

DIVISION ONE

MARTHA K. GARRISON, LAUREN DIANE FRESH,
A MINOR, BY AND THROUGH HER GUARDIAN
AD LITEM, PATRICIA FRESH, AND GARRISON
WESLEY FRESH, A MINOR, BY AND THROUGH HIS
GUARDIAN AD LITEM, PATRICIA FRESH,

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pages
98-5738

PLAINTIFFS,

VS.

SUPERIOR COURT
NO. 454209

CYNTHIA RAE FILES, DOYLE FILES, PORSCHE-
AUDI, A DIVISION OF VOLKSWAGEN OF AMERICA,
INC., PORSCHE, NORDEN AUTOHAUS LIMITED,
AND DOES ONE THROUGH ONE HUNDRED,
INCLUSIVE,

JURY INSTRUCTIONS
CLOSING ARGUMENTS

DEFENDANTS.

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE MILTON MILKES, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

JUNE 20, 1983
JUNE 21, 1983

APPEARANCES:

FOR PLAINTIFF
MARTHA GARRISON:

LUCE, FORWARD, HAMILTON & SCRIPPS,
BY: CRAIG R. MC CLELLAN
110 WEST A STREET
SAN DIEGO, CALIFORNIA 92101

FOR PLAINTIFFS
LAUREN AND GARRISON
FRESH:

MORGAN, RUBY, TETER, SCHOFIELD,
FRANICH, BOUCHEIR & FREDKIN,
BY: GLEN W. SCHOFIELD
100 PALM CENTER PLAZA, SUITE 350
SAN JOSE, CALIFORNIA 95113

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LLOYD GIBBONS, CSR 3776
OFFICIAL REPORTER

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JUNE 20, 1983

I N D E X

INSTRUCTIONS TO THE JURY	PAGE 5616
MR. MC CLELLAN'S CLOSING ARGUMENT	PAGE 5643

JUNE 21, 1983

MR. MC CLELLAN'S ARGUMENT - CONTINUED	PAGE 5736
MR. SCHOFIELD'S CLOSING ARGUMENT	PAGE 5776
MR. WAIMEY'S CLOSING ARGUMENT	PAGE 5804

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MAY IT PLEASE THE COURT, MY COLLEAGUE AND GOOD FRIEND, MR. SCHOFIELD, MY COLLEAGUES, MR. WAIMEY, COURTURE AND SHIFFLET, LADIES AND GENTLEMEN OF THE JURY,

BEFORE I PRESENT TO YOU THE SUMMATION OR THE CONCLUDING REMARKS THAT I HAVE TODAY, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK ALL OF YOU.

IT'S BEEN A LONG TIME THAT WE HAVE BEEN TOGETHER IN THIS CASE.

IT'S BEEN A NUMBER OF MONTHS, LONGER THAN WE CERTAINLY ANTICIPATED INITIALLY; I AM SURE LONGER THAN ALL OF YOU ANTICIPATED.

AND BELIEVE ME, WE KNOW, THE LAWYERS KNOW AND THE CLIENTS KNOW WHAT IT'S LIKE FOR YOU BEING AWAY FROM YOUR HOMES AND YOUR FAMILIES AND YOUR JOBS AND COMING DOWN HERE AND LISTENING TO THE PROBLEMS AND THE DIFFICULTIES, OF OTHER PEOPLE AND OTHER COMPANIES THAT YOU HAVE NEVER HAD ANY ASSOCIATION WITH AND THAT YOU DON'T KNOW.

AND I WAND TO TELL YOU THAT WE APPRECIATE YOUR

1 PATIENCE THROUGHOUT THE TRIAL AND WE APPRECIATE YOUR
2 DEVOTION TO THIS CASE, THE SACRIFICES YOU HAVE MADE AND THE
3 DEDICATION YOU HAVE TO OUR SYSTEM, BECAUSE THAT IS, IN THE
4 END, THE IMPORTANT THING, THAT THE SYSTEM PREVAILS, THE
5 SYSTEM OF JUSTICE THAT WE HAVE, AND THAT YOUR VERDICT IS A
6 FAIR AND JUST VERDICT.

7 I SHOULD TELL YOU RIGHT OFF THE BAT THAT THIS IS
8 AN IMPORTANT CASE AND IT'S AN IMPORTANT CASE NOT JUST
9 BECAUSE OF THE VALUE OF THE LOSS, BUT IT'S AN IMPORTANT
10 CASE BECAUSE OF THE POWER OF THE JURY TO SET THE STANDARDS
11 OF PRODUCTS AND IN PARTICULAR OF NOT ONLY THE ONE PRODUCT
12 THAT'S INVOLVED IN THIS CASE BUT TO SET AND DETERMINE
13 WHETHER THE STANDARDS OF PRODUCTS ARE GOING TO BE HIGH OR
14 LOW; AND YOU HAVE THE POWER, BY YOUR VERDICT IN THIS CASE,
15 TO SET STANDARDS AS TO PRODUCT SAFETY.

16 YOU ARE THE ULTIMATE ENFORCER OF CONSUMER SAFETY
17 AND PRODUCT SAFETY IN THIS COUNTRY, AND THE VERDICT THAT
18 YOU RENDER IN THIS CASE IS HEARD THROUGHOUT THE MANUFACTURING
19 INDUSTRY.

20 IT GOES BEYOND THIS COURTROOM.

21 IT'S HEARD BACK IN THE BOARDROOMS OF THE
22 MANUFACTURERS IN THIS COUNTRY AND IN WEISSACH OR STUTT GART.

23 AND SO BY YOUR VERDICT YOU TELL THE MANUFACTURERS
24 HIGH OR LOW STANDARDS; IN THIS STATE AND IN THIS COURTROOM.

25 NOW, I WOULD JUST LIKE TO BRIEFLY MENTION TO YOU,
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1 WHEN I SAY THAT YOU SET THE STANDARDS, THERE ARE NO SPECIFIC
2 LAWS -- YOU HEARD THE COURT'S INSTRUCTIONS, AND THERE ARE NO
3 SPECIFIC LAWS OR STANDARDS ON THE ISSUES THAT ARE BEFORE YOU
4 TO DECIDE; JUST LEGAL GUIDELINES FOR YOU TO FOLLOW IN
5 ARRIVING AT YOUR DECISION.

6 IN THAT REGARD YOU MAY RECALL THAT DURING THE VOIR DIRE
7 PROCESS, THE INITIAL QUESTION AND ANSWER
8 PROCESS THAT WENT ON BETWEEN US AT THE BEGINNING OF THE
9 CASE, I ASKED QUESTIONS ABOUT THE PHILOSOPHY OF CAVEAT EMPTOR, -
10 LET THE BUYER BEWARE.

11 THAT IS SOMETHING THAT MANY, IF NOT ALL OF US HAVE HEARD
12 ABOUT AT ONE TIME OR ANOTHER, BE IT IN SCHOOL OR THROUGH OUR
13 ASSOCIATION WITH OTHER PEOPLE OR OUR COMMON BACKGROUND AND
14 EXPERIENCE THAT WAS THE LAW OF OLD WITH REGARD TO CONSUMER SAFETY AND
15 PRODUCT LIABILITY.

16 THAT WAS THE LAW WHEN THE INTEREST OF MANUFACTURERS
17 WERE PARAMOUNT AND CONSUMERS' HAD FEW OR NO RIGHTS. DURING
18 THE INDUSTRIAL REVOLUTION, THERE WAS A GREAT EFFORT TO PROMOTE
19 MANUFACTURING AND THE LAW FAVORED MANUFACTURERS; BUT THEN AS
20 THE TOLLS OF INJURIES AND DEATHS MOUNTED, AS MORE AND MORE
21 PEOPLE WERE ROBBED OF THEIR HEALTH AND DIGNITY THROUGH THE
22 USE OF PRODUCTS, THE LAW STARTED TO CHANGE AND THE PHILOSOPHY
23 BEHIND IT STARTED TO CHANGE SO THAT WE GOT WHERE WE ARE TODAY.
24 AND ONE OF THE REASONS THAT WE GOT THERE IS BECAUSE OF THE
25 CHANGE IN THE DEVELOPMENT AND
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1 THE MANUFACTURING OF PRODUCTS .

2 PRODUCTS BECAME MASS PRODUCED; OUR SOCIETY, AS A RESULT THE
3 MANUFACTURING PROCESS, AS WELL AS THE TYPES OF PRODUCTS THAT WERE
4 PRODUCED, BECAME MORE COMPLEX.

5 AND THE AVERAGE CONSUMERS, SUCH AS YOU AND I,
6 COULD NOT BE EXPECTED TO KNOW ALL THE COMPLEXITIES AND
7 THE TECHNICALITIES OF ALL THE PRODUCTS, THE VARIOUS MASS-
8 PRODUCED PRODUCTS THAT ARE ON THE MARKET.

9 WE DON'T KNOW, FOR INSTANCE, WHY WE ARE NOT
10 SUPPOSED TO PUT ALUMINUM FOIL IN A MICROWAVE OVEN, WE ARE
NOT ENGINEERS AND TECHNICIANS WHO KNOW THOSE THINGS.

12 WE ARE TOLD NOT TO DO IT BECAUSE THE MANUFACTURERS
13 WHO HAVE THE ENGINEERS, THE TECHNICIANS AND DESIGNERS, KNOW
14 THAT, AND THEY KNOW THAT IT'S DANGEROUS TO DO THOSE THINGS, SO
15 THEY IMPART THAT KNOWLEDGE TO US BY WAY OF WARNINGS.

16 THIS IS A DAY OF SYNTHETIC LIVING WHEN, TO AN EVER-INCREASING
17 EXTENT, OUR POPULATION IS DEPENDENT UPON MASS-PRODUCED PRODUCTS FOR
18 ITS FOOD AND DRINK, ITS CURES AND COMPLEXITIES AND GADGETS.

19 THESE NO LONGER ARE NATURAL AND SIMPLE PRODUCTS BUT SOME
20 COMPLEX ONES WHOSE COMPOSITIONS AND QUALITIES ARE OFTEN SECRET.

21 SUCH A DEPENDENT SOCIETY MUST EXACT GREATER CARE
22 THAN IN MORE SIMPLE DAYS AND MUST REQUIRE FROM MANUFACTURERS
23 OR PRODUCERS INCREASED INTEGRITY AND CAUTION AS THE ONLY
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1 PROTECTION OF ITS SAFTEY AND WELLBEING.

2 PURCHASERS CANNOT TRY OUT DRUGS TO DETERMINE
3 WHETHER THEY KILL OR CURE.

4 CONSUMERS CANNOT TEST THE YOUNGSTER'S COWBOY SUIT OR
5 WIFE'S SWEATER TO TELL IF THEY ARE APT TO BURST INTO FATAL
FLAMES.

7 WHERE EXPERIMENT OR RESEARCH IS NECESSARY TO
8 DETERMINE THE PRESENCE OR DEGREE OF DANGER, THE PRODUCT MUST
9 NOT BE TRIED OUT ON THE PUBLIC NOR MUST THE PUBLIC BE
10 EXPECTED TO POSSESS THE FACILITIES OR THE TECHNICAL KNOWLEDGE
11 TO LEARN FOR ITSELF OF THE INHEREN, BUT LATENT DEFECTS.

12 AND, LADIES AND GENTLEMEN, THAT'S WHAT THIS CASE IS
13 ABOUT.

14 LET'S FIRST TALK FOR A MOMENT ABOUT WHAT HAPPENED IN
15 THIS ACCIDENT.

16 YOU HAVE HEARD A LOT OF TESTIMONY THAT GOES BACK
17 A LONG WAYS, AND I AM NOT GOING TO GO THROUGH IT ALL OVER
18 AGAIN, BUT IT'S IMPORTANT BECAUSE IT'S BEEN SO LONG, THAT WE
19 TOUCH UPON SOME OF THAT TESTIMONY AND PERHAPS TRY TO
20 RECONSTRUCT WHAT IT WAS THAT OCCURRED ON MAY 12, 1980.

21 YOU HAVE HEARD A LOT OF TESTIMONY AND IT SEEMS TO
22 BE A GENERAL CONSENSUS OF FACT THAT THE PORSCHE TURBO 930
23 VEHICLE STARTED FROM A STOP SIGN AT GIRARD AND PROGRESSED
24 ON PROSPECT STREET IN A SOUTHERLY DIRECTION THROUGH WHAT
25 HAS BEEN CALLED A RIGHT-HAND TURN AND A LEFT-HAND TURN AND
26 ENDED UP IN A COLLISION AT A POINT NEAR BISHOPS LANE

1 NOW, THE FIRST WITNESS YOU HEARD IN THE CASE WAS
2 CYNTHIA FILES, AND CYNTHIA FILES TOLD YOU THAT BASICALLY SHE
3 COULDN'T REMEMBER TOO MUCH ABOUT WHAT HAPPENED, AND THINK
4 THAT, FROM WHAT WE HAVE HEARD, NOT ONLY BEFORE HER
5 TESTIMONY BUT SINCE HER TESTIMONY, IT'S UNDERSTANDABLE THAT
6 WHEN SOMEBODY IS IN AN ACCIDENT WITH A DEATH INVOLVED, I
7 SUPPOSE WE CAN ALL EXPECT THAT THE MEMORY MAY NOT BE AS
8 GOOD AS IT MIGHT OTHERWISE HAVE BEEN; BUT IN ANY EVENT, SHE
9 REMEMBERED THAT SHE WAS GOING, DOWN PROSPECT STREET; SHE
10 THOUGHT SHE WAS GOING FASTER THAN SHE SHOULD BE; SHE TOOK HER
11 FOOT OFF THE GAS; THE REAR END OF THE CAR STARTED TO SLIDE OUT
12 TO THE LEFT; AND SHE SAID THAT SHE THOUGHT SHE REMAINED ON HER
13 SIDE OF THE STREET.

