- it had to be 180, halfway, or 360 in order  
19 to get that slide out.

20 There is no evidence to support that kind of a  
21 steer input. You had two people from the van who  
22 said, driver was holding it tight trying to keep it  
23 straight. They did not describe a driver steering  
24 180 or 360.

25 What other evidence is there of whether this

1 design, single rear bustle-back, leads to these  
2 kinds of crashes?

3 We had Carla Cox and this crash in June of  
4 2010, here in Florida. Eight people in that van.

5 We had the Mauro/Brownell crash, April of  
6 2004, in California. Five people in that crash.  
7 Rear tread separation, loss of control, rollover.

8 We had the Hanson case, 2005, rollover, tread  
9 separation, seven people in the van. Rear tire  
10 tread separation.

11 We had the Arrellano Dineen crash in 2008 in  
12 Missouri. Left rear tread separation. There was  
13 16 people, including a baby, in that one. Loss of  
14 control and rollover.

15 We had the Rascon, 2012, New Mexico, rear  
16 tread separation. 12 people in it. Loss of  
17 control and rollover.

18 There were no -- there was no testimony from  
19 Ford witnesses about these crashes. The only  
20 testimony -- and there was no cross-examination of  
21 Mr. Gilbert -- the only testimony was Mr. Gilbert  
22 about these other crashes, which he told you that  
23 this van's design, that rear weight imbalance was a  
24 substantial contributing factor in causing the vans  
25 to lose control and roll over.

1 He's keeping me on track. Thank you.

2 So you heard there's a verdict form. Let me  
3 show you -- I'm going to talk to you about the  
4 first two questions.

5 And if we could -- first, can we switch to the  
6 ELMO.

7 You've got me confused, because it's the wrong  
8 side. I'm not left-handed.

9 So this is the verdict form. This is the  
10 first question you're going to be asked to answer.  
11 This is really important to follow these  
12 instructions so you understand the meaning of the  
13 answers to your questions.

14 The first question: Did Ford Motor Company  
15 place the 2002 Ford E350 15-passenger van on the  
16 market with a defect by designing it with a single  
17 rear wheel bustle-back, which design defect was a  
18 legal cause of Michalanne Salliotte's death?

19 If we can go back to the PowerPoint. Let's  
20 look at the evidence that supports you answering  
21 that question "yes."

22 If we can flip that. I'm sorry. Thank you.

23 Got one point at the bottom there. But these  
24 are -- this is the evidence of the design defect.  
25 There's evidence that there's a weight imbalance on

1 the rear axle tires, which gets worse the more you  
2 put in it. The combination of the wheelbase and  
3 weight leads to a sluggish and sloppy response to  
4 driver steering.

5 The oversteer -- the vehicle has an oversteer  
6 response and limit maneuvers. It gives an  
7 unexpected response to driver steering. And with  
8 dual rear wheels, you do not get the oversteer  
9 response.

10 You haven't heard any testimony to the  
11 contrary. Mr. Tandy certainly didn't tell you  
12 that.

13 This van's design contributed substantially to  
14 the death of Michalanne Salliotte. So we go back  
15 to the verdict form. We believe the evidence  
16 supports you answering "yes" to that question.

17 Now, here is the instruction you have to pay  
18 attention to: If you answer "yes," you go to  
19 question 2. If you answer "no," you don't get to  
20 the negligence question. You skip it, and then you  
21 go to seat belts.

22 So if you say "yes" to 1, then you go to  
23 question 2. If you say "no" to question No. 1, if  
24 you say "no," there is no defect because of that  
25 bustle-back without dual rear wheels, then you're

1 basically saying to Ford Motor Company, no problem  
2 on the van.

3 Then, if you say "yes," you go to question 2.

4 Was Ford Motor Company negligent in designing  
5 the E350 15-passenger van to have a single rear  
6 bustle-back with negligence -- which negligence was  
7 a legal cause of death?

8 There's different evidence on negligence,  
9 because I told you is what did Ford know versus  
10 what did the design do? So let's look at that  
11 evidence that we've just gone through.

12 If we can flip back.

13 Ford's choice. They made a choice of a  
14 bustle-back instead of dual rear wheels. Was that  
15 an unreasonable choice back in 1975 and carried all  
16 the way up to 2002?

17 They knew that the dual rear wheels was their  
18 own preferred alternative for passenger safety. It  
19 was deferred. They didn't do it. They knew of the  
20 risks of the bustle-back's design from  
21 Mr. Schettler's rollover, from the Tandy/Carter  
22 recreation of the testing, from the oversteer memo  
23 of the tire engineer, from the NHTSA consumer  
24 advisory and the VDANL computer simulation, and the  
25 2002 NHTSA tire investigation.

1           That's all information Ford had before this  
2 van was sold to the First Baptist Church without  
3 dual rear wheels.

4           Again, that evidence, the design of the van  
5 was defective, and it caused, contributed  
6 substantially to the death of Michalanne Salliotte.  
7 If they had only done what they set out to do in  
8 1975, this crash would not have occurred. We would  
9 not be here.

10           So if we go back to the verdict form, we  
11 believe that evidence supports that there was a  
12 defect. And because of that, you should also  
13 answer "yes" to question 2 that there was -- Ford  
14 was negligent in designing the van to not have dual  
15 rear wheels, and instead, to have the 20 extra  
16 inches, the bustle-back with the single rear  
17 wheels.

18           Thank you very much. I'm going to go back to  
19 Mr. Newsome. I really appreciate your time and  
20 your attention in this case.

21           Do you want me to leave the verdict form  
22 there?

23           MR. NEWSOME: Yes, please.

24           Okay, members of the jury. I've got some time  
25 left. I'm going to talk about the seat belt now.

1           Going back to the shared responsibility, we're  
2 talking about Ford Motor Company.

3           This is the rule, that a manufacturer must  
4 design a vehicle to have seat belts that are  
5 accessible for seated occupants to protect people  
6 from serious injury or death. That's a rule that  
7 Mr. Burnett agreed to. We had the two seat belt  
8 experts: Mr. Meyer and Mr. Burnett.

9           Mr. Burnett is the Ford employee. He works  
10 for Ford. He's been there his whole life. Right  
11 out of school in 1992, and worked in restraints.  
12 And he agreed -- this is the agree board that we  
13 did over here on the flip chart.

14           I wrote these down. These are basically the  
15 points that Mr. Meyer talked about. And No. 1, the  
16 single most important safety device is the seat  
17 belt.

18           Why does that matter? Well, we heard about  
19 the bustle-back. And again, regardless of Ford's  
20 position and Mr. Tandy, that vehicle, based on the  
21 evidence that Mr. Gilbert presented and what you've  
22 seen, obviously, a safety device is important.  
23 Even more important, perhaps, here because of the  
24 bustle-back.

25           Second, a manufacturer -- and here is that

1 rule -- must design a vehicle with accessible and  
2 available seat belts.

3 He agreed, check.

4 Buckles were not available that day. I think  
5 both sides agree on that. They were underneath the  
6 seat, hidden from Michalanne Salliotte when she got  
7 in there that morning. That is not disputed. And  
8 there were not readily accessible.

9 He agreed with that.

10 And finally, this is -- there's a another  
11 board -- but Ford knew that it was possible to pull  
12 them through. That's the design.