14 SHE APPLIED THE BRAKES. AND SHE SAID SHE DIDN'T
15 REMEMBER ANYTHING AFTER THAT.

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OFFICER ATKINS WAS ONE OF THE FIRST WITNESSES CALLED
TO THE STAND, AND YOU MAY RECALL THAT OFFICER ATKINS

1 WAS THE POLICE OFFICER WHO WENT OUT AND HE DID SOME
2 MEASUREMENTS AND MADE SOME DRAWINGS OR SKETCHES OF THE
3 MOVEMENT OF THE VEHICLE UP UNTIL THE POINT OF IMPACT.

4 I HAVE GOT THE CHART HERE. I AM GOING TO PUT IT UP IN A
5 SECOND.

6 I WANT TO ADD ONE OTHER WITNESS. THERE IS ONE
7 OTHER WITNESS THAT OBSERVED THE ACTUAL IMPACT, THE ACTUAL
8 COLLISION AND THE MOVEMENT OF THE VEHICLE UP TO THE TIME OF
9 THE COLLISION AND THAT WAS MR. ROBERTSON.

10 YOU RECALL THAT THE OTHER WITNESSES, A MR. KOTAKIS
11 HE'S THE ONE THAT GAVE US THE WHINING SOUND OF THE ENGINE --
12 WAS BACK IN THIS AREA.

13 MR. MURPHY WAS AT THE SERVICE STATION HERE; AND
14 BECAUSE OF THE WINDOW HE WAS LOOKING OUT, HIS VIEW WAS
15 LIMITED.

16 MR. ROBERTSON, THE DRIVER OF THE BMW, THE OTHER
17 CAR, WAS HERE AND OBVIOUSLY WAS INVOLVED IN THE COLLISION
18 AND THREE THINGS THAT MR. ROBERTSON SAID -- I KNOW IT'S
19 DIFFICULT TO GET THAT TESTIMONY WHEN IT DOESN'T COME TO YOU
20 RIGHT FROM THE WITNESS STAND; IT WAS READ FROM A DEPOSITION;
21 BUT THREE THINGS THAT MR. ROBERTSON SAID, I THINK, ARE
22 IMPORTANT AND STICK OUT.

23 ONE IS THAT AS HE SAW THE VEHICLE COMING FROM
24 RIGHT TO LEFT BEFORE IT WENT INTO A SLIDE;
25 HE SAW A WIGGLE MOTION OF THE CAR; AND HE ALSO SAID THAT -
26 ONCE IT WENT INTO A SLIDE, HE OBSERVED THE

1 FRONT AND THE REAR WHEELS OF THE CAR AND THEY WERE SPINNING
2 ALL THE WAY UP UNTIL THE TIME IT IMPACTED HIS CAR.

3 SO THAT'S REALLY ALL THE TESTIMONY THAT WE HAVE FROM
4 EYEWITNESSES, FROM PEOPLE WHO WERE INVOLVED IN THE ACCIDENT,
5 ITSELF.
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13 OFFICER ATKINS DREW THE MOVEMENT OF THE VEHICLE
14 AS IT PROGRESSED INTO THE BROADSIDE SLIDE, AS IT COLLIDED
15 WITH THE BMW AND THEN WENT BACKWARDS IN A CIRCULAR
16 MOTION, COUNTERCLOCKWISE; STOPPED, AND WENT FORWARD OVER A
17 SLIGHT CROWN IN THE ROAD AND CRASHED
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1 INTO A VOLKSWAGEN PARKED ON THE OTHER SIDE OF THE STREET.
2 THAT WAS THE GENERAL SEQUENCE OF THE ACCIDENT
3 ACCORDING TO OFFICER ATKINS.

4 NOW, THE NEXT DAY DETECTIVE CASTEEL WENT TO THE
5 SCENE OF THE ACCIDENT. YOU HEARD FROM DETECTIVE CASTEEL
6 DURING THIS TRIAL.

7 OFFICER CASTEEL WENT THE NEXT DAY AND HE TOOK A LOOK
8 AT THE SCENE AND HE MADE A DIAGRAM OF THE ACCIDENT
9 SCENE AND THE SCUFF MARKS.

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1 YOU MAY RECALL, I ASKED HIM - I WAS STANDING RIGHT UP
HERE ALONGSIDE OF HIM - AND I GAVE HIM A HYPOTHETICAL
3 QUESTION; I SAID, "WHAT IF A DRIVER OF A CAR TOOK HER FOOT
4 OFF THE GAS AND THE REAR END STARTED TO SLIDE OUT, WOULD
5 THAT BE CONSISTENT WITH THE KIND OF MARKS THAT YOU FOUND IN
6 THIS CURVE, IN THIS LEFT-HAND CURVE?"

7 AND HE SAID, "YES, IF THE REAR END WAS SLIDING
8 OUT, IT WOULD LEAVE SCUFF MARKS, THE SAME TYPE OF MARKS
9 THAT WERE FOUND AT THE SCENE OF THE ACCIDENT."

10 YOU SAW PHOTOGRAPHS THAT WERE PASSED AROUND TO YOU OF THE
11 VEHICLE AFTER THE ACCIDENT.

12 WITH REFERENCE NOW TO SOME OF THESE PHOTOGRAPHS, YOU WILL SEE THAT THE
13 WHEELS OF THE PORSCHE, AT THE TIME OF ITS COMING TO REST WERE IN WHAT HAS BEEN
14 REFERRED TO AS A COUNTERSTEERTNG POSITION.

15 IN OTHER WORDS, THEY WERE TURNED IN THE DIRECTION OF
16 THE MOVEMENT OF THE REAR END OF THE VEHICLE.

17 THE MOVEMENT OF THE REAR END OF THE VEHICLE HAD
18 BEEN TO THE RIGHT. THE WHEELS ARE TURNED TO THE RIGHT AND
19 ARE AT THE RIGHT AND HAD TO BE AT THE RIGHT AT THE TIME OF
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THE IMPACT BECAUSE OF THE MOVEMENT OF THE VEHICLE AFTER THE IMPACT.

IT WOULDN'T HAVE MOVED AROUND IN A SEMICIRCLE,
COUNTERCLOCKWISE, HAD THE WHEELS NOT BEEN TURNED TO THE
RIGHT IN THIS COUNTERSTEERING POSITION.

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NOW, WHAT ABOUT THE SPEED AT THE TIME OF THE

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IMPACT?

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I MADE A FEW NOTES ABOUT WHAT TESTIMONY THERE HAS

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BEEN ABOUT THE SPEED AT THE TIME OF IMPACT.

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YOU RECALL THE FIRST TESTIMONY YOU HEARD WAS FROM MR.

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O'SHEA.

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PAUL O'SHEA TESTIFIED THAT HIS CALCULATION OF THE

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SPEED AT THE TIME OF IMPACT WAS ABOUT 30 MILES PER HOUR;

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THAT'S THE COLLISION SPEED; AND HE RELIED IN PART ON THE

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1 TESTIMONY OF A DR. BLYTHE, WHO HE WAS FAMILIAR WITH, AND
2 TOLD YOU ABOUT HIS QUALIFICATIONS AND HIS OWN
3 CALCULATIONS, BASED UPON HIS RECONSTRUCTING THE SEQUENCE OF
4 EVENTS.

5 AND SGT. PRIEM, ANOTHER POLICE OFFICER, TESTIFIED.

6 SGT. PRIEM SAID HE CALCULATED A SPEED OF 25 TO
7 35 MILES PER HOUR AT IMPACT.

8 AND THERE WAS ONE OTHER CALCULATION OF SPEED AND
9 THAT CAME FROM PORSCHE'S CRASH SPECIALIST.

10 MR. MARTIN, YOU MAY RECALL, THE BRAKE ENGINEER
11 FROM PORSCHE, TESTIFIED THAT PORSCHE'S CRASH SPECIALIST HAD
12 ESTIMATED THE SPEED AT THE TIME OF IMPACT TO BE 50 KILOMETERS
13 WHICH WORKED OUT TO 32 MILES PER HOUR.

14 ALL RIGHT, WITH THAT BACKGROUND AS TO THE
15 OCCURRENCE OF THE ACCIDENT, LET'S TALK FOR A MOMENT NOW
16 ABOUT WHAT CAUSED THE ACCIDENT.

17 THE COURT HAS INSTRUCTED YOU ON WHAT IS CALLED A
18 DESIGN DEFECT.

19 THE INSTRUCTION THAT THE COURT GAVE YOU WAS THAT

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"A PRODUCT IS DEFECTIVE IN DESIGN UNLESS THE
BENEFITS OF THE DESIGN OF THE PRODUCT AS A WHOLE OUTWEIGH

THE RISK OF DANGER INHERENT IN THE DESIGN OR IF THE PRODUCT
FAILED TO PERFORM AS SAFETY AS AN ORDINARY CONSUMER
THE PRODUCT WOULD EXPECT WHEN USED IN A MANNER REASONABLY
FORESEEABLE BY THE DEFENDANT."

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WHAT DOES THAT MEAN?

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IT MEANS THERE ARE TWO TESTS IN DETERMINING WHETHER
THERE IS A DESIGN DEFECT IN A VEHICLE.

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THE FIRST TEST, AND I'LL TAKE THEM IN REVERSE
ORDER, IS THAT A VEHICLE IS DEFECTIVE IN DESIGN IF IT FAILS TO
PERFORM AS SAFELY AS AN ORDINARY CONSUMER OF THE PRODUCT
WOULD EXPECT IT TO PERFORM WHEN USED IN A REASONABLY
FORESEEABLE FASHION.

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THAT'S ALL IT MEANS.----- DOES IT PERFORM AS SAFELY AS
THE AVERAGE CONSUMER WOULD EXPECT?

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AND THE SECOND TEST IS EVEN IF IT DOES
PERFORM AS SAFELY AS THE AVERAGE CONSUMER WOULD EXPECT, BUT BECAUSE
OF THE DESIGN OF THE PRODUCT, IT WAS A LEGAL CAUSE WHICH
SUBSTANTIAL FACTOR IN BRINING ABOUT THE ACCIDENT, THEN
YOU HAVE TO DETERMINE WHETHER THE RISKS OF THE DESIGN ARE
OUTWEIGHED BY THE BENEFITS; OR PUTTING IT ANOTHER WAY, AND I AM
TRYING TO AVOID ALL THE LEGALESE OF THESE INSTRUCTIONS; I AM SURE
THEY ARE WRITTEN BY LAWYERS; IT'S DIFFICULT EVEN FOR LAWYERS TO
UNDERSTAND THEM SOMETIMES; BUT BASICALLY WHAT THAT MEANS

1 IS: ARE THERE ANY BENEFITS TO THIS DESIGN WHICH OUTWEIGH THE
DANGERS OF THE DESIGN?

AND WE'LL GET TO THAT IN JUST A SECOND, BUT LET'S TALK
ABOUT WHAT DESIGN THIS IS, THAT'S THE FIRST THING.

THE PART OF THE DESIGN THAT WE ARE TALKING ABOUT IS THE
POWER AND HANDLING CHARACTERISTICS OF THE CAR AND WHETHER
THE POWER AND HANDLING CHARACTERISTICS OF THIS CAR PERFORM
AS SAFELY AS AN ORDINARY CONSUMER OF THE PRODUCT WOULD
EXPECT WHEN USED IN A REASONABLY FORESEEABLE MANNER.

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11 NOW, IN THAT REGARD, YOU HEARD FROM MR. O' SHEA. HE
12 WAS ONE OF THE FIRST WITNESSES THAT TALKED ABOUT THE HANDLING
13 OF THE CAR, AND HE DREW A CHART OF OVERSTEER AND UNDERSTEER,
14 AND HE TOLD YOU THAT THIS CAR WAS UNIQUE IN MANY RESPECTS.

15 ONE OF THE REASONS IT WAS UNIQUE, IS BECAUSE IT
16 OVERSTEERED, AND HE DESCRIBED OVERSTEERING FOR YOU AS, IN
17 EFFECT, THE REAR END OF THE CAR DRIVING THE CAR INSTEAD OF
18 VICE VERSA; THAT WHEN THE CAR GOES INTO AN OVERSTEER
19 SITUATION, THE MOVEMENT OF THE CAR IS BEING GOVERNED BY THE
20 MOVEMENT OF THE REAR END INSTEAD OF BY THE DRIVER.

21 HE DESCRIBED IT IN TERMS OF OUR EVERYDAY
22 EXPERIENCES, LIKE FLYING A PLANE UPSIDE DOWN. IT'S A GOOD
23 ANALOGY. INSTEAD OF PULLING BACK ON THE STEERING WHEEL TO
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1 GO UP YOU WOULD HAVE TO DO THE OPPOSITE. YOU WOULD HAVE PUSH IN TO
2 GO UP.