13 Now, I want to focus on that for a minute,  
14 because I suspect what you're going to hear from  
15 the other side when we're talking about consumer  
16 expectations and whether folks expect Ford to  
17 follow the rules so the buckle is there, and  
18 whether it was used in a foreseeable manner. I  
19 expect they're going to come in and say, "Gosh, it  
20 was substantially changed."

21 Not the design. That's how it was designed.  
22 Ford knew it was supposed to come through. That  
23 was not a substantial change at all. It was  
24 exactly the same, other than the fact that it had  
25 been pushed through a bunch of times. Because Ford

1 has this design -- you'll hear Mr. Burnett say --  
2 you heard him say, it's not a problem. It's not a  
3 problem, because, gosh, you can just push it back  
4 through. No big deal. So no substantial change,  
5 because that was the design. That was the design.

6 What else? Second board that Mr. Burnett  
7 agreed to.

8 Seat belts are the single most effect  
9 deterrent for rollover ejection. Again,  
10 particularly important in this case because of the  
11 bustle-back. Because it's got that back end that's  
12 branching out. But regardless, he agrees with  
13 that.

14 And then we were talking about the specific  
15 design. And we talked about the zip tie. Again,  
16 this is just trying to get on the same page with  
17 Mr. Burnett and Mr. Meyer. And he agreed that to  
18 stiffen the underneath with a stalk or maybe a zip  
19 tie, was something that could be done at a small  
20 cost. Five-cent zip tie.

21 He agreed with that. Oops, sorry.

22 And here was the rub: Whether they broke the  
23 rule or not. There's a couple of rules we're going  
24 to go over. That's just one of them.

25 Even Mr. Meyer, you'll remember, said, look,

1 I'm looking at the rule. There's three different  
2 sections, and it says -- let me go through it --  
3 what it says about buckles being accessible and  
4 available for seated occupants.

5 Mr. Meyer said, Look, this is foreseeable.  
6 They knew this. And I think it's inconsistent with  
7 that rule. That's where he disagreed.

8 And finally, both sides agreed, faulty  
9 maintenance by the Church. Faultily maintenance by  
10 the Church. Both experts, both seat belt experts  
11 agree.

12 So let's talk about the rule. Now, this is  
13 the federal rule. And this was Mr. Meyer's slide.  
14 I just popped it in here in this PowerPoint.

15 But Mr. Burnett clarified, latch mechanism,  
16 that means the buckle. And it says acceptance  
17 provided, but here it applies that each seat belt  
18 assembly installed in any vehicle shall have a  
19 latch mechanism, a buckle, that complies with the  
20 requirements, and specifically the components of  
21 the buckle shall be accessible to a seated occupant  
22 in both the stowed and operational positions.

23 Here's another one. This is another one of  
24 the Ford documents that talks specifically about  
25 Ford's internal standards. It's kind of cut off up

1 here, but it's -- you can see it's produced by  
2 Ford.

3 "Corporate product acceptance and  
4 specifications. And Mr. Burnett agreed with this.  
5 And I want to focus in a little bit.

6 Here is part of it, just so we can read it.  
7 It talks about rear passenger foot -- and so well,  
8 gosh, this is a little bit of an older  
9 specification, but yes, it still applies. That  
10 front seat belt anchor shall be located in such a  
11 position that they will not necessarily restrict  
12 rear passenger foot room.

13 Acceptability to be established by a jury  
14 evaluation. That's not, you know, juries like  
15 this. But that's the Ford term for the test  
16 engineers, the folks that are looking at this.  
17 That's their standard. Don't interfere with the  
18 foot room.

19 Well, there it is. Now, that's looking down  
20 when you're seated -- I think we talked about with  
21 Mr. Burnett, and we have the board. But that's the  
22 foot room right smack there. It looks like a  
23 footrest. Foreseeable. In violation of that rule.

24 Just like an -- do you remember we had  
25 Mr. Burnett talk about how in an airplane, you put

1 your foot sometimes on the footrest and stretch  
2 back. If one wouldn't -- didn't know differently,  
3 a passenger could expect to do that. Expect to use  
4 that as a footrest, especially when you're going on  
5 a seven-hour trip. Especially when those seats are  
6 tight together and you've got luggage and  
7 everything. It's nice to stretch. Or perhaps that  
8 there's a backpack down there and you're trying to  
9 stretch. Foreseeable.

10 So this is what we asked Mr. Burnett. Would  
11 you agree that they're accessible and available?

12 Well, they weren't accessible.

13 This is from Ms. Latham when she came back up  
14 over here and asked him some questions. And he  
15 said -- she was trying to get him to agree with  
16 her. And she asked him, "Wouldn't you agree that  
17 they were accessible and available?"

18 I think he was parsing words. And Mr. Meyer  
19 said they were either accessible or available.  
20 Kind of, getting into the semantics. She was  
21 trying to get him to go with her. And he said,  
22 "Oh, they were not accessible in terms of what we  
23 talked about the federal standards." His  
24 testimony. They're not ready to buckle. That's  
25 what he said.

1           Violates the rule. Violates the rule, safety  
2 rule that's there for a reason.

3           And here's the key jury instruction: Did the  
4 seat belt then fail to perform as an ordinary  
5 consumer would expect to use as intended or in a  
6 manner reasonably foreseeable by the manufacturer?  
7 Reasonably foreseeable by the manufacturer.

8           And he said that you have to consider average  
9 users. You know that there's kids. You know that  
10 there's folks using this thing. It was  
11 foreseeable.

12           And so I asked him about it. This is another  
13 one of those flip charts, where he -- I was trying  
14 to understand to what degree he would agree with  
15 Mr. Meyer. He said, well, we do know they can get  
16 pulled through, and I don't think it's likely that  
17 they're going to get pushed through. It's more  
18 likely they're going to get pulled through. And I  
19 did it, I pulled it through. And yeah, I pushed it  
20 through with my foot.

21           So we know that kids can do it. We know that  
22 removing the seat, it's possible to pull it through  
23 when you -- remember, this is the compromise. They  
24 had the seats that you can take out for cargo? And  
25 sure enough, as Mr. Meyer said, and he agreed --

1 Mr. Burnett agreed, that when you take that seat  
2 out, those almost look like hand-holds that get  
3 pulled out. Or snagging luggage, a backpack, a  
4 book bag, a piece of luggage that's thrown there.

5 And Ford knew those -- all of those things  
6 were available. Ford knew. Their design, they  
7 knew. That's the design, as he said.

8 I also asked him -- well, we didn't discuss,  
9 at least I don't think, in greater detail, is  
10 people could -- this is, again, Ms. Latham. This  
11 is Ms. Latham. People could come from behind and  
12 push on it with their feet. See, it's already  
13 through partially, but now with the foot it can be  
14 pulled even further.

15 He said yes. He agreed. You can pull it with  
16 your foot, in violation of Ford's own  
17 specifications.

18 And so I put that here on the list. It was  
19 foreseeable. Ford knew that -- with this design.  
20 Not changing it, but with this design, kids,  
21 removing the seat, snagging the luggage, and you  
22 could pull it through with your foot. That's  
23 Ford's knowledge. That is a bad design, a  
24 defective design. And it's certainly not something  
25 that consumers would expect to have happen.

1           We have these rules for a reason, because  
2 people want to expect that vehicles are safe.  
3 Consumers want to expect that when you go in, you  
4 put a kid in the back, he's not going to push it  
5 through with his foot. Consumer expectations  
6 foreseeability.

7           So one of the dynamics that's also going on  
8 here is this -- the Church and Ford, and our side,  
9 as you've heard, has accepted responsibility and  
10 argues to you that the evidence shows this is  
11 shared responsibility. All four parties in this  
12 bear some responsibility. It's something you're  
13 going to have to apportion. But to the extent that  
14 the Church didn't properly maintain this, that was  
15 foreseeable.

16           And Ford considers it in the design, because  
17 of course you have to. As a manufacturer, you have  
18 to consider what the average user is going to do,  
19 especially in a vehicle where you've got kids and  
20 teenagers and sports teams going for long  
21 distances. Foreseeable maintenance is something.

22           Poor Claudio Hentochell should not be put in  
23 the position of having to go out every single time  
24 the van is used. Every single time. Because as he  
25 said, they're sloppy, and they fall through.

1 That's a bad design, and it's just not right.

2 And if Ford had done what Mr. Burnett said  
3 they did, which was monitor these things when they  
4 go out in the field, they would have acknowledged  
5 it. They would have acknowledged that this is a  
6 bad design.

7 Going back. So this is the agree board.  
8 We've talked about not readily accessible, single  
9 most important safety device. Not readily  
10 accessible. Ford knew it was possible to pull  
11 through.

12 Ford knew that it was possible to pull these  
13 through. Almost -- not just foreseeable, but  
14 almost reliably predictable when you're loading  
15 this thing up with sports teams and kids to  
16 transport them over long distances. This is not a  
17 cargo van we're talking about. But when you put a  
18 truckload of kids in here, it's almost sure as  
19 bells that this is going to happen. Predictable.  
20 Bad design is going to cause a problem. This is a  
21 ticking time bomb, this bad design. It's just a  
22 matter of time before something happens like this,  
23 because those buckles aren't available and are not  
24 where consumers expect them to be.

25 This is where the police officer found it

1 hidden underneath the seat that day. Not one.  
2 Four of them like this. And as Claudio told you,  
3 this has been going on for a long time. Heck, we  
4 had the one guy, McCloud over here, say that it was  
5 so bad, he went to Pastor Burroughs three or four  
6 years before this happened and said, "Pastor, we've  
7 got to do something. How about if I spray some  
8 foam in it?"

9 Obviously, that didn't work. He didn't know  
10 about the zip tie or the Buckle Mate or some of  
11 these other alternative designs, not from Ford.

12 Bad design. Predictable.

13 So Ford knew about the buckle from 1992 when  
14 this seat and this buckle were designed until 2002  
15 when they sold this vehicle, and that went all the  
16 way up until, as Mr. Burnett said, 2007, at least  
17 ten years before this thing was sold. Predictable.  
18 Knew it. Bad design. Matter of time something is  
19 going to happen, like Michalanne Salliotte getting  
20 in there and not finding where she would have  
21 expected it to be. Consumer expectation.

22 We have rules for a reason. And when a  
23 manufacturer breaks the safety rule, it's a matter  
24 of time. Ten years.

25 Talk about Mr. Meyer for a minute. He said

1 some additional things that Mr. Burnett did not  
2 say.

3 Oh, my goodness, what did I do? Okay.

4 He explained to you why this was a bad design.  
5 This is Ford's design. You've got the half  
6 stalk -- cheap little half stalk that comes up. A  
7 cheap, flimsy piece of metal and a little plastic  
8 gasket sewn into the upholstery of the seat. The  
9 upholstery of the seat. Nothing in the owner's  
10 manual about, wait, if this happens, you need to go  
11 in and you need to replace the upholstery. It  
12 doesn't tell you where to go -- the gasket, maybe  
13 your local upholstery. No answers to that.

14 This is predictable and foreseeable. Not a  
15 thing in there. Bad design. Defective design.  
16 Not what a consumer would expect.

17 Mr. Meyer said, "Yep, it was not a big deal.  
18 I went in there and I popped it right out with my  
19 foot."

20 Mr. Burnett said he did, too.

21 Predictable. Foreseeable. Not what a  
22 consumer would expect.

23 And let's talk a minute for risk versus the  
24 benefits of this particular design versus something  
25 else. And that's what we talked about, all of

1 these different things. Talked about the zip tie  
2 fix. This was another exemplar that had a  
3 completely different solution. A little  
4 five-cent -- actually, they had two of them here.  
5 Drill a little hole in the side, push the buckle  
6 side, drill a little hole, put the zip tie here,  
7 and just attach it to the bottom of the frame.  
8 Five-cents. Five-cents.

9 Bad design. Easy fix.

10 The benefit of not doing this is certainly not  
11 outweighed by the risks of the predictable nature  
12 of regular people, regular soccer moms getting in  
13 this thing with busy kids and this bad design.  
14 Matter of time.

15 Just some more pictures of it. You can  
16 actually see where the stalk is gone here and it's  
17 zip tied to a piece of tubing. It works. Good  
18 solution. Nothing on the floor from that zip tie  
19 fix.

20 Look where they are. Right where a consumer  
21 would expect. When you get in at 5:30 in the  
22 morning with busy kids, and the book bags and the  
23 blankets and it's kind of dim -- it's not dark.  
24 It's got an overhang. But it's a hectic moment.  
25 You get in and you pull the shoulder harness, a

1 side or a passenger does, and sure enough, right  
2 there, boom, click it. Roll over. Not dead.

3 Here, for these children and for this man  
4 right here. Five-cents.

5 Now, here's is the moment of clarity. And I  
6 hope -- I hope you can recall this, because I think  
7 it's a real moment of truth.

8 When we talked about the hog-tie tool --  
9 remember, Mr. Meyer said, well, you don't have to  
10 use a zip tie, because of mass production, they use  
11 the -- Hog Ring sometimes, so you don't have use a  
12 zip tie. So maybe another way that you can attach  
13 that cheap little half stalk to the bottom of the  
14 seat if you wanted to.

15 And here's what Mr. Burnett said. This is a  
16 moment of clarity. He said, oh, it's a design  
17 no-no to use a Hog Ring in your seatbelt,  
18 Mr. Meyer. You can't do that. A lot of things can  
19 go wrong. We don't want metal parts up against the  
20 seat belt webbing. We don't want big staples being  
21 driven anywhere near where it could pierce the seat  
22 belt webbing and damage the strings. Those Hog  
23 Rings are not an acceptable concept at Ford.

24 I hope you remember that. Lo and behold, a  
25 big old fat staple. A moment of truth.

1           Mr. Burnett is a team player. He's been with  
2 Ford as part of their family since 1992 when he was  
3 recruited out of college. He's been there 26, 28  
4 years. Staple. Smack going through it.

5           Not true that you can't use a staple through  
6 the webbing. Not true that you couldn't use a Hog  
7 Ring. And darn sure not true that you couldn't use  
8 the zip tie.

9           Five-cents. Bad design. Predictable.  
10 Foreseeable. It doesn't meet consumer  
11 expectations. Easy fix. Easy fix that the  
12 benefits clearly outweigh -- are outweighed by the  
13 risks.

14           Predictable death. Five-cents. Zip tie.

15           And here's what they say -- not here in the  
16 courtroom, but this is what they said in Europe  
17 back in 1999 when they were bragging about the  
18 Transit.