3 THAT'S WHY PEOPLE ARE NOT USED TO OVERSTEERING
4 CARS. IT'S A UNIQUE CAR. THERE AREN'T OTHER CARS LIKE
5 THIS CAR.

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14 YOU REMEMBER THERE WAS TESTIMONY ABOUT WHAT
15 HAPPENS WHEN YOU GO AROUND A CORNER.

16 WHEN EACH OF US GO AROUND A CORNER IN OUR CARS AND WE LET
17 GO, IN EFFECT, JUST LOOSEN OUR HANDS ON THE STEERING WHEEL, THE WHEEL
18 COMES BACK IN OUR HANDS, AND WE ARE GOING STRAIGHT AHEAD AS WE GET
19 AROUND THAT CORNER.

20 IN AN OVERSTEERING CAR, WE WOULD GET AROUND THE CORNER
21 AND LOOSEN UP ON THE WHEEL AND THE CAR WOULD KEEP GOING IN
22 THE DIRECTION IT WAS GOING AROUND THE CORNER UNLESS YOU
23 STEEED OUT THAT OVERSTEER.

24 YOU HAVE TO REACT QUICKLY AND YOU HAVE TO STEER
25 THAT OUT AND THEN YOU STEER BACK TO GET IN A STRAIGHTAWAY
26 POSITION, THE SAME POSITION YOU WOULD END UP IN AN
UNDERSTEERING CAR

1 WITHOUT ANY MOVEMENT ON YOUR PART, WITHOUT ANY ACTIVITY ON
2 YOUR PART IN TERMS OF STEERING MANEUVERS.

3 NOW, REMEMBER MR. WAKEFIELD, WHO FORMERLY WORKED FOR ROAD AND TRACK.

4 WHAT DID HE SAY? HE DID FINE IN SECOND GEAR AT
5 36 MILES AN HOUR.

6 HIS TESTIMONY WAS HE WENT INTO THE WEEDS AT 38
7 MILES AN HOUR. HE CALCULATED HE HAD TWO AND A HALF SECONDS
8 TO REACT.

9 NOW, HOW MANY PEOPLE ARE GOING TO KNOW WHAT TO
10 DO IN THAT KIND OF A CAR IN THAT KIND OF A SITUATION IN TWO
11 AND A HALF SECONDS, AND THAT'S AT 38 MILL AN HOUR ON A
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CURVE THAT ISN'T MUCH DIFFERENT THAN THAT RIGHTLHAND CORNER
IN LA JOLLA.

3 HE SAID HE HAD NO TIME TO REACT at 44 MILES PER
4 HOUR. AND THIS IS THE DRIVER WHO IS A JOURNALIST, WHO'S
5 MADE A LIVING WRITING ARTICLES ABOUT AUTOMOBILES AND
6 TESTING AUTOMOBILES, AND HE'S DRIVEN ALL KINDS OF CARS.

7 IF HE CAN'T DO IT, IF HE CAN'T REACT AT 44 OR 45
8 MILES AN HOUR, WHAT IS THE AVERAGE CONSUMER GOING TO DO?
9 WHAT IS THE PERSON, WHO UNDERSTANDS THAT IF YOU WANT TO
10 SLOW DOWN YOU TAKE YOUR FOOT OFF THE GAS, GOING TO DO WHEN
11 THEY DO THAT AND FIND THE CAR GOING INTO A BROADSIDE SLIDE
12 OR SPIN.

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MR. WAKEFIELD IS A WITNESS THAT PORSCHE CALLED TO THE
STAND. HE CHARACTERIZED THE PORSCHE TURBO 930 AS BEING A
CAR THAT UNDERSTEERS THROUGH MOST OF ITS CORNERING
RANGE; BUT ONCE IT STARTS TO LOSE TRACTION, IT
OVERSTEERS, IE.,

HE SAID IF YOU TAKE YOUR FOOT
OFF THE GAS ABRUPTLY, THE REAR END OF THE CAR WILL RISE UP,
CAUSING THE CAMBER OF THE REAR WHEELS TO CHANGE, WHICH WILL
CAUSE THE REAR WHEELS TO LOSE TRACTION ABRUPTLY; THEY WILL
START SLIDING.

1 NOW, MR. WAKEFIELD ALSO SAID ANOTHER INTERESTING
2 THING. HE SAID HE DIDN'T HAVE ANY OPINION AS TO WHETHER
3 ANY LICENSED DRIVER SHOULD BE ABLE TO BUY A PORSCHE 930
4 TURBO LIKE THE '79 VERSION AND READ THE OWNERS MANUAL AND
5 KNOW HOW TO DRIVE IT.

6 HE HAD NO OPINION REGARDING THAT.

7 HE READ THE ARTICLE IN ROAD AND TRACK ON THE
8 PORSCHE TURBO AND KNOWS THE PEOPLE THAT WROTE IT. HE SAID
9 HE KNEW THE PEOPLE THAT WERE INVOLVED IN IT AND THOSE
10 PEOPLE WERE GENERALLY RELIABLE IN THE FIELD AND AT THE
11 TIME IT WENT INTO PRODUCTION HE HAD READ THE STATEMENT AND
12 HE EDITED IT AND HE PUBLISHED IT WHICH SAID, "WE FEEL THE
13 TURBO'S HANDLING IS SOMETHING FEW DRIVERS WILL MASTER,"
14 AND HE READ A PART AT PAGE 131 OF THAT ROAD AND TRACK
15 ARTICLE WHICH STATES, "AND IN DRIVING THE TURBO, WE FOUND
16 THAT THE EXPECTED TRANSITION FROM UNDER TO OVERSTEER AND
17 VICE VERSA IS ALWAYS THERE AND READY TO CATCH THE UNWARY
18 DRIVER WHO BACKS OFF THE THROTTLE IN A TIGHT CORNER OR
19 APPLIES A HEAVY FOOT TO THE THROTTLE AND BRINGS ON THE
20 BOOST."

21 HE ALSO READ THE PART THAT SAID, AND I QUOTE,
22 "OUR TEST DRIVER COMMENTED THAT HE HAD TO TRICK THE CAR INTO
23 GOING FAST THROUGH THE SLALOM AND SKID-PAD PORTIONS OF THE
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1 TEST PROCEDURE.

2 "IT WAS A QUESTION OF KEEPING THE ENGINE OFF
3 BOOST BY USING A HIGHER GEAR AND LIGHT THROTTLE; OTHERWISE
4 THE TURBOCHARGER BOOST WOULD COME ON WITH A RUSH AND CHANGE
5 THE HANDLING CHARACTERISTICS DRAMATICALLY."

6 AND MR. WAKEFIELD SAID KEEPING THE ENGINE OFF BOOST,
7 MEANS KEEPING IT IN THE NONTURBOCHARGED RANGE, BELOW 3,000
8 RPM'S. HE SAID THAT IF ONE WERE GOING ALONG AT 1500 RPM'S AND
9 PUSHED THE THROTTLE DOWN, IT WOULD BUILD TO THE POINT WHERE YOU
10 WOULD GET TO 3,000 RPM'S AND THEN THE TURBOCHARGER WOULD COME ON
11 WITH A RUSH.

12 THOSE WERE HIS WORDS.

13 THE RUSH, HE SAID, MEANS THAT THE ACCELERATION
14 INCREASES DRAMATICALLY.

15 HE SAID THAT HE WOULD AGREE THAT ONE OF THE WORST
16 THINGS YOU COULD DO, IF YOU WERE IN A CORNER, AT THE
17 CORNERING LIMITS, WOULD BE TO PULL YOUR FOOT OFF THE THROTTLE
18 ABRUPTLY. HE SAID THAT WOULD PROBABLY CAUSE AN OVERSTEER, AND
19 OVERSTEER WOULD RESULT OR COULD RESULT IN THE REAR END OF THE
20 VEHICLE SWINGING OUT TOWARDS THE OUTSIDE OF THE CURVE.

21 NOW, THE ACCIDENT VEHICLE, THE VEHICLE THAT WAS
22 INVOLVED IN THIS ACCIDENT, WAS THE VERY SAME VEHICLE THAT
23 WAS REFERRED TO IN THAT ROAD AND TRACK ARTICLE.

24 THE ENGINE OF THE 930 TURBO, YOU MAY RECALL, WAS

1 INCREASED FROM THREE LITERS TO 3.3 LITERS, ACCORDING TO
2 MR, WAKEFIELD, TO INCREASE ITS SPEED PERFORMANCE.

3 AND, ACCORDING TO THE ROAD AND TRACK ARTICLE,
4 WHICH MR. WAKEFIELD SAID HE CONSIDERED VALID, THE 930 TURBO
5 WILL PRODUCE A SPEED OF 55 MILES AN HOUR IN FIRST GEAR;
6 THAT'S TN FIRST GEAR, THAT CAR IS GOING TO REACH THE SPEED
7 LIMIT, ANY SPEED LIMIT IN THE NATION; 94 MILES PER HOUR IN
8 SECOND GEAR; 127 MILES PER HOUR IN THIRD GEAR AND 156 MILES
9 PER HOUR IN FOURTH GEAR.

10 NOW, YOU ALSO HEARD THAT THE TESTS SHOWED THAT THE TOP
11 SPEED IS 165 MILES AN HOUR.

12 IT GOES FROM ZERO TO 60 IN 4.9 SECONDS; IT GOES FROM
13 ZERO TO 100 IN UNDER 12 SECONDS.

14 THERE ARE TURBOCHARGERS ON THE MARKET
15 AND COMING ON THE MARKET, BUT MR. O'SHEA TOLD YOU THAT THIS
16 TURBOCHARGER IN THIS CAR IS SET AT THREE TO FOUR TIMES
17 THE BOOST OF ANY OTHER CAR THAT'S ON THE MARKET, AND THAT'S
18 ON TOP OF ONE OF THE MOST POWERFUL ENGINES ON THE MARKET-
19 AND IT'S IN THIS RELATIVELY SMALL CAR.

20 THOSE ARE ALL FACTORS THAT AFFECT THE PERFORMANCE
21 OF THE CAR, BECAUSE THESE POWER AND HANDLING CHARACTERISTICS
22 THAT WE ARE TALKING ABOUT GO HAND IN HAND.

23 IT'S THE TURBOCHARGER AND THE BOOST, WHEN YOU GET TO THAT 3,000 RPM'S
24 AND THE ACCELERATION TAKES OFF DRAMATICALLY THAT GETS YOU INTO THE SITUATION
25 WHERE YOU FIND YOURSELF IN A CORNER AND HAVE TO SLOW DOWN.

26 YOU ARE GOING FASTER ALL OF A SUDDEN THAN YOU THOUGHT YOU WERE GOING
BECAUSE THE CAR HITS 3,000 RPM'S AND ACCELERATION INCREASES DRAMATICALLY
WITHOUT PRESSING THE GAS ANY FURHTER.

SO YOU GET INTO A CORNER AND THE NATURAL REACTION OF ANYBODY IS TO TAKE
THEIR FOOT OFF THE GAS AND WHEN THAT HAPPENS, - THAT'S THE LAST THING YOU
SHOULD DO WITH THIS CAR, - WHEN THAT HAPPENS THE REAR END GOES OUT AND, BOY
YOU BETTER KNOW WHAT TO DO.

1 YOU BETTER KNOW HOW TO HANDLE THAT STEERING WHEEL AND GET BACK
2 ON THE ACCELERATOR AND POWER IT THROUGH THE CURVE AND
3 COUNTERSTEER OR IT'S GOING TO BE ALL OVER, JUST AS MR.
4 WAKEFIELD TESTIFIED, AS MR. O'SHEA TESTIFIED, AND AS PORSCHE'S
5 TEST SHOW.

6 WHAT HAS TO BE REMEMBERED IN ALL OF THIS IS THAT WE ARE TALKING
7 ABOUT THE AVERAGE CONSUMER, WHAT THE EXPECTATION OF THE AVERAGE
8 CONSUMER IS, THE AVERAGE DRIVER, THE AVERAGE AUTOMOBILE USER, AND
9 NOT A PROFESSIONAL DRIVER.

10 YOU HAVE HEARD MR. WAIMEY, IN HIS OPENING STATE-
11 MENT, AND I HAVEN'T HAD AN OPPORTUNITY TO COMMENT UPON HIS
12 OPENING STATEMENT, YOU HEARD HIM SAY TO YOU, "WELL, I DON'T
13 THINK MR. O'SHEA IS QUALIFIED TO TELL YOU ABOUT THE 930
14 BECAUSE HE HASN'T DRIVEN IT VERY MUCH."

15 WELL, LADIES AND GENTLEMEN, THAT'S THE WHOLE POINT
16 OF THIS CASE. THAT'S WHAT THIS LAWSUIT IS ABOUT.

17 IT DOESN'T SHOW ANYTHING TO
18 TAKE A PROFESSIONAL RACE CAR DRIVER UP TO SANTA MARIA AND
19 RUN A BUNCH OF CARS THROUGH UNTIL THEY SPIN OUT WITH YOUR
20 FOOT ON THE GAS.