19           Mr. Burnett said, oh, Transit is different.  
20 It's got a different seat configuration. It's not  
21 for cargo. Translated, it's not a compromise,  
22 trying to balance cargo and people. It's just for  
23 people. It's different kind of seats. And it's  
24 got these stalks.

25           Here is what they brag, though -- out of

1 court. This is their marking thing that  
2 Mr. Burnett acknowledged: The Transit has an end  
3 release seat belt buckle that's affixed to the  
4 seat, making it much easier to locate without the  
5 driver having to look down and search.

6 And I asked him, "Why do you want that? Why  
7 this rule that the buckles have to be accessible  
8 and available?"

9 He says, "Well, because people use it more."

10 Of course, they do. Common sense -- and  
11 members of the jury, that's something that you're  
12 not just allowed to use, you're instructed to use.  
13 And you've been handpicked on this jury, because  
14 you said that you could put everything else aside  
15 and bring that common sense here.

16 Common sense, this is an awful, cheap, bad  
17 design that could have been so easily fixed.  
18 Certainly, not anything consumers would have  
19 expected, and not what they were telling people in  
20 Europe.

21 Now, there are alternative designs. GM --  
22 General Motors, this is the 2000 van. Buckles were  
23 attached to the back of the seat. Feasible,  
24 certainly. This is the competitor. They did it.  
25 And if you get in, and you stuff your -- you're

1 there at 5:15 in the morning and you have your  
2 shoulder harness in one hand and you're digging  
3 around in the seat crack with your other, it's  
4 right there waiting for you.

5         Something a consumer expects. Mr. Burnett, I  
6 think, said something to the extent, well, fall  
7 through the cracks. Well, sure. But when you look  
8 for it and you expect to find it, it's there.  
9 There's not a -- there's not a complete absence of  
10 anything, unless you get out -- and you saw how  
11 close those seats are together. And you stick your  
12 head around underneath, or you go around behind --  
13 you heard the officer say today, she had to have  
14 her partner do it because she had to get the  
15 picture and she was more, I think, "nimble" or --  
16 or something.

17         It should be there, because that's what  
18 consumer expect. Consumer expectations test. Sure  
19 enough, boom. Pop it right through. As Mr. Meyer  
20 said, not a big deal.

21         So again, this is the consumer expectations  
22 test. This is the actual law that you will have to  
23 follow back in the jury room using your common  
24 sense, that if the product fails to perform as  
25 safely as an ordinary consumer would expect when

1 used as intended or when used in a manner  
2 reasonably foreseeable by the manufacturer.

3 He said it. Their design was that, yeah, you  
4 can pull it through. Yeah, you can push it through  
5 with your foot. They knew that. Not only was it  
6 reasonably foreseeable, they said that was the  
7 design.

8 I think he said something -- I didn't mark  
9 this part down, but it was something like, well, if  
10 it comes through, you've got to balance and you  
11 want to make sure that if -- when it comes through,  
12 it's easy to push back up and that's what we used  
13 this design.

14 How about making sure it doesn't come out in  
15 the first place with a Hog Ring or a zip tie, as a  
16 consumer would expect? Not a big deal. This was a  
17 defective design based on this test, which is the  
18 consumer expectation test.

19 As Ms. Spagnoli told you, there's two tests  
20 here to find design defect. You can find either  
21 one. You don't have to find both. One or the  
22 other.

23 And you have to find some fault, not all, but  
24 some fault against Ford Motor Company for this very  
25 predictable, foreseeable design to protect soccer

1 moms and kids.

2 And one is the consumer expectations test.  
3 The other is the risk -- the risk of -- the  
4 risk/benefit test. Is the benefit of this design  
5 outweighed by the risks?

6 Of course, it is. Five-cents. Hog tie.

7 Shifting to Mr. Burroughs on this consumer  
8 expectations test. I asked him, Pastor Burroughs,  
9 typically when you get into a car or a vehicle and  
10 you sit there -- you heard Mr. Meyer talk about the  
11 standard on one hand, where you reach over, and you  
12 may have your cup of coffee, and you click it right  
13 next there on your side. Yep, I heard that, he  
14 said.

15 But you would expect -- that's what you expect  
16 when you get in. It's common sense, members of the  
17 jury. Common sense that you have to bring in here.  
18 You look for it, and you pull it across, and you  
19 expect it. That's where it's supposed to be,  
20 right?

21 Correct. Of course. Of course.

22 Those experiences that you have in everyday  
23 life, you're supposed to bring in here, because  
24 that's part of common sense.

25 And certainly, Pastor Burroughs agreed. I'm

1 not going read this in total, but Pastor  
2 Burroughs -- so not that it's all Ford's fault or  
3 it's anybody's fault, or all anyone's fault, but  
4 doesn't Ford share some of the blame? Yes, I think  
5 so. Yes, I think so. Pastor Burroughs said it.

6 And you're going to -- on behalf of -- not  
7 just yourself, but on behalf of First Baptist  
8 Church of New Port Richey, that's correct, as their  
9 representative, yes.

10 Now, that's what Pastor Burroughs said on the  
11 stand under oath.

12 I questioned -- I don't know what his lawyer  
13 is going to say, but that's Pastor Burroughs'  
14 testimony. And he asked -- you heard Mr. Meyer  
15 say -- who else said it? -- about what a normal  
16 consumer would expect. Pull it across and expect  
17 it to be there, and it wouldn't be there. That's  
18 part of the reason you feel this way?

19 Yes, that's part of the problem.

20 Pastor Burroughs.

21 Common sense. Of course.

22 I want to mention this briefly. This was  
23 Ford's expert, the biomechanic whose video we  
24 played.

25 And Mr. Carhart was asked, what was the

1 nature -- he's a biomechanic. What happened?

2 He said, well, if she had just been buckled  
3 up, if she had just been buckled up, then she  
4 wouldn't have been seriously injured, and certainly  
5 not have been killed.

6 So that's established, if that buckle had been  
7 there that day, as a consumer would expect, may I  
8 suggest unequivocally, she would be here.

9 So when we go through the evidence -- I'm  
10 going to go through some of these other parties.  
11 We're talking about the Ford Motor Company, first  
12 got the bustle-back. You see the evidence that you  
13 can weigh. That this is a vehicle that's got a  
14 steering problem, and when it rolls over, you need  
15 a seat belt that's accessible and available.

16 We've heard all from Mr. Burnett. We talked  
17 about that, and the agree board and everything he  
18 agreed to.

19 We heard from Mr. Meyer about the alternative  
20 designs: The GM, the Transit, the zip tie, the  
21 bull tie.

22 And of course, Mr. Burnett's position is you  
23 can't even put a staple through, which I would  
24 suggest is maybe the most obvious tell of what's  
25 really at issue here. What's really going on.

1           The agree boards. Foreseeability. You can't  
2 really see that, what they knew about the  
3 maintenance that you have to consider the average  
4 user and the bull ring -- or the Hog Ring. I keep  
5 messing that up.

6           The fact that their standard says that this  
7 thing should not interfere with the foot room, and  
8 of course, it did.

9           And then 208, the plain language of 208, which  
10 you can decide was a rule that they should have  
11 followed to make it so that seated occupants didn't  
12 have to look around, didn't have to search, because  
13 they knew that those belts being accessible were  
14 important.

15           And another element I want to mention briefly  
16 that you will have to weigh, is time. So how do we  
17 weigh evidence? We weigh both -- you look at the  
18 witnesses, who's credible; who is not. You can  
19 weigh the evidence. The greater weight of the  
20 evidence here. I would suggest the greater weight  
21 shows that there's some fault on everyone.