21 THAT'S NOT WHAT WE ARE HERE ABOUT.

22 THE PORSCHE IS A TREMENDOUS CAR IF YOU KNOW HOW
23 TO DRIVE IT.

24 OBVIOUSLY, THEY WIN LOTS OF RACES.

25 THE 934'S, THE 935'S ARE GREAT CARS, AND MR,
26 DETTLING IN THE PERFORMANCE IN LA JOLLA, SHOWED THAT THE
27 CAR CAN BE WELL HANDLED BY SOMEONE THAT KNOWS HOW TO HANDLE
28 I T.

1 THAT'S NOT THE POINT.

2 THE POINT IS: WHAT IS THE EXPECTATION OF THE

3 AVERAGE CONSUMER? HOW DOES THAT CAR PERFORM FOR YOU AND ME?
4 HOW DOES THAT CAR PERFORM FOR THE PERSON THAT HAD NO SPECIAL
5 SKILL IN DRIVING AND CAN SOMEBODY LIKE THAT GET IN THE CAR
6 AND DRIVE IT AND NOT HAVE A SITUATION LIKE THIS
7 ARISE, WITHOUT ANY WARNINGS, WITHOUT ANY INSTRUCTIONS,
8 WITHOUT ANY INDICATION OF THE PECULIARITIES OF THIS CAR?

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NOW, IF YOU TAKE THE ELEMENTS OF THE TURBOCHARGER,
THE POWER OF THE CAR, THE KICK-IN, THE OVERSTEER SITUATION
AND THE SITUATION THAT OCCURRS WHEN YOU TAKE YOU FOOT OFF THE
GAS WHEN YOU ARE GOING INTO A CORNER AND YOU PUT THEM ALL
TOGETHER, THEN THAT'S THE SITUATION WE CONTEND THAT
CONSTITUTES, IN THE TERMS OF THE COURT'S INSTRUCTION, A
PRODUCT THAT FAILS TO PERFORM AS SAFELY AS AN ORDINARY
CONSUMER OF THE PRODUCT WOULD EXPECT.

1 THOSE CHARACTERISTICS PUT TOGETHER IN THE
2 AUTOMOBILE DO NOT MAKE THAT AUTOMOBILE PERFORM AS SAFELY AS AN
3 ORDINARY CONSUMER WOULD EXPECT.

4 THEN IT GETS BACK TO THE FACT THAT WHAT AMOUNTS TO
5 IS A TRAP, BECAUSE WHEN YOU REACT, AS WE ALL DO, TO GOING TOO
6 FAST ON A CORNER, YOU DO THE VERY THING THAT YOU SHOULDN'T DO
7 WITH THIS PARTICULAR KIND OF CAR.

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NOW THE COURT HAS INSTRUCTED YOU
THAT A LEGAL CAUSE OF INJURY IS A CAUSE WHICH IS A
SUBSTANTIAL FACTOR IN BRINGING ABOUT THE INJURY OR DEATH. IN
OTHER WORDS, IT DOESN'T HAVE TO BE THE SOLE CAUSE. IT
DOESN'T HAVE TO BE THE ONLY CAUSE. IT'S JUST
A SUBSTANTIAL FACTOR IN BRINGING ABOUT INJURY OR DEATH.

AND THE COURT ALSO INDICATED THAT THERE MAY BE MORE
THAN ONE LEGAL CAUSE IN BRINGING ABOUT THE DEATH, AND WHEN A
PRODUCT DEFECT AND THE CONDUCT OF

ANOTHER PERSON CONTRIBUTE CONCURRENTLY AS LEGAL CAUSES,
IN OTHER WORDS, AS SUBSTANTIAL FACTORS OF AN INJURY, THE
PRODUCT DEFECT AND THE CONDUCT ARE EACH CONSIDERED TO BE A
LEGAL CAUSE OF THE INJURY REGARDLESS OF THE EXTENT TO WHICH
EACH CONTRIBUTES TO THE INJURY.

NOW, THE QUESTION THEN BECOMES: WAS THE DESIGN
DEFECT, THAT'S THE PRODUCT'S FAILURE TO PERFORM AS SAFELY

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AS AN ORDINARY CONSUMER WOULD EXPECT IT TO PERFORM, A
SUBSTANTIAL FACTOR IN BRINGING ABOUT THE DEATH OF DONALD
FRESH.

AND THE ANSWER TO THAT QUESTION, I THINK, IS VERY
CLEAR.

PORSCHE KNOWS THAT IT WAS A SUBSTANTIAL FACTOR
AND THAT'S ONE REASON THAT IT HAD TO ALTER ITS TEST REPORT,
WHICH I WILL DISCUSS LATER.

WHEN CYNTHIA FILES FOUND HERSELF GOING TOO
FAST INTO THE CORNER AS A RESULT OF THE TURBOCHARGER AND
ITS EFFECT ON THE POWER OF THE CAR AND TOOK HER FOOT OFF THE
GAS, THAT'S WHEN THE REAR END STARTED TO SLIDE OUT, THAT'S
WHEN THE TROUBLE BEGAN, THAT'S WHEN THE CAR WENT INTO
OVERSTEERING, AND THAT WAS PART OF THE SEQUENCE OF EVENTS
THAT LED TO THE DEATH OF DONALD FRESH, AND IT'S ABSOLUTELY A
SUBSTANTIAL FACTOR, BECAUSE IF THE CAR HANDLED LIKE ANY OTHER
CAR, LIKE ANY NORMAL CAR, WHAT WOULD HAVE HAPPENED WHEN SHE
TOOK HER FOOT OFF THE GAS? THE CAR WOULD HAVE SLOWED DOWN;
SHE WOULD HAVE HELD IT INTO THE CORNER INSTEAD OF FINDING
HERSELF HAVING TO STEER IT BACK OUT, AND WE

1 WOULDN'T HAVE BEEN AT THE END OF BISHOPS LANE IN A SIDEWAYS POSITION
2 WITH A DEAD PASSENGER.
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THERE IS ANOTHER ISSUE YOU WILL HAVE TO DETERMINE, IT IS
QUESTION NUMBER 10 ON YOUR SPECIAL VERDICT FORM AND YOU
HAVE TO ANSWER THAT YES OR THE PLAINTIF CAN'T RECOVER
AGAINST PORSCHE, BECAUSE THAT APPLIES TO ALL OF THE ISSUES.
IT IS A STANDARD QUESTION, AND THAT IS THAT THE PRODUCT HAD
TO BE USED ACCORDING TO THE

1 JUDGE'S INSTRUCTIONS TO YOU, IN A MANNER REASONABLY
2 FORESEEABLE TO THE DEFENDANT.

3 WHAT DOES THAT MEAN, A MANNER REASONABLY FORESEEABLE
4 BY THE DEFENDANT?

5 WHAT THAT MEANS, FOR INSTANCE, IS THAT YOU DON'T TAKE
6 A 930 TURBO AND REPLACE THE OLD CORONADO FERRY OUT
7 HERE. YOU DON'T TAKE A 930 TURBO AND TRY TO FLOAT IT OVER TO
8 CORONADO. IT'S NOT MADE TO BE A BOAT. IT'S NOT DESIGNED TO BE A
9 BOAT.

10 AND IF THE CAR SINKS AND SOMEBODY DROWNS, THAT IS
11 NOT A REASONABLY FORESEEABLE USE OF THE CAR THAT A
12 MANUFACTURER WOULD ANTICIPATE,

13 BUT THE COURT HAS INSTRUCTED YOU ON WHAT IS A
14 FORESEEABLE USE IN TERMS OF USING THIS CAR ON THE STREETS AND
15 HIGHWAYS.

16 AND IT SAYS THAT THE USE OF AN AUTOMOBILE IS
17 REASONABLY FORESEEABLE TO THE MANUFACTURER AS LONG AS THE
18 USE IS ONE THAT THE MANUFACTURER COULD HAVE REASONABLY
19 ANTICIPATED, EVEN THOUGH SUCH USE INVOLVES SOME DEGREE OF
20 MISUSE AND ABUSE.

21 SO THE QUESTION ABOUT WAS IT REASONABLY
22 FORESEEABLE TO THE MANUFACTURER, ISN'T TILL INTO
23 ANYTHING OTHER THAN THE WAY THE CAR WAS BEING USED AT
24 THE TIME THE ACCIDENT OCCURRED.

25 AND IT MEANS THAT IT WAS BEING USED IN A MANNER THAT
26 PORSCHE COULD ANTICIPATE.

1 IN OTHER WORDS, THEY COULD ANTICIPATE THAT THE
2 TURBO WOULD GET THE DRIVER GOING TOO FAST, A DRIVER WOULD
3 TAKE HER FOOT OFF THE GAS, THE CAR WOULD THEN GO INTO THIS
4 OVERSTEER SITUATION WHICH WOULD CAUSE DRASTIC STEERING
5 MANEUVERS TO BE CONDUCTED BY THE DRIVER.

6 NOW, NOT ONLY COULD PORSCHE REASONABLY
7 ANTICIPATE THAT, BUT IT DID ANTICIPATE IT, BECAUSE THAT'S
8 EXACTLY WHAT THEY DID IN THEIR TEST. THE 3.3 LITER TEST ON THIS
9 VEHICLE; THAT'S EXACTLY WHAT THEY DID.

10 THEY DID A TURN-IN TEST AND THEY DID TESTS AROUND THE
11 SKID PAD AT HIGH RATES OF SPEED.

12 AND WHY ARE THEY DOING THOSE TESTS? BECAUSE THE
13 CAR IS DESIGNED TO GO FAST; IT'S GOT TO GO FAST; AND THEY
14 KNOW PEOPLE ARE GOING TO BE DRIVING IT FAST; AND THEY ARE
15 GOING TO BE DRIVING IT INTO TURNS FAST.

16 NOT ONLY DID THEY ANTICIPATE THIS TYPE OF THING,
17 BUT THEY PLANNED ON IT. THEY COUNTED ON IT. THEY KNEW IT
18 WAS COMING.

19 IN ADDITION TO THAT, THEIR TEST REPORTS, OF
20 COURSE, TOLD THEM WHAT WOULD HAPPEN WHEN SOMEBODY DID THAT.
21 IT WOULD OVERSTEER.

22 "IT SHOULD HAVE AN UNDERSTEERING SETTING FOR OUR
23 CUSTOMERS IN THE FAST TURNS" AND WHEN YOU TAKE YOUR FOOT
24 OFF THE GAS IN A FAST TURN, "IT'S POISONOUS."
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1 NOW, THERE'S ANOTHER THING.

2 PORSCHE, YOU HEARD, SUBSCRIBES TO ROAD AND TRACK.
3 THE ROAD AND TRACK ARTICLE THAT MR. WAKEFIELD HAD, THE
4 1978 ARTICLE TOLD PORSCHE, "THIS IS A CAR THAT
5 FEW DRIVERS WILL EVER MASTER. IT'S A TRAP FOR THE UNWARY."
6 HOW MUCH FORESEEABILITY DO YOU NEED?

7 YOU SUBSCRIBE TO A MAGAZINE THAT YOU GIVE A CAR TO
8 THAT DOES A TEST REPORT AND THEY TELL YOU WHAT'S GOING TO
9 HAPPEN, AND IT HAPPENED.

10 SO THEY KNOW PEOPLE WILL DRIVE FAST AND GET INTO
11 CORNERS, REASONABLY FAST, AND SO WASN'T IT REALLY
12 REASONABLY FORESEEABLE TO PORSCHE, THAT SOMEBODY COULD BE
13 INJURED OR KILLED AS A RESULT OF THE USE OF THE VEHICLE
14 WITHOUT WARNINGS AND WITH THE DESIGN DEFECTS THAT ARE BUILT
15 IN? THAT'S QUESTION NUMBER TEN.

16 NOW, THE SECOND PART OF THE DESIGN DEFECT,
17 REMEMBER THERE'S TWO PARTS, ONE, THAT IT FAILS TO
18 MEET THE EXPECTATIONS OF THE AVERAGE CONSUMER; THE
19 SECOND TEST IS THAT EVEN IF YOU SHOULD FIND THAT IT DOES MEET
20 THE EXPECTATIONS OF THE AVERAGE CONSUMER; THAT IS,
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1 THAT SOMEHOW THE VEHICLE IS AS SAFE AS THE AVERAGE PERSON
2 WOULD EXPECT, THEN IT IS STILL DEFECTIVE IF ITS POWER AND
3 HANDLING CHARACTERISTICS WERE A SUBSTANTIAL FACTOR IN
4 BRINGING ABOUT THE ACCIDENT AND THE RISKS OF THE DESIGN
5 OF THE CAR OUTWEIGH ITS BENEFITS.

6 IN OTHER WORDS, IF THE OVERSTEERING AND ALL THESE
7 CHARACTERISTICS THAT WE DISCUSSED WERE A SUBSTANTIAL FACTOR
8 IN BRINGING ABOUT THIS ACCIDENT, THEN THE LAW CONSIDERS THE
9 DESIGN OF THE CAR DEFECTIVE UNLESS THOSE RISKS ARE
10 OUTWEIGHED BY HAVING A CAR THAT HAS POWER AND HANDLING
11 CHARACTERISTICS OF THIS MANNER.