22           But certainly, you can also consider as a  
23 method of determining, apportioning fault, time.  
24 Time. How long did a party know, or how long did  
25 they have where this problem was out there that was

1 predictable and foreseeable, and eventually a  
2 soccer mom was in this position.

3 I call her a soccer mom. She wasn't. But for  
4 an average consumer, would the expectations that  
5 members of the public have, how long did they have?  
6 And they had 40 years on the bustle-back, but at  
7 least ten years until this vehicle was sold, and  
8 then seven more years on the -- or five more years  
9 on top of that before this crash happened.

10 So I want to talk about the First Baptist  
11 Church for a minute. You heard Pastor Burroughs  
12 testify. One of the first things he talked about  
13 was trust. Trust. And that's important. That's  
14 what he said. That's the reason they bought this  
15 van. They trusted Ford Motor Company. They  
16 trusted that Ford would follow the rules. Follow  
17 the safety rules. Safety rules that are designed  
18 to protect members of the public. Trusted them to  
19 do that.

20 Perhaps if he had purchased a GM instead, it  
21 wouldn't have -- we wouldn't be here today. But he  
22 trusted Ford. Trusted Ford Motor Company, who  
23 broke those rules -- and I would suggest the  
24 evidence shows -- betrayed that trust because of a  
25 cheap, flimsy, bad, defective design that could

1 have been avoided.

2 All of this. This is the pre-trip checklist.  
3 And First Baptist bears some responsibility. They  
4 are negligent, too. The evidence suggests that all  
5 of the parties here, but certainly First Baptist  
6 who had this pre-trip checklist.

7 Again, it's common sense. If you're going to  
8 send a group of children on a seven-hour trip to  
9 Georgia, you want to make sure that you do a trip  
10 [sic] right before, especially if you know these  
11 buckles are sloppy and falling through all the  
12 time.

13 So they had this checklist. And a couple of  
14 things that are -- that tell that this wasn't done.

15 Number one, it talks about fuel. It talks  
16 about the fuel. One of the pieces of evidence that  
17 you can rely upon and know that this checklist --  
18 Claudio didn't go out that morning is because they  
19 had to stop for fuel 15, 20 minutes into the trip.  
20 It wasn't done.

21 We also know that any defects in the interior,  
22 such as a cut belt -- Pastor Burroughs said --  
23 should be reported. Never happened. Never  
24 happened.

25 Claudio Hentochell talked about how these

1 belts were sloppy every time he would go in there  
2 and check these buckles. He said they would fall  
3 through. You heard the officer testify today, this  
4 had been there a while. This had been there a  
5 while. Not that Claudio had bad intentions. He  
6 should have been put in the position of having to  
7 double-check these things every single time it went  
8 out.

9 I think what he said was, and -- well, I know  
10 what he said. He said, well, last time I checked  
11 it was -- the seat belts -- the seat belts was  
12 before the Miami trip. And the last time I checked  
13 the vehicle was the morning, that Wednesday  
14 morning, and the trip was on Friday.

15 Well, they had Wednesday prayer night.  
16 There's a group of people that got on that bus. So  
17 either he never checked the buckles after Miami, or  
18 they had popped out before this trip. Because the  
19 one thing we know unequivocally, based on the  
20 evidence, is the seat belts were underneath, hidden  
21 that morning when they got in the van.

22 That was certainly something that Claudio  
23 should have reported to Pastor Burroughs, and never  
24 did.

25 This is Mr. Meyer's chart. One, two, three --

1 this one was hidden -- four and then five.

2 So he had done it that morning, presumably,  
3 based on his testimony. Pastor Burroughs said,  
4 yes, Pastor Burroughs, we do bear some  
5 responsibility here for that faulty maintenance.

6 That's common sense, too. Shared  
7 responsibility. Shared fault.

8 Of course, this is where they were found that  
9 day.

10 So I asked him, are you telling the jury that  
11 every time you went into the van at the end of the  
12 month to check the seat belts, they were always on  
13 the floor?

14 No. Not all of them. Here and there. Some  
15 were on the floor. Some don't. I just put them.  
16 There's a little hole, and I push them up.

17 Is it fair to say -- this is your testimony  
18 here today -- that every time you check the van at  
19 the end of the month during these regular  
20 inspections?

21 Yep, every time at the end of the month. Not  
22 before the trip. End of the month. This is his  
23 testimony at trial.

24 And some of the seat belts would be below the  
25 bench seat, right? When you found the buckles on

1 the floor, you don't know how those buckles got the  
2 on floor, do you?

3 They're pretty sloppy. They fall down easily.

4 I think that's a great characterization of  
5 this bad, defective design.

6 He knew it. Pastor Burroughs knew it. Other  
7 employees knew it. Consumers and passengers did  
8 not.

9 And then there's Les McCloud. And I put him  
10 up here because, again, I think it establishes a  
11 timeline for how much before this crash the Church  
12 was aware of it. He said it was, I think, three or  
13 four years. He was deposed back in 2015, I think,  
14 which is when this -- when this clip was played  
15 when he gave his deposition.

16 And he said back in '11 when he had just  
17 started working there that he reported it to Pastor  
18 Burroughs and had to spray foam. So the Church  
19 knew this was a problem. Certainly, Ford bears  
20 more responsibility, because the Church shouldn't  
21 have to be in the position, because Ford foresees  
22 maintenance problems. That's why you have a good  
23 design.

24 And it was that design, that very design that  
25 was unchanged when the Church got it here, the

1 Church is having to do what they're having to do.

2 So when it comes to First Baptist Church, the  
3 evidence shows they do bear some responsibility.  
4 They were negligent. They didn't use sufficient  
5 care, because they did not do that pre-trip  
6 checklist. They allowed these buckles to go out  
7 that day, or the van -- folks to get into that van  
8 that were on the floor. That's uncontroverted.

9 There was a cut belt that, by itself -- which  
10 is where Corinn -- I'm sorry, not Corinn -- where  
11 another child was sitting.

12 Pre-trip checklist. All of the various  
13 positions where these things were missing that  
14 morning. And for four years, they knew it. Four  
15 years. They bear the -- the Church bears some  
16 responsibility, some fault.

17 But I will suggest that when you weigh the  
18 evidence, that certainly more of this goes to Ford  
19 than to the Baptist Church, both in terms of time  
20 and in terms of the weight, the collective weight  
21 of the evidence.

22 Let's talk about Michelin. This was a  
23 defective tire. No question. This was a defective  
24 tire that failed. It did. That's a given.

25 But Michelin had recalled that tire. They

1     tried to do the right thing. They tried to do the  
2     right thing with Ford Motor Company, which had this  
3     defective design. Came in here in Court and told  
4     you that it was just fine and it was not a problem.

5             This is their design. It wasn't a problem.  
6     And of course, you can't put the staples in it or  
7     Hog Rings in it.

8             But certainly, Michelin bears responsibility.  
9     They do. We acknowledge that. We accept that  
10    responsibility.

11            And so when it comes to the verdict form,  
12    Michelin needs to have shared responsibility, too.  
13    One of the things that you consider -- and I don't  
14    think it was established definitively -- but it was  
15    some months when the recall had happened. Some  
16    months. Maybe years. We don't know exactly.

17            We talk about Michalanne Salliotte. You first  
18    heard from Corinn Salliotte -- or actually, you  
19    heard from Sherri Paules. I want to talk about  
20    Corinn.

21            This was a traumatic event. You heard about  
22    what it was like for her immediately afterwards at  
23    the hospital, and certainly that day. I think, for  
24    a 16-year-old to go through this, and her not  
25    remember all the precise facts is completely

1 understandable.

2 She came and she did her best. I suspect -- I  
3 don't know, the other side may attack her memory or  
4 attack her credibility. That's one of the things  
5 that's fair game. You have to evaluate witnesses.  
6 You have to evaluate their credibility.

7 But I would suggest to you that what Corinn's  
8 testified about had a ring of truth. Had a ring of  
9 truth. When she came in and said that they got  
10 there that day, it was dim, it was exciting, there  
11 was a lot of activity. They got in the van. She  
12 doesn't remember a whole lot other than she studied  
13 and she put her headphones on that day. I'm not  
14 sure what they're going to say about it. Maybe not  
15 something I'm going to get to sit down and then I  
16 get a brief rebuttal in the end, I get 15 minutes.

17 But I don't know, but I would suggest that  
18 Corinn Salliotte had a ring of truth. Doesn't  
19 remember a whole lot. But she did say that her mom  
20 always wore her seat belt. Always wore her seat  
21 belt. She talked about her mom. She talked about  
22 the kind of person that her mother was and the kind  
23 of mother that Michalanne was. I would suggest  
24 that if you consider the totality of the evidence  
25 when she got in that day, if that buckle had been

1 there, she would have put it on. Common sense.

2 Common sense.

3 Sherri Paules. Sherri was the first witness.  
4 Sherri talked -- got in that day. She doesn't want  
5 to actually describe having to remember Michalanne  
6 pulling it across and trying to buckle up. And she  
7 was looking for it in the crack and in the seat.

8 Now, Sherri Paules is a friend. Again, they  
9 attack Sherri Paules. You heard it right out of  
10 the gate -- out of the box. One of the things  
11 that, oh gosh, didn't you talk to Mr. Newsome?

12 And the Judge is going to instruct you,  
13 that's, of course, perfectly permissible. And she  
14 told you. Well, we spoke for five minutes the  
15 night before. We met out in the hallway, and we  
16 met at her deposition. And then years before, when  
17 her son had a claim from this.

18 So to the extent that there's a suggestion  
19 that there's something untoward about her -- about  
20 that, evaluate Sherri Paules. Yes, she was best  
21 friends with Michalanne. Yes, she loves this  
22 family.

23 But just like Pastor Burroughs, I would  
24 suggest that you can take away from her demeanor  
25 and who -- she's not going to come in here, I would

1 suggest that you can find, and make something up.

2 Why do I say that? Well, because she  
3 admitted, you know in hindsight -- in hindsight,  
4 yeah, man, we should have done something more. In  
5 hindsight.

6 But because of the circumstances that day and  
7 the expectations, and this bad design when it came  
8 across, it wasn't there for Michalanne.

9 And I would suggest that when you evaluate  
10 Sherri Paules, you can find truth in that. And I  
11 also brought up, well, gosh, today, you said that  
12 Michalanne Salliotte said, well, we can't find the  
13 seat belts, I guess we'd better pray. You didn't  
14 say that in your deposition. And that was a big  
15 deal. And both lawyers today, they're trying to  
16 suggest that, oh, she's making stuff up, she's  
17 throwing stuff in here that she didn't say in her  
18 deposition.

19 When I came back, if you recall, she said,  
20 yeah, well, I remember it now, because there was a  
21 statement, a tape-recorded statement that I gave to  
22 FHP that I -- it was kind of traumatic. I forgot  
23 about it.

24 When she listened to her tape-recorded  
25 statement after the deposition, oh, yeah, she did

1 tell me that immediately after the accident.

2       So based on the totality of who Sherri Paules  
3 is and what you observed about her and her candor  
4 when she talked about her own responsibility, it's  
5 got the ring of truth. It's got the ring of truth,  
6 and it's something you can evaluate and you can  
7 consider.

8       But certainly, based upon -- you believe  
9 Sherri Paules, Michalanne tried to put it on that  
10 day and made an affirmative defense to dig for it,  
11 and look and it just wasn't there. And she would  
12 have put it on had the buckle been where it was  
13 supposed to be, as everyone expected that day.

14       I also want to talk about the Florida seat  
15 belt law. You heard Pastor Burroughs talk about,  
16 well, click it or ticket. As the Judge instructs  
17 you, it's in the instructions, it is not the law in  
18 Florida for adults in the back seat to wear your  
19 seat belt. It's just not the law. It's not  
20 required.

21       Now, yes, in a case like when we're talking  
22 about negligence and what someone -- yeah, she had  
23 a duty. You have a duty -- Michalanne had a duty,  
24 which is why we are accepting some responsibility.  
25 But it can certainly be considered and weighed

1 together with the rest of the evidence in this  
2 case.

3 And so that's why, in this case, Jeff Novak  
4 [sic] on behalf of the children and his family,  
5 yes, just like Sherri Paules said, you know, in  
6 hindsight, yeah, man, we would have maybe said  
7 something. We should have said something to Pastor  
8 Burroughs. Or we should have gotten out.

9 But considering all of the facts in the  
10 totality, under the circumstances, what we know is  
11 it wasn't there that day when consumers would  
12 expect.

13 And when you consider who knew the most, who  
14 knew the most and cared the least, at least based  
15 on what the evidence is going to say, when you're  
16 weighing that evidence, especially if you look at  
17 the time aspect of it, what did she have, a couple  
18 of hours maybe before this happened? Maybe even --  
19 I was thinking about putting, you know, 20 minutes  
20 because when she got in, she conked out. She went  
21 to sleep. And that was the decision. There was  
22 that critical moment -- it really probably came  
23 down to -- I'm sorry.

24 Jeff Salliotte. I was thinking about the  
25 other Jeff -- Jeff Novak.

1           Jeff Novak was the driver. I'm tired. This  
2 has been a very long trial. I'm sure you guys are  
3 tired too, so I'm surprised this is the first thing  
4 I misstated. My partner pointed out I said Jeff  
5 Novak. I just -- he was the driver in this case,  
6 the CDL driver who tried to hold the wheel  
7 straight. He certainly didn't put in 360 degrees of  
8 steer, as Mr. Tandy, the \$100 million man said --  
9 or \$75 million to his company, for Ford Motor  
10 Company.

11           But going back to Michalanne, Jeff has -- Jeff  
12 Salliotte -- I'm sorry -- has accepted some  
13 responsibility. But when you weigh this based upon  
14 the weight of the evidence, the evaluation of the  
15 witnesses, your common sense, and really, it  
16 probably came down to maybe a one- or two-minute  
17 decision, but obviously, it can't be undone.

18           But when you balance it, the bulk of the  
19 responsibility, I would submit, based on the  
20 evidence and the time that you have to weigh, goes  
21 to Ford Motor Company.

22           So when it comes to the verdict form -- let me  
23 switch back to the ELMO.

24           Did Ford Motor Company place the E350  
25 15-passenger van on the market with seat belts that

1 were defectively designed, with the design defect,  
2 that was a legal cause? Yes, based on the  
3 evidence.

4 Was there negligence on the part of First  
5 Baptist Church based on their failure to maintain  
6 and do what was reasonable? The answer is yes.  
7 Not perfect, but were they negligent.