12 AND THE JUDGE'S INSTRUCTIONS GIVE YOU A GUIDE
13 TO FOLLOW IN DECIDING WHETHER THE RISKS OUTWEIGH THE
14 BENEFITS OR VICE VERSA.

15 QUOTE "IN DETERMINING WHETHER THE BENEFITS OF THE
16 DESIGN OUTWEIGH SUCH RISKS, YOU MAY CONSIDER, AMONG OTHER
17 THINGS"-AND LET'S DISCUSS THEM AS WE GO THROUGH -- "THE
18 GRAVITY OF THE DANGER POSED BY THE DESIGN."

19 WELL, IT'S NOT HARD TO SEE, LADIES AND GENTLEMAN,
20 WHAT'S GOING TO HAPPEN WHEN THE AVERAGE PERSON GETS INTO A
21 CORNER TOO FAST WITH THIS CAR AND TAKES THEIR FOOT OFF THE
22 GAS.

23 "THE GRAVITY OF THE DANGER POSED BY THE
24 DESIGN,"- IT GOES INTO OVERSTEER; THE REAR END SLIDES OUT.

25 SECONDLY, "THE LIKELIHOOD THAT SUCH DANGER WOULD
26 CAUSE DAMAGE," YOU ARE DEALING WITH A CAR THAT IS THE

1 FASTEST CAR IN THE WORLD ON THE STREET, THAT IS TREMENDOUSLY
2 POWERFUL.

3 IT'S IN THE HANDS OF AN UNSKILLED DRIVER WITHOUT
4 ANY WARNINGS; AND IN SUCH A SITUATION, I DON'T THINK THERE
5 IS ANY QUESTION BUT THAT THERE WOULD BE A GREAT LIKELIHOOD
6 THAT THE DANGER OF THESE OVERSTEERING AND POWER CHARACTER-
7 ISTICS COMBINED, WOULD CAUSE DAMAGE.

8 "THE MECHANICAL FEASIBILITY OF A SAFER ALTERNATE
9 DESIGN AT THE TIME OF MANUFACTURE," WELL, MR. O'SHEA
10 INDICATED THEY CAN MAKE THE CAR UNDERSTEER. MR. DETTLING
11 INDICATED THEY CAN MAKE THE CAR UNDERSTEER.

12 SO IS IT MECHANICALLY FEASIBLE? IT MUST BE.

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14 "THE FINANCIAL COST OF AN IMPROVED DESIGN," WELL,
15 IF THEY CAN CHANGE, THE CAMBER, AND THEY CAN CHANGE THE
16 TOE-IN, THAT'S SOMETHING THEIR ENGINEERS DO, THAT'S AN IN-
17 HOUSE FUNCTION.

18 IT COSTS NO MORE TO PUT IT AT ONE SETTING THAN AT
19 ANOTHER.

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1 AND FINALLY, "THE ADVERSE CONSEQUENCES TO THE
2 PRODUCT AND THE CONSUMER THAT WOULD RESULT FROM AN ALTERNATE
3 DESIGN,"-ABSOLUTELY NONE, NO ADVERSE CONSEQUENCES TO THE
4 CONSUMER FROM HAVING A CAR THAT UNDERSTEERS.

5 THAT'S EXACTLY WHAT THE CONSUMERS ARE USED TO AND
6 WANT.

7 ALL RIGHTT. WE' LL CALL
8 THIS THE RISK-BENEFIT ANALYSIS -- THE ANALYSIS FALLS IN FAVOR, CLEARLY IN FAVOR,
9 OF AVOIDING THE RISKS OF THIS PARTICULAR VEHICLE AND SHOWING THAT THE RISKS
10 OUTWEIGH THE BENEFITS OF HAVING THE DESIGN.

11 WHAT ARE THE BENEFITS OF HAVING A DESIGN THAT
12 OVERSTEERS AND HAS THIS SITUATION WHEN YOU TAKE YOUR FOOT
13 OFF THE GAS?

14 I DON'T KNOW.

15 MAYBE WE'LL HEAR FROM PORSCHE.

16 THERE IS NO STANDARD, LADIES AND GENTLEMEN,
17 THAT IS SET. THAT'S SOMETHING FOR YOU TO DECIDE.

18 WE COULD HAVE -- PORSCHE COULD COME OUT NEXT YEAR
19 WITH A PORSCHE DC 10 TURBO OR SOME OTHER KIND OF VEHICLE
20 THAT WOULD GO FROM ZERO TO 120 IN FOUR SECONDS ONCE IT
21 IGNITES.

22 BETTER NOT GET INTO ANY TURNS, BUT GO STRAIGHT
23 AHEAD. THERE IS NO LAW AGAINST IT IF IT MEETS EMISSION
24 CONTROL STANDARDS. IF IT MEETS THE OTHER GOVERNWNT
25 REGULATIONS.

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THERE IS NOTHING TO SAY THAT COULDN'T HAPPEN AND IT
WOULDN'T HAPPEN EXCEPT YOUR VERDICT.

3 YOUR VERDICT HAS TO TELL THE MANUFACTURER, ENOUGH
4 IS ENOUGH; THE RISKS OF THIS KIND OF A DESIGN OUTWEIGH
5 *use)*
6 THE BENEFITS.

7 ALL RIGHT, THE NEXT AREA THAT WE GET INTO IS THE
8 WARNINGS.

9 YOU HAVE HEARD THE DEFECTS THAT I HAVE
10 TALKED ABOUT IN DESIGN.

11 THESE SAME CHARACTERISTICS OF THE CAR APPLY TO
12 WARNINGS.

13 WE ARE AT A DIFFERENT STAGE NOW. THE COURT HAS
14 TOLD YOU THAT A PRODUCT IS DEFECTIVE, IT'S CONSIDERED
15 DEFECTIVE IF THE USE OF THE PRODUCT, IN A MANNER THAT IS
16 REASONABLY FORESEEABLE BY THE DEFENDANT, INVOLVES A
17 SUBSTANTIAL DANGER THAT WOULD NOT BE READILY RECOGNIZED BY
18 THE ORDINARY USER OF THE PRODUCT AND THE MANUFACTURER FAILS
19 TO GIVE ADEQUATE WARNINGS OF SUCH DANGER.

20 IT SAYS EVEN IF YOU SHOULD FIND THAT THE VEHICLE
21 MEETS THE EXPECTATIONS OF THE AVERAGE CONSUMER AND EVEN IF
22 YOU SHOULD FIND, IF PORSCHE CAN TELL US HOW THE BENEFITS
23 OF THAT KIND OF A CAR ARE GOING TO OUTWEIGH THE RISKS, THE
24 GRAVE RISKS THAT ARE INHERENT IN THE DESIGN, THEN THE NEXT
25 THING WE GET TO IS: SHOULDN'T THERE AT LEAST BE WARNINGS?

26 DON'T YOU AGREE THAT THERE IS A SUBSTANTIAL

1 DANGER TO THE AVERAGE PERSON IN DRIVING THIS CAR FOR WHICH THERE
2 SHOULD BE WARNINGS?

3 THERE SHOULD BE SOMETHING TELLING THE BUYER, THAT THIS
4 CAR IS DIFFERENT; THIS
5 CAR IS UNIQUE; THIS CAR HAS SPECIAL HANDLING QUALITIES
6 THAT, IN EFFECT, MAKE IT HANDLE THE OPPOSITE OF OTHER CARS
7 YOU ARE USED TO IN CERTAIN SITUATIONS AND YOU SHOULD BE
8 AWARE OF THOSE BEFORE YOU DRIVE IT.

9 AS A MATTER OF FACT, DON'T YOU THINK, LADIES AND
10 GENTLEMEN, JUST ON THE BASIS OF THE EVIDENCE THAT YOU HAVE
11 HEARD IN THIS CASE, THAT THERE ARE PEOPLE WHO WOULD NOT WANT
12 TO GET INTO THIS CAR, KNOWING WHAT YOU DO ABOUT IT NOW.

13 SURE, THERE ARE PEOPLE THAT WOULD LOVE TO GET IN
14 IT AND TRY IT OUT, BUT DON'T YOU THINK THERE ARE OTHER
15 PEOPLE THAT MIGHT BE AFRAID TO GET IN IT BASED UPON WHAT
16 YOU HAVE HEARD IN THIS CASE?

17 WELL, IF THERE ARE, THERE SHOULD BE WARNINGS TO
18 WARN THESE PEOPLE OF WHAT THEY ARE GOING TO RUN INTO WHEN
19 THEY GET IN AND START THIS CAR AND TAKE OFF.

20 AND THAT'S THE WHOLE POINT.

21 CONSUMERS HAVE A RIGHT TO KNOW.

22 YOU HAVE A RIGHT TO MAKE AN INTELLIGENT DECISION BASED
23 UPON ADEQUATE WARNINGS OF WHETHER YOU ARE GOING TO DRIVE THIS CAR
24 OR NOT.

25 AND IF YOU ARE TO DRIVE IT, YOU SHOULD KNOW WHAT YOU ARE
26 GETTING INTO. YOU HAVE A RIGHT KNOW THE

1 PECULIAR AND THE PARTICULAR DANGERS INVOLVED WITH DRIVING
2 THIS VEHICLE.

• 3 YOU HAVE A RIGHT TO KNOW ABOUT THE TURBO KICK-IN,
4 ABOUT WHAT HAPPENS WHEN YOU TAKE YOUR FOOT OFF THE GAS AND
5 YOU ARE GOING THROUGH A CORNER RAPIDLY, WHAT YOU DO IF THE
6 CAR GOES INTO AN OVERSTEER.

7 YOU HAVE GOT A RIGHT TO KNOW THOSE THINGS.

8 AND YOU HEARD FROM DR. BURG BACK AT THE BEGINNING
9 OF THE CASE, WHO IS A HUMAN FACTORS ENGINEER, A PERSON WHO
10 DEALS -- YOU HEARD HIS QUALIFICATIONS; I THINK THEY ARE
11 QUITE IMPRESSIVE -- BUT HE DEALS WITH THE INTERACTION OF
12 MACHINES AND PEOPLE, AND HE TOLD YOU IN HIS OPINION THIS
13 CAR PRESENTED A SUBSTANTIAL DANGER FOR WHICH ADEQUATE
14 WARNINGS WERE NEEDED AND THAT NO SUCH WARNINGS WERE GIVEN.

15 YOU HAVE GOT THE OWNERS MANUAL HERE.

16 THE OWNERS MANUAL SAYS, "AVOID BREAKING THE SPEED
17 LIMITS; DRIVE DEFENSIVELY." THAT'S THE WARNING THAT YOU
18 GET WITH THE CAR, AND THAT'S IT.

19 IT'S LIKE --

22 A MANUFACTURER GIVING A CONSUMER THE DRUG TO SEE
23 WHETHER IT KILLS OR CURES.

24 THAT'S JUST NOT THE WAY WE DO THINGS. WE DON'T TRY
25 OUT DRUGS ON A CONSUMER AND LET
26 THE CONSUMER FIND OUT WHETHER IT CURES OR IT KILLS.

1 THERE ARE WARNINGS THAT COME WITH THE DRUG THAT
2 TELL YOU ABOUT THE SIDE EFFECTS AND THE DANGERS IN TAKING
3 THE DRUG, AND YOU HAVE A RIGHT TO MAKE A DECISION AS TO WHETHER
4 YOU ARE GOING TO TAKE IT; AND IF YOU DECIDE TO TAKE IT, YOU
5 HAVE A RIGHT TO KNOW WHAT THE DANGERS ASSOCIATED WITH THAT
6 ARE.

7 AND IN THIS CASE YOU GET A CAR; IT'S A PECULIAR CAR;
8 IT'S A UNIQUE CAR; AND YOU'LL EITHER LEARN WHEN YOU DRIVE IT OR
9 YOU'LL BE INJURED OR KILLED.

10 THAT'S WHAT IT AMOUNTS TO. YOU ARE GOING TO LEARN
11 IT, BY JUST DOING IT OR YOU ARE GOING TO HURT YOURSELF, OR SOMEBODY ELSE, DRIVING
12 IT.

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YOU HAVE READ THE PORSCHE TEST REPORT.

THE ORIGINAL TEST REPORT BEFORE PORCHE ALTERED IT, SAID THE HANDLING OF THE VEHICLE HAD TO BE CHARACTERIZED AS "POISONOUS." AND THERE HAS BEEN SOME TESTIMONY AS TO WHAT POISONOUS MEANS.

AND YOU REMEMBER I ASKED MR. DETTLING, I SAID, "WELL, IF IT WERE DEFINED AS POISONOUS, WOULDN'T THAT MEAN IT WAS DANGEROUS?"

HE SAID, "WELL, LET'S PUT IT THIS WAY: YOU'D HAVE TO BE AWFULLY CAREFUL WITH IT."

WE KNOW WHAT POISONOUS MEANS IN THIS COUNTRY, --- DANGEROUS, DEADLY. AS A MATTER OF FACT, IN THIS COUNTRY, ANYTHING THAT'S POISONOUS IS MARKED WITH A SKULL AND CROSSBONES.

THERE WERE NO WARNINGS AT ALL WITH THIS CAR OR OF THESE HANDLING AND POWER CHARACTERISTICS.