8 Does everyone agree that evidence is  
9 uncontroverted. Even Pastor Burroughs admitted it  
10 himself that, yes, the Church bears some  
11 responsibility.

12 Uncontroverted evidence, members of the jury.

13 Did Michelin North America place the left rear  
14 passenger tire of an E350 on the market with a  
15 manufacturing defect, which is a contributing legal  
16 cause? Yes.

17 And then you have to come, and you've got to  
18 fill out these percentages. And that's really --  
19 members of the jury, when you go back in the jury  
20 room, this is solely in your hands. But I would  
21 suggest that the bulk certainly should go right  
22 here to Ford Motor Company, based on the length of  
23 time and the weight of the evidence that you're  
24 going to have to balance.

25 I've got about ten minutes left, and then I'll

1 be done.

2       So damages, when we were together for those  
3 three days, it was a long three days, in the jury  
4 selection when we had all the people here. We  
5 talked about damages. We talked about how there  
6 are two types of damages: Economic damages and  
7 noneconomic damages. And I'm not going to spend a  
8 lot of time on the economic damages. Those are the  
9 hard chalkboard numbers that Fred Raffa, the  
10 economist, came up with, and he went through the  
11 list -- and I think I've got them here. Let's see.

12       These are Mr. Raffa's -- or Dr. Raffa's  
13 numbers.

14       And it's not that -- I think it was suggested  
15 that Jeff Salliotte had to hire someone. It's the  
16 value of Michalanne Salliotte's past and future  
17 support and services. What would it cost to  
18 replace her, as someone who stayed at home and  
19 someone who provided all the services that she  
20 provided, and then for each of the children,  
21 depending upon their age. There's actually  
22 quantifiable economic numbers that are undisputed  
23 and unrefuted in this case.

24       And so were one to, in calculating these  
25 damages say that there's nothing there, it's

1 just -- it's not based on the evidence. And those  
2 are the numbers from Dr. Raffa, the economic  
3 numbers.

4 If we can go back to the PowerPoint.

5 So now I need to talk to you about the  
6 noneconomic damages. We talked about this in jury  
7 selection.

8 The noneconomic damages, based on the jury  
9 instructions that the Court read, are the pain and  
10 suffering . For Jeff, it's the mental pain and  
11 suffering as a result of his wife's death. The  
12 companionship, the protection.

13 And for the children, the companionship,  
14 instruction, guidance, mental pain and suffering.

15 And I have to talk about that. It's not for  
16 sympathy, because the Salliotte family does not  
17 want your sympathy. But we have to talk about  
18 these losses to each of the children and to Jeff as  
19 the husband, because it's your job to weigh that  
20 evidence, to weigh that evidence and to -- as  
21 appraisers -- as appraisers, to weigh the loss --  
22 to weigh the loss and to measure what was taken  
23 from the children and from Jeff.

24 You know, in this country -- or in some  
25 countries they have what's called an eye for an eye

1 or a tooth for a tooth. That's not what we do here  
2 in this country. It's barbaric. It's not our  
3 system.

4 But what we do have is a system that says, you  
5 know what, it's also not just to turn a blind eye.  
6 To turn a blind eye. Our system stands for the  
7 notion that there are consequences, and there's  
8 responsibilities. And that there's remedies that  
9 are appropriate and just under justice when there  
10 has been a loss, when something was taken.

11 And your job as jurors, as arbiters, is to  
12 fairly and fully weigh that loss for each one of  
13 these family members.

14 So in Florida, it's not the value of the life  
15 that was lost. That's not the measure. That's not  
16 what the instructions say.

17 Rather it's viewed from the eyes of the  
18 survivors, the eyes of the four children and Jeff  
19 Salliotte. And as appraisers, to measure that, to  
20 measure it both -- again, based upon the evidence  
21 of who she was and what she meant as a mother. And  
22 the time that they would have shared if they had --  
23 if she had not died and lived a normal life  
24 expectancy.

25 So when it comes to these noneconomic damages,

1 you have to look at it from the eyes of the  
2 survivors, through Jeff as the husband, and the  
3 children, and fully and completely evaluate it for  
4 each person.

5 Now, there's a tendency to lump it all  
6 together when you get in a case like this and just  
7 kind of lump it. But in this case, that's not the  
8 law. It's not the law to lump it all together.

9 The law is that it's -- a lot of times the law  
10 doesn't make sense. But this is one of the laws  
11 that actually does make sense. That would be an  
12 injustice to these various members that the loss  
13 meant something different to each person.

14 So the law says that you have to look at it  
15 from the eyes of each survivor taken separately.  
16 Not just for them as individuals, but for time, for  
17 all time.

18 It's not -- this is not a case where we come  
19 back in ten years and ask for more. It has to be a  
20 verdict for all time for each individual person.  
21 For each individual person. And here for these  
22 children for the loss of a mother.

23 You know, and a verdict for time. There's a  
24 very different loss between what a mother means in  
25 terms of support and things to a 12-year-old versus

1 when that person is 16. A 12-year-old daughter has  
2 a lot-- or a five-year-old daughter, has a lot of  
3 different losses when she's five, when she's ten.  
4 And really, as long as she's going to have that  
5 mother. And so your job is to consider all that.  
6 And I'm going to spend just a few minutes to talk  
7 about these losses, because it's important for you  
8 to consider this evidence.

9         Again, not for sympathy, because we don't want  
10 it, but to recognize who this woman was.

11         This was their gift. This was their gift.  
12 This was -- you know, sometimes folks don't have a  
13 mother who was special like this, but these people  
14 did. These children did. This husband did. She  
15 was extraordinary. And you've heard the evidence  
16 of these children and talked about what she meant  
17 to them, and looking at it from Corinn's  
18 perspective -- they were best friends. Corinn had  
19 been with her from the time she was little, every  
20 single day and every single night. She talked to  
21 Michalanne. She was that child, kind of, pulled on  
22 the apron strings, who was just there all the time.

23         Now, Connor, of course, was a little bit  
24 different. But for Corinn, this was -- she was  
25 that child. And to look at it from her perspective

1 and through her eyes, for the rest of the time that  
2 she would have had that mother, that's what you  
3 have to weigh in this case.

4 With Corinn, you'll hear that not only did she  
5 lose her mother, but she basically lost her  
6 childhood. When this happened, she had to start  
7 helping with the home schooling. She had to help  
8 with the housework. Her life changed dramatically  
9 forever.

10 Of course, you heard her talk about that she  
11 works now. She goes to school, and she helps take  
12 care of the kids. She didn't have to do that  
13 before. Very different.

14 And that was -- but to weigh her loss from her  
15 eyes, it's necessary to appreciate that this was a  
16 special mother. This was a special gift that  
17 Corinn Salliotte had, that not a lot of people  
18 have. So the loss that was taken from her was  
19 substantial.

20 The loss for Connor was substantial. You  
21 heard -- you felt it. The loss that he had when  
22 that gift was taken him. You heard of the  
23 letterman's jacket. You heard his stories of the  
24 love, and you could see it. And how it feels now  
25 to be there in Publix when you have to watch other

1 kids come in with their mother. He's living that  
2 every day, and this verdict has to substantially  
3 measure that loss that was taken from him. And  
4 taken not naturally. Not in a natural way, but  
5 taken in an unnatural way that was avoidable.

6 And it's your job to weigh all of that and to  
7 measure as appraisers based on all of that evidence  
8 for him. He will not have somebody to talk to him,  
9 to counsel about college or when he goes to school,  
10 to be able to get the feedback from Michalanne, who  
11 was there every day for him, and who was the rock  
12 that he leaned on -- I'm getting behind a little  
13 bit.

14 But you could feel it. Connor -- and that was  
15 his gift that was taken away for all time. So when  
16 you measure this as appraisers, you have to look at  
17 it from his perspective for all time.

18 Then there is the middle child, you heard Jeff  
19 talk about -- Mr. Salliotte talk about Kaden. And  
20 this is their -- this is the one that Jeff worries  
21 about. He's got a weight problem. He's in middle  
22 school. He does not have a mother.

23 It's not that Jeff doesn't do a good job. I  
24 mean, Jeff obviously -- these children are his  
25 passion, but he's not Michalanne. And there are

1 different needs that a mother can fill that a dad  
2 just can't. And this little boy has got to go  
3 through -- Jeff told you he's worried about him,  
4 and it's not just getting through middle school.  
5 But to lose that rudder, to lose that pillar of a  
6 child's life, when we lean -- as children do, they  
7 lean on their mother as one of their basic means of  
8 support. That is now gone for this child.

9 Not just now. Not just when he's 16. But for  
10 all time. And it's not just the obvious, the big  
11 things: The weddings, the first children, the  
12 first day of college, decisions -- it's the little  
13 things. And to just focus on the obvious  
14 dimensions and value of the everyday and the  
15 mundane.

16 Every single day, that support is gone. And  
17 it's the little things. There's a movie Vanilla  
18 Sky a couple of years ago where Tom Cruise said,  
19 you know, the little things are everything. It's  
20 not the big things. It's the little things. The  
21 hug. The caress. The pat on the back when people  
22 are making fun of you. He will not have that now  
23 and forever.

24 So the verdict has to recognize it through  
25 this child's eyes and not lump it with everyone

1 else, but has to be a fair appraisal of what was  
2 taken from him, this gift.

3         And then there's Baby. This was the couch, of  
4 course. She doesn't even remember her mother that  
5 much. She remembers her voice. She can watch  
6 videos. She was five when this happened. So just  
7 like Connor, when he's at Publix watching those  
8 other kids coming in there with their parents, this  
9 child is never going to have that. Has never been  
10 really have known a mother and have received that  
11 support and that care that she has or that  
12 Michalanne was there every day for her.

13         Let's talk about Jeff. Jeff Salliotte, of  
14 course, met Michalanne in Michigan. Moved down --  
15 and it's overused, but this was his soulmate. This  
16 was his best friend. It was a gift. Not everyone  
17 finds a relationship like he did with this woman.  
18 Someone who when they're sitting on that couch, can  
19 look at with love that he shared -- he will never  
20 share that with anyone else. The love that she had  
21 that they shared with those children, it's the  
22 little looks, the smiles, the winks, the nods, the  
23 shared experiences that a husband and wife and  
24 parents have for a child, gone forever.

25         Now, you've heard about his schedule and how

1 he's had to go on, and obviously he keeps his head  
2 held high because he has to. But losing this --  
3 there's an emptiness and a brokenness that is  
4 there. And that pain and that sorrow and that  
5 grief lives with him every single day.

6         And it's this -- it's the little things. It's  
7 the phone call to check in. It's the phone call  
8 when things go bad. It's the support at night to  
9 just be there. And you know, after he comes in to  
10 bed or to kiss her in the morning. As appraisers,  
11 you have to weigh that. This was his gift. This  
12 was taken from him and -- in so many ways. Just  
13 every single day. It's gone.

14         And he's done a good job with these children.  
15 He's got a small business. He comes home and helps  
16 with the home school. He cooks. He cleans. And  
17 you heard him describe, from 6:30 in the morning  
18 until 1:30 at night. Every single day for the rest  
19 of his life, they would have had with her.

20         So when we talk about these noneconomic  
21 damages, as appraisers you have to look at it  
22 individually for each one of these members of this  
23 family. Each -- from the perspective of each one  
24 of their eyes. I said at the beginning. You  
25 were -- we talked about this. If -- the question

1 is whether the weight of the evidence was there,  
2 which it is here based on this special  
3 relationship. Whether -- if the evidence proved  
4 it, would you be able to have a verdict that would  
5 fairly appraise the gravity and the size of this  
6 loss.

7 It would be different if they didn't have this  
8 special thing. But she was taken from them  
9 forever. It's a huge loss. It's a huge loss.

10 As appraisers, that's why the measure of that  
11 has to similarly be huge. Based on the evidence in  
12 this case, looking at it from the perspective of  
13 each individual person -- each individual person's  
14 loss for these children, certainly not more than  
15 \$10 million per person, that's a huge number.  
16 \$10 million per person.

17 But this is a huge loss. This is a massive  
18 loss. And to not value that as appraisers based on  
19 this evidence and this case -- if it was a  
20 different case, it would be different. But this is  
21 a verdict for all time. And the magnitude of this  
22 loss, because of who she was and who she meant to  
23 this family, must be -- must be significantly  
24 large.

25 Some jurors aren't up to that. That's why you

1 were hand-picked, that you could put all those  
2 considerations aside and come in here as appraisers  
3 and say yes, based on this specialness, on this  
4 gift, yes. If the evidence justifies it, then the  
5 appraisal, using your common sense, must be  
6 similarly significant.

7 And some may say -- you may hear, well, gosh,  
8 so and so will never make that in their whole  
9 life --

10 THE COURT: I'm sorry. It's a 5:00 change  
11 over.

12 MR. NEWSOME: That's okay.

13 I'm about to sit down. But some folks may  
14 say, you know what, so and so will never make this  
15 much money in their whole lifetime.

16 But this is about a mother. It's about a  
17 wife. This is not about a paycheck. And your job  
18 is to use your common sense to measure as  
19 appraisers that loss. Not just the economic, but  
20 the noneconomic. And so certainly, based on this  
21 case and the time from each one of these and this  
22 specialness -- this was a rare gift that was taken  
23 unnecessarily, not more than \$10 million per person  
24 is a fair and reasonable measure of the loss that  
25 they've experienced.

1           So I want to sit down now and get a few more  
2 minutes at the end to stand up in rebuttal.

3           But I want to finish with thanking you. This  
4 has been tedious. It's been long. It's late. But  
5 you're here, and you listened. And this is an  
6 important case for all time for this family, and on  
7 their behalf, I thank you.

8           THE COURT: All right. Let's take a  
9 ten-minute break. If you guys want to go back into  
10 the jury room. Again, no talking about the case.  
11 Leave your notes, and feel free to have a snack or  
12 something if you need it. Be back in ten minutes.

13           (Jury exits at 5:04 p.m.)

14           DEPUTY BAILIFF: The jurors are out of the  
15 hearing of the Court.

16           THE COURT: Let's take a ten-minute recess.

17           (A short recess was taken.)

18           THE COURT: Is everybody ready to go back?

19           MS. LUKA: Your Honor, just real fast. Ms.  
20 Lumish and I were reading along when you were  
21 reading the instructions.

22           THE COURT: What did I mess up?

23           MS. LUKA: You didn't mess up anything.

24           We messed up something in Final Instruction 7.  
25 It's supposed to be --