Q: WERE THE LACK OF WARNINGS A LEGAL CAUSE OF THE ACCIDENT, IN OTHER WORDS, A SUBSTANTIAL FACTOR IN BRINGING

1 ABOUT THE ACCIDENT? ABSOLUTELY.

2 MRS. FILES SAID THAT SHE READ WARNINGS AND WOULD
3 HAVE READ THEM. DOYLE FILES SAID HE DIDN'T HAVE ANYTHING
4 TO TELL HIS WIFE BECAUSE, AS FAR AS HE KNEW, THE CAR WAS
5 THE SAME AS THEIR THE ALFA EXCEPT FASTER.

6 THE PLAINTIFFS HAVE THE BURDEN OF PROOF. THEY HAVE
7 TO SHOW BY A PREPONDERANCE OF THE EVIDENCE, MEANING THAT
8 IT'S MORE LIKELY THAN NOT; THAT'S ALL IT MEANS, NOT BEYOND A
9 REASONABLE DOUBT; IT'S MORE LIKELY THAN NOT.

10 DON'T YOU THINK THAT IF CYNTHIA FILES HAD BEEN
11 WARNED ABOUT WHAT THIS CAR WOULD HAVE DONE OR WOULD DO,
12 THAT IT'S MORE LIKELY THAN NOT, BASED UPON YOUR EVALUATION
13 OF THE TYPE OF PERSON THAT SHE IS, THE TYPE OF INDIVIDUAL
14 THAT SHE IMPRESSED YOU AS, THAT SHE WOULD HAVE, ONE, EITHER
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CHOSEN NOT TO DRIVE THE CAR AT ALL, OR, IF SHE DID, SHE WOULD HAVE
2 KNOWN WHAT TO EXPECT AND WHAT TO DO.

3 THAT'S REALLY WHY THE WARNINGS ARE SO IMPORTANT,
4 AND THAT'S WHY, I HAVE SAID THIS ALL ALONG, THE CONSUMERS
5 HAVE A RIGHT TO KNOW SO THEY CAN MAKE THOSE KINDS OF
6 DECISIONS.

7 IF CYNTHIA FILES HAD KNOWN, IF SHE HAD KNOWN WHAT
8 SHE WAS GETTING INTO, IF SHE HAD BEEN ADEQUATELY WARNED,
9 DONALD FRESH WOULD BE ALIVE TODAY.

10 SHE WOULDN'T HAVE DRIVEN THE CAR; OR IF
11 SHE WOULD HAVE, SHE CERTAINLY WOULD HAVE HANDLED IT
12 DIFFERENTLY THAN SHE DID.

13 AND I THINK THAT'S MORE LIKELY THAN NOT.

14 IF THAT'S MORE LIKELY THAN NOT, THEN THESE LACK
15 OF WARNINGS WERE A SUBSTANTIAL FACTOR
16 AND THEREFORE A LEGAL CAUSE IN BRINGING ABOUT THE DEATH OF
17 DONALD FRESH.

18 MR. MELER, THE HEAD OF PORSCHE OPERATIONS IN THE UNITED
19 STATES, HE SAID, "WELL, PORSCHE MAKES THESE CARS TO MAKE A PROFIT.
20 ALL YOU HAVE TO HAVE IS A LOT OF MONEY AND WE MAKE THEM AND WE SELL
21 THEM TO MAKE A PROFIT."

'29 WELL, FINE, THERE'S NOTHING WRONG WITH MAKING A
23 PROFIT, BUT SOME OF THOSE PROFITS SHOULD BE PUT BACK INTO THE
24 SAFETY OF THE PRODUCT TO INSURE THE PROTECTION OF THE PEOPLE
25 THAT USE IT.

26 AND DR. BURG TESTIFIED THAT IT WOULD ONLY COST

1 ABOUT A DOLLAR PER CAR TO PUT IN THE KINDS OF WARNINGS THAT
2 WOULD BE NECESSARY TO INSURE THAT THE OWNER AND THE USERS
AND SUBSEQUENT USERS OF THE VEHICLE WERE ADEQUATELY WARNED.

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NOW LET'S MOVE TO WHAT YOU HAVE ALL SURMISED I AM SURE IS ONE OF THE -- ONE OF THE KEY THINGS THAT HAPPENED DURING THIS TRIAL AND ONE OF THE KEY PIECES OF EVIDENCE THAT INDICATES THE DEFECTIVE NATURE OF THIS PRODUCT.

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BUT EVEN MORE THAN THAT, IT INDICATES THE ATTITUDE OF THIS MANUFACTURER TOWARDS THIS JURY, TOWARD OUR COURT SYSTEM, TOWARD OUR SYSTEM OF JUSTICE AND TOWARD THE WIDOW AND CHILDREN OF THE DECEASED: AND THAT'S THE EVIDENCE OF THAT I REFERRED TO EARLIER AS THE COVERUP, AND THAT'S THE BEST WORD FOR IT, BECAUSE THAT'S EXACTLY WHAT IT IS.

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AND I'LL GO THROUGH THAT WITH YOU AND TELL YOU HOW IT CAME ABOUT.

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THE BEST EVIDENCE OF THE DEFECTS IN THIS CAR WITH RESPECT TO POWER AND HANDLING CHARACTERISTICS IS PORSCHE'S

1 TEST REPORT.

2 THREE YEARS AGO, THE CAR WAS TESTED IN 1980,
3 AND THE RESULTS CONFIRM THE EXACT CONTENTIONS OF THE
4 PLAINTIFFS IN THIS CASE.

5 MR. DETTLING'S DEPOSITION IN FEBRUARY

6 THERE WERE NO TEST REPORTS PRODUCED BY PORSCHE IN THIS
7 CASE -- AND YOU HEARD MR. DETTLING INDICATE AFTER HIS
8 DEPOSITION, AFTER MY MOTION, THE COURT ORDERED THAT PORSCHE
9 PRODUCE ITS TEST REPORT.

10 AND WHAT IT DID THEN, WHEN IT REALIZED THAT IT HAD
11 TO PRODUCE ITS TEST REPORT, WAS INSTEAD OF PRODUCING IT, MR.
12 MEIER AND THE COMPANY DECIDED TO ALTER IT.

13 THEY GOT HOLD OF MR. KUSSMAUL, WHO IS NOW IN ANOTHER
14 DEPARTMENT AT PORSCHE, THREE YEARS LATER.

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YOU REMEMBER MR. MEIER HAD HIM CALLED IN IMMEDIATELY
AND THE REPORT WAS ALTERED.

AND THEY CAME IN HERE AND THEY PRESENTED A COPY,
AND A COPY WHICH MR. BRADFORD TOLD YOU ONLY AN EXPERT COULD
5 TELL WAS ALTERED AND AN EXEPTR WOULDN'T HAVE BEEN ABLE TO TELL
THAT THAT WAS NOT A TRUE COPY OF THE ORIGINAL UNLESS HE HAD
7 SOMETHING TO COMPARE IT TO.

AND, OF COURSE, PORSCHE HAD NO IDEA WHATSOEVER - YOU
8 HEARD ABOUT HOW SURPRISED THEY WERE - THAT WE HAD A COPY
9 OF THE ORIGINAL TEST REPORT. SO THEY ALTERED THEIR REPORT
10 DURING THIS TRIAL, IN MARCH OF THIS YEAR, WHILE YOU WERE
11 SITTING HERE, WHILE THIS EVIDENCE WAS BEING
12 PRODUCED.

13
14 THEY WENT IN AND THEY ALTERED A THREE-YEAR-OLD
17 REPORT AND THEY ALTERED IT IN THREE PLACES -

18 THEY ALTERED IT AT THE THREE POINTS THAT PROVED OUR CONTENTIONS ABOUT
THIS CAR WERE CORRECT.

AND, LADIES AND GENTLEMEN, THESE ALTERATIONS ARE NOT CHANGING
19 HAPPY TO GLAD. THEY ARE NOT SLIGHT ALTERATIONS. THEY ARE CHANGING BLACK
20 TO WHITE THEY HAVE CHANGED OVERSTEER TO UNDERSTEER.

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1 THEY HAVE TAKEN OUT, JUST TAKEN OUT COMPLETELY THE
2 COMMENTS THAT TALK ABOUT THE DESIRABILITY OF CHANGING IT TO
 UNDERSTEER.

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NOW, WHAT PORSCHE DID WAS NO DIFFERENT THAN IF THEY

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1 HAD CALLED MR. KUSSMAUL TO THE STAND DURING THEIR CASE AND
2 HAD MR. KUSSMAUL TESTIFY, "YEAH, THIS IS MY REPORT THAT I DID
3 IN 1980, AND IT SHOWED THE VEHICLE WAS NORMAL."

4 NOW, I DON'T HAVE TO TELL YOU THAT WOULD HAVE BEEN PERJURY.

5 MR. KUSSMAUL COULDN'T HAVE COME IN HERE AND SAID, WITHOUT
6 COMMITTING PERJURY, THAT HIS REPORT IN 1980 SHOWED THE VEHICLE NORMAL,
7 BECAUSE IT DIDN'T.

8 SO INSTEAD, WHAT THEY DID IS: THEY HAD MR. DETTLING -
9 - THEY TOLD MR. DETTLING, "TAKE THIS REPORT AND GO OVER THERE
10 AND TESTIFY, AND TESTIFY OF THE RESULTS OF THIS
11 REPORT," THE COPY OF THE ALTERED ORIGINAL.

12 NOW, AS I SAID, THEY DIDN'T KNOW THAT WE HAD A
13 COPY OF THE REAL TEST REPORT. AND YOU HEARD MY SECRETARY
14 COME IN AND INDICATE HOW WE RECEIVED IT.

15 WE GOT IT IN THE MAIL WITH A NOTE. THE NOTE SAID IT WAS
16 FOUND ON AN AIRPCANE FLIGHT TO STUTTGART AND MY
NAME AND ADDRESS WERE ON AN ACCOMPANYING SLIP OF PAPER.

POSSIBLY; PERHAPS THAT'S HOW THE PERSON THAT SENT
24 IT TO ME FOUND IT. MAYBE MR. MEIER OR MR. DETTLING, AFTER
25 THEIR TIME OVER HERE IN CALIFORNIA, MAYBE ON ONE OF MR.
26 MEIER'S TRIPS TO GERMANY HE LEFT IT ON THE AIRPLANE.

1 I HAVE DOUBTS ABOUT THAT CONSIDERING THE IMPORTANCE
2 OF THIS DOCUMENT AND THE FACT THAT IT'S A DOCUMENT IN
3 PORSCHE THAT'S SECRET, NOBODY CAN GET TO WITHOUT PERMISSION.
4 IT'S KEPT IN THE ARCHIVES WITH A GUARD.

5 I DOUBT IF THAT'S HOW THIS DOCUMENT ACTUALLY WAS
6 FOUND.

7 I THINK PROBABLY THE WAY IT GOT TO US WAS FROM AN
8 EMPLOYEE WITH A CONSCIENCE.

9 I THINK PROBABLY WHAT HAPPENED IS: THERE WAS
10 SOMEBODY INVOLVED IN MAKING THE CHANGES, SOMEBODY, MAYBE A
11 SECRETARY IN A DEPARTMENT THAT KNEW THAT THESE CHANGES WERE
12 GOING TO AFFECT THE LIVES AND THE FUTURE OF A WIDOW AND
13 CHILDREN WHOSE HUSBAND AND FATHER HAD BEEN KILLED IN AN
14 ACCIDENT BECAUSE OF THE VERY CHARACTERISTICS THAT THEY WERE
15 NOW WIPING OUT WITH WHITEOUT, THAT THEY WERE WIPING OUT AND
16 COVERING UP WITH THIS DOCUMENT, AND THAT EMPLOYEE POSSIBLY
17 FELT IT WASN'T RIGHT HE OR SHE WAS GOING TO TAKE A CHANCE
18 AND SEND IT TO US.

19 SO WHAT HAPPENED AFTER PORSHCE FOUND OUT THAT WE HAD
20
21 THIS?

22 THEY REGROUPED, WENT BACK TO GERMANY OVER THE
23 WEEKEND, MET WITH MR. DETTLING, MET WITH MR. HEPMAN, HIS
24 BOSS, TALKED ABOUT HOW SURPRISED THEY WERE THAT THIS
25 ORIGINAL HAD GOTTEN OUT AND WE HAD FOUND OUT ABOUT IT.

26 THEY MET WITH MR. KUSSMAUL, THE AUTHOR, AND THEY

1 MET WITH MR. MEIER HERO IN CALIFORNIA AND THEN THEY CAME
2 BACK AND KUSSMAUL HAD TO COME OVER AND TESTIFY THEN.

3 AND HE CAME OVER AND HE SAID, "WELL, YEAH, I
4 CHANGED IT. I CHANGED IT THIS YEAR."

WHAT COULD THEY SAY?

5
6 IN EFFECT, THEY WERE CAUGHT WITH THERE HANDS IN
7 THE COOKIE JAR. THEY HAD TO TRY THEN TO EXPLAIN IT.

8 AND HE CAME OVER AND SAID, "WELL, I CHANGED IT, BUT
9 I HAD SOME DOUBTS BACK THREE YEARS AGO WHEN I DID IT, AND
10 SO MR. MEIER JUST SUGGESTED THAT I COME IN AND CONFIRM MY
11 DOUBTS."

12 THAT'S WHAT HE WANTED HIM TO DO, CONFIRM HIS DOUBTS
13 AND REDO THE TEST REPORT.

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NOW, LADIES AND GENTLEMEN, ARE THEY GOING TO PUT OUT A TEST REPORT AND FILE IT IN THEIR OFFICIAL ARCHIVES, WHICH STAYS WITH THE HISTORY OF THE COMPANY, BASED ON INACCURATE INFORMATION.

DON'T YOU THINK IF A TEST DRIVER--THAT'S THEIR JOB TO TEST AND DESIGN THE VEHICLE--DON'T YOU THINK IF HE IS WORTH HIS SALT, HE WOULDN'T SUBMIT A REPORT THAT IS NOT RIGHT. IF THERE IS SOMETHING WRONG ABOUT IT, THEY ARE GOING TO CHECK THAT VEHICLE AND MAKE SURE THEIR FINDINGS ARE ACCURATE BEFORE THEY PUT OUT THIS OFFICIAL PRIVILEGED PUBLICATION THAT GOES INTO THEIR ARCHIVES.

OF COURSE, THEY ARE.

MR. KUSSMAUL SAID, "YES, WE CHECK ALL THE VEHICLES BEFORE WE TEST THEM," AND THEY MAKE SURE ALL THE SETTINGS ARE RIGHT AND THE VEHICLE IS WHAT IT'S SUPPOSED TO BE.

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4 ASK YOURSELVES, LADIES AND GENTLEMEN, WHY, AFTER
5 THREE YEARS, WHY AFTER THREE YEARS WOULD THEY CHANGE THAT
6 REPORT.

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8 THERE IS ONLY ONE REASON THAT THEY WOULD AND THAT'S
9 BECAUSE OF THEIR LIABILITY IN THIS CASE. THAT'S THE ONLY
10 REASON.

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12 MR. MEIER CALLED THEM IN AND SAID, "WE HAVE GOT A
13 CASE IN CALIFORNIA AND IT INVOLVES A CLAIM THAT THIS CAR
14 OVERSTEERS AND IT'S DANGEROUS WHEN YOU TAKE YOUR FOOT OFF
15 THE GAS; AND, BY GOLLY, THAT'S EXACTLY WHAT YOUR REPORT
16 SAYS, AND IT BETTER BE CHANGED."

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18 AND THEN HE SUPPOSEDLY TAKES A 1981 CAR, NOT EVEN
19 THE SAME CAR, BUT HE TAKES A 1981 CAR; HE ELIMINATES
20 "POISONOUS," CHANGES THAT TO "NORMAL" WITHOUT CHANGING ANY
21 FIGURES, NO FIGURES AT ALL.

22
23 *They*
24 THEY CHANGED IT SO CAREFULLY, THAT THE LINES, THE
25 EXTRA LINES THAT STUCK OVER HAD BEEN TAKEN OUT; FIGURES HAD
26 BEEN CHANGED TO MAKE SURE THEY APPEARED EXACTLY THE SAME.

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2 MR. O'SHEA POINTED OUT THE STEERING CHARACTERISTICS
3 WE ARE TALKING ABOUT WHERE THEY CHANGED THIS FROM OVERSTEER
4 TO UNDERSTEER.

5 THEY WENT FROM A 30 DEGREE ANGLE AT THE MAXIMUM SPEED
6 TO A 70 DEGREE.

7 THEY CHANGED IT TO A 70. THAT'S OVER A 100
8 PERCENT CHANGE.

9 THAT'S LIKE IN A CRASH TEST, IF YOU ASK A DRIVER,
10 "GO CRASH THIS CAR INTO THAT WALL AT 30 MILES AN HOUR; WE
WANT TO TEST THE CRASHWORTHINESS OF THIS VEHICLE," THE
DRIVER MAY COME BACK AND SAY, "WELL, I MADE A LITTLE MISTAKE;

I WENT IN AT 28, NOT 30 MILES AN HOUR," OR, "I WENT IN AT 31
OR 32, NOT EXACTLY 30," BUT YOU DON'T EXPECT THEM TO COME
16 BACK AND SAY, "I MADE A LITTLE MISTAKE; I WENT IN AT 60
17 MILES AN HOUR."

18 WE ARE TALKING ABOUT A CHANGE OF A COMPLETE
19 AND UTTER REVERSAL, A CHANGE FROM 30 DEGREES TO 70 DEGREES.

20 CHANGES WERE MADE WITH THE SAME INK.

21 NOW, IF PORSCHE WAS NOT TRYING
22 TO HIDE SOMETHING, WHY DO YOU THINK, AFTER THREE YEARS,
23 THEY GO BACK AND THEY MATCH UP THE INK, GET THE SAME PEN, THE
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1 SAME INK TO CHANGE THESE FIGURES, TO MAKE IT LOOK ON THE
2 COPY AS IF IT WAS THE SAME AS DONE THREE YEARS AGO, THAT
3 MAYBE THE FIGURES WERE CORRECTED THEN, THREE YEARS AGO.

4 WE WOULD HAVE NO WAY, NO REASON TO SUSPECT OTHER-
5 WISE UNLESS WE HAD THAT OTHER REPORT AND SAW THE FIGURES IN
6 THE TEXT.

7 THEY USED BLACK INK WHERE BLACK INK HAD BEEN USED
8 BEFORE.

TRYING TO HIDE SOMETHING?

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THERE IS NO INDICATION ON THAT REPORT THAT IT WAS REVISED,
THAT IT WAS UPDATED, THAT IT WAS ALTERED. DON'T YOU THINK A
SUPPLEMENTAL REPORT,

AMENDED REPORT, REVISION TO ORIGINAL REPORT, SOMETHING LIKE
THAT WOULD BE PREPARED? - NOT SO. EITHER, THAT IT'S A
DIFFERENT CAR BEING TESTED.

THEY ARE PUTTING THOSE FIGURES DOWN AS IF THAT'S
THE SAME CAR THAT THEY TESTED IN 1980.

IT'S AN OBVIOUS, OBVIOUS ATTEMPT TO COVER UP THE

1 EVIDENCE AND KEEP IT FROM YOU AND TO KEEP IT FROM THIS
2 TRIAL. AND THE REASON IS CLEAR AND SIMPLE, BECAUSE IT'S
3 LIABILITY.

4 --- THERE'S A STORY THAT
5 I THINK MAY ILLUSTRATE THE POINT -- YOU REMEMBER BACK, MR.
6 MEIER, WHEN HE WAS FIRST ON THIS STAND,
7 I STARTED TO ASK HIM ABOUT THOSE TEST REPORTS, AND I SHOWED
8 THEM TO MR. MEIER; AND I SAID, "ARE THESE THE REPORTS THAT
9 YOU REVIEWED BACK IN THE FACTORY IN SEPTEMBER-OCTOBER OF
10 1982?"

11 REMEMBER - HE HAD SAID THAT HE WENT BACK TO THE FACTORY
12 AND REVIEWED THE TEST REPORTS.

13 AND HE SAID, "YEAH, THOSE ARE THE REPORTS THAT
14 I REVIEWED."

15 WHEN HE SAID THAT, HE KNEW THAT THE
16 3.3 LITER REPORT, THE ONE THAT PERTAINS TO THE CAR IN THIS
17 ACCIDENT, WAS NOT THE REPORT HE REVIEWED IN SEPTEMBER-
18 OCTOBER OF '82. HE KNEW THAT HE HAD ALTERED IT, THAT HE HAD
19 IT ALTERED.

20 HE WAS THE ONE THAT PARTICIPATED. HE TOLD KUESMAUL
21 TO DO IT. AND HE WAS SITTING BACK HERE IN THE BACK OF THIS
22 COURTROOM AND I KNOW A LOT OF YOU SAW HIM AFTER HE TESTIFIED,
23 HE KEPT
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1 COMING BACK HERE WHEN MR. DETTLING WAS ON THE STAND AND
2 THE OTHER PEOPLE FROM THE FACTORY BECAUSE
3 HE IS THE RESPONSIBLE AGENT IN THE UNITED STATES; AND HE IS
4 THE HEAD OF ALL PORSCHE IN THE UNITED STATES; AND HE WAS
5 HERE AND SITTING IN THE BACK ROW AND HE WAS WATCHING WHAT
6 WAS GOING ON; AND I KNOW THAT SOME OF YOU LOOKED AT HIM WHEN
7 I BROUGHT OUT THE REAL TEST REPORT, AND I KNOW THAT YOU SAW
8 WHAT HAPPENED, AND HE LOOKED DOWN, AND HE KNEW THAT WE HAD A
9 COPY OF THE DOCUMENT THAT HAD BEEN ALTERED, AND HE'S NEVER
10 BEEN BACK SINCE.

11 IT REMINDS ME, OF A STORY.

12 IT GOES THAT THERE WAS A MAN SITTING ON A BANK BY
13 A RIVER AND SEES A BOAT COME ALONG THE RIVER, AND THERE'S TWO
14 MEN IN THE BOAT AND THEY ARE FIGHTING LIKE CRAZY, YELLING AND
15 SCREAMING AT EACH OTHER AND, FIGHTING AND ARGUING; THE BOAT
16 GOES AROUND A CORNER, THERE'S KIND OF A FOG, AND THE MAN THAT'S
17 SITTING ON THE BANK CAN'T SEE THE BOAT ANYMORE, BUT HE STILL
18 HEARS THEM YELLING AT EACH OTHER AND HE HEARS SOME
19 SCUFFLING, THEN HE HEARS A SPLASH, AND A FEW MINUTES LATER
20 THE BOAT ROWS UP TO SHORE AND THERE IS ONLY ONE MAN IN IT,
21 AND THE MAN GETS OUT AND HE COMES UP TO THE BANK AND HE
22 SEES THE OTHER MAN SITTING THERE AND HE SAYS, "WAIT A
23 MINUTE. DID YOU SEE ANYTHING OUT THERE?"

24 AND THE MAN ON THE SHORE SAYS, "I DIDN'T SEE
25 ANYTHING, BUT I KNOW YOU KILLED THAT OTHER FELLOW. I KNOW
26

1 YOU DROWNED HIM."

2 AND THEY COME AND ARREST HIM, THE MAN IN THE BOAT,
3 AND THEY TAKE HIM TO TRIAL AND THEY ACCUSE HIM OF MURDER AND
4 THEY NEVER FOUND THE BODY OF THE MAN THAT WAS ALLEGEDLY
5 DROWNED.

6 AND THEY GET TO TRIAL AND IT COMES TO FINAL
7 ARGUMENT AND THE DEFENSE LAWYER GETS UP AND HE SAYS,
8 "LADIES AND GENTLEMEN"-- AND OF COURSE, IN A CRIMINAL CASE,
9 IT'S BEYOND A REASONABLE DOUBT; IN THIS CASE, THAT'S NOT THE
10 STANDARD OF EVIDENCE; IT'S JUST PREPONDERANCE, MORE LIKELY
11 THAN NOT -- AND HE GETS UP AND HE SAYS, "LADIES AND GENTLE-
12 MEN," HE SAYS, "MY CLIENT" -- HE'S REPRESENTING THE
13 DEFENDANT, THE MAN WHO IS ACCUSED OF MURDER -- "MY CLIENT
14 DIDN'T KILL JOHN SMITH."

15 HE SAYS, "THE PROSECUTION HASN'T EVEN PRODUCED A
16 BODY IN THIS CASE. THERE'S NO BODY HERE, THERE'S NO
17 EVIDENCE THIS MAN IS DEAD; AND, AS A MATTER OF FACT, LADIES
18 AND GENTLEMEN, HE'S NOT DEAD; HE WAS NEVER KILLED; AND RIGHT
19 NOW IF YOU LOOK AT THAT DOOR, HE'S GOING TO COME WALKING
20 THROUGH."

21 AND ALL THE JURORS LOOKED AT THE DOOR AND, OF
22 COURSE, NOBODY CAME IN; AND THE LAWYER SAYS, "SEE,
23 LADIES AND GENTLEMEN, YOU ALL LOOKED AT THAT DOOR
24 BECAUSE YOU HAD A REASONABLE DOUBT, AND TO CONVICT MY CLIENT YOU
25 MUST BELIEVE HIM GUILTY BEYOND A REASONABLE DOUBT. SO YOU MUST ACQUIT
26 MY CLIENT.

1 "HE IS NOT GUILTY."

2 AND THE JURY RETIRED, CAME BACK ABOUT FIFTEEN
3 MINUTES LATER AND THE VERDICT WAS GUILTY.

4 THE DEFENSE LAWYER WAS SHOCKED. HE WENT OUT IN
5 THE HALL. HE WAS TALKING TO THE JURORS AFTERWARDS AND HE
6 WENT TO THE FOREMAN.

7 "MR. FOREMAN,' HE SAYS, 'THAT WAS THE

8 BEST CLOSING ARGUMENT I EVER GAVE. HOW COULD YOU CONVICT
9 MY CLIENT?"

10 HE SAID, "YOU SAW ALL THE JURORS LOOK' AT THE DOOR."
11 AND THE FOREMAN SAYS, "YES, MR. LAWYER," HE SAYS, "ALL THE
12 JURORS LOOKED AT THE DOOR, BUT WE ALSO LOOKED AT YOUR
13 CLIENT AND HE WASN'T LOOKING AT THE DOOR."

14 LADIES AND GENTLEMEN, THOSE OF YOU WHO LOOKED AT
15 MR. MEIER, HE WASN'T LOOKING AT THE DOOR. MR. MEIER KNOWS
16 WHAT WE FOUND AND HE'S NEVER BEEN BACK SINCE AND HE LIVES
17 IN THIS COUNTRY AND HE'S IN CALIFORNIA AND HE KNOWS WHAT THE
18 PENALTY FOR PERJURY IS, AND I SUGGEST TO YOU, THERE'S A GOOD
19 REASON HE HASN'T BEEN BACK.

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1 THIS WHOLE THING, THIS WHOLE COVERUP, THE
2 ALTERATION OF THE DOCUMENT, IT SHOWS THE KIND OF CORPORATE
3 MENTALITY THAT WE ARE DEALING WITH.

4 I MEAN LOOK AT THIS COMPANY. IT'S COMING IN HERE DURING
5 THE TRIAL AND ALTERING DIRECT EVIDENCE.

6 IF WE HADN'T HAD THAT REPORT, YOU WOULD BE SITTING HERE
7 NOW, AS WE WOULD, THINKING BACK IN 1980 THEY FOUND THIS

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1 VEHICLE TO BE FREE AND CLEAR OF DEFECTS; IT HANDLED NORMALLY.
2 IF SOME EMPLOYEE WITH A CONSCIENCE HAD NOT SENT US THAT
3 REPORT, THAT'S WHAT WE WOULD ALL THINK RIGHT NOW, THAT THAT'S
4 WHAT THE VEHICLE WAS FOUND TO BE IN 1980, NORMAL.

5 WHAT KIND OF A CORPORATION WOULD DO THAT KIND OF
6 A THING? WHAT KIND OF ARROGANCE FOR THE JURY, FOR THE
7 WIDOW AND FOR THE CHILDREN AND FOR OUR SYSTEM OF JUSTICE
8 DOES IT TAKE TO ALTER AND FALSIFY EVIDENCE AND COME IN
9 HERE AND PRESENT IT TO YOU LIKE THAT?

10 THAT ARROGANCE HAS PERMEATED THE DEFENSE IN THIS
11 CASE AND WE HAVE SEEN IT THROUGHOUT THIS TRIAL IN RESPECTS
12 THAT DIDN'T APPEAR APPARENT, CERTAINLY NOT AS APPARENT AS
13 THIS COVERUP EVIDENCE BUT IN OTHER RESPECTS THROUGHOUT THE
14 TRIAL.

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THE JUDGE GAVE YOU A JURY INSTRUCTION THAT I THINK
IS EXTREMELY APPROPRIATE FOR YOU TO CONSIDER IN EVALUATING THE
COVERUP.

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2 IT READS, "A WITNESS FALSE
3 IN ONE PART OF HIS TESTIMONY IS TO BE DISTRUSTED IN OTHERS;
4 THAT IS TO SAY, YOU MAY REJECT THE WHOLE TESTIMONY OF
5 A WITNESS WHO WILLFULLY HAS TESTIFIED FALSELY AS TO A
6 MATERIAL POINT UNLESS FROM ALL THE EVIDENCE YOU SHALL BELIEVE
7 THAT THE PROBABILITY OF TRUTH FAVORS HIS TESTIMONY IN OTHER PARTICULAR."

8 AND, LADIES AND GENTLEMEN, THAT APPLIES TO A WHOLE
9 DEFENSE.

10 IF YOU FIND THAT PORSCHE HAS BEEN WILLFULLY FALSE IN
11 THIS CASE, AND I DON'T THINK THERE IS ANY QUESTION ABOUT IT,
12 YOU CAN DISTRUST THEIR ENTIRE DEFENSE.

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I THINK THAT YOU

1 HAVE SEEN THROUGHOUT THIS CASE, AND THIS IS THE IMPORTANT
2 POINT TO REMEMBER IN THE JURY ROOM WHEN YOU DECIDE ABOUT THE
3 VERDICT AND RESPONSIBILITY, AND SO ON, YOU HAVE SEEN A
4 CONSCIOUS DISREGARD ON THE PART OF PORSCHE FOR THE RIGHTS AND
5 THE SAFETY OF OTHERS AND YOU HAVE SEEN THIS PARTICULARLY IN
6 TWO RESPECTS, ONE TOWARDS YOU.

7 YOU HAVE SEEN A CONSCIOUS DISREGARD OF YOUR RIGHT TO
8 KNOW THE TRUE FACTS OF THIS CASE AND WHAT THEIR TESTS SHOWED.

9 AND WHAT DO I MEAN WHEN I SAY "CONSCIOUS DISREGARD"?
10 THAT MEANS THAT THEY KNEW YOU HAD A RIGHT TO HAVE THE REAL
11 EVIDENCE AND THEY CONSCIOUSLY WITHHELD IT FROM YOU.

12 THEY CONSCIOUSLY MADE THE DECISION TO ALTER THE REPORT
13 AND NOT PRESENT IT TO YOU.

14 THAT IS A CONSCIOUS DISREGARD OF YOUR RIGHTS.

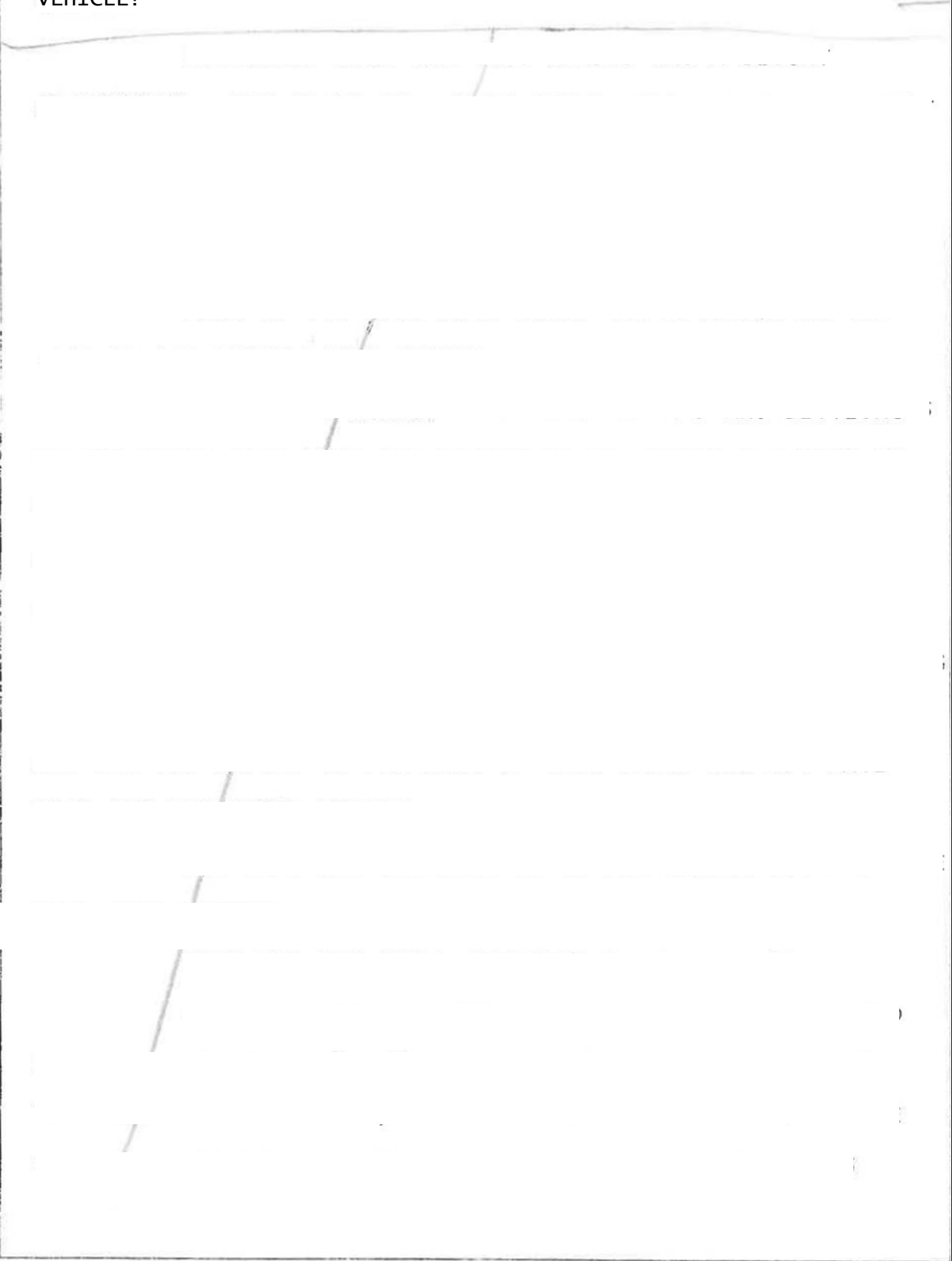
15 AND YOU HAVE SEEN A CONSCIOUS DISREGARD OF THE
16 RIGHTS OF CONSUMERS, AND I HAVE TO EMPHASIZE THAT, IT'S A
17 CONSCIOUS DISREGARD OF THE RIGHTS AND THE SAFETY OF CONSUMERS
18 IN THIS STATE, WHEN THEY KNOW THAT CAR IS UNSAFE, WHEN THEY
19 KNOW IT'S SUBSTANTIALLY DANGEROUS WHEN SOMEBODY DOESN'T KNOW
20 HOW TO HANDLE IT AND THEY DON'T WARN.

21 AND WHAT IS THE REASON FOR BOTH OF THOSE THINGS?

22 THEY DIDN'T REVEAL IT TO YOU BECAUSE OF MONEY. THEY
23 KNOW IT WOULD COST THEM A LOT OF MONEY IN TERMS OF YOUR
24 VERDICT AND THEY DON'T PUT WARNINGS ON THE CAR BECAUSE THEY
25 KNOW IT'S GOING TO COST THEM MONEY IN TERMS OF SALES.
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1 HOW MANY CUSTOMERS WOULD THEY LOSE IF THOSE
2 CUSTOMERS KNEW THE TRUE FACTS ABOUT THE DANGERS OF THE
3 VEHICLE?

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1 AND AS TO THE ISSUE OF MONEY, I WOULD LIKE TO MOVE NOW TO THE LAST
2 AREA OF MY SUMMATION, WHICH IS THE AREA OF THE DAMAGES THAT HAVE BEEN

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7 SUSTAINED IN THIS CASE.

8 AND YOU HEARD THE TESTIMONY OF MR. NEFFELER, AND
9 THE COURT HAS INSTRUCTED YOU ABOUT THE LIFE EXPECTANCY, THE
10 AVERAGE LIFE EXPECTANCY OF A MAN WHO WAS 38 YEARS OLD, BUT
11 THERE'S A COUPLE OF THINGS THAT WE NEED TO DISCUSS.

12 FIRST OF ALL, THE COURT HAS INSTRUCTED YOU,
13 PROPERLY SO, THAT WHAT YOU AWARD IN THE WAY OF DAMAGES IS
14 THE PRESENT VALUE OF THE LOSS OF SUPPORT.

15 AND KNOWING, OBVIOUSLY KNOWING THAT THAT'S THE LAW,
16 MR. NEFFELER TESTIFIED AS TO THE PRESENT VALUE OF THE LOSS OF
17 SUPPORT.

18 IN OTHER WORDS, WHAT HE DID WAS TAKE THE WAGES OF
19 DONALD FRESH AT THE TIME OF HIS DEATH,
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1 ADD IN THE S.A.I. INCREASES THAT HAVE
2 BEEN GIVEN SINCE THAT TIME, AND THEN TAKE THE FINAL WAGE AT
3 THE TIME OF TRIAL, AND FROM THAT HE
4 COULD OBVIOUSLY DETERMINE WHAT THE PAST LOSS HAD BEEN.

5 AND NOW TALKING ABOUT THE FUTURE LOSS, HE SAID THAT
6 THE WAGE THAT HE WOULD HAVE BEEN RECEIVING AT THE TIME OF
7 TRIAL, IF HE WOULD HAVE BEEN ALIVE, WOULD INCREASE,
8 OBVIOUSLY, OVER TIME WITH INFLATION.

9 BUT, SIMILARLY, IF YOU WERE TO HAVE THE MONEY FROM
10 THE FUTURE LOSS NOW, RATHER THAN IN THESE YEARS IN THE FUTURE,
11 IT COULD DRAW
12 INTEREST.

13 AND THEN HE GAVE YOU A HISTORICAL ANALYSIS OF THE
14 INTEREST RATE VERSUS INFLATION WHICH SHOWED THAT HISTORICALLY
15 THE YIELD ON U.S. TREASURY BONDS, AND THE JURY INSTRUCTION
16 SAYS A SECURE INVESTMENT, HAS PRETTY MUCH MATCHED INFLATION.
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1 IN OTHER WORDS, IF YOU HAD THE MONEY NOW, THE LOSS
2 OF SUPPORT NOW AND HAD IT INVESTED AT A SECURE INVESTMENT,
3 --THE INCREASE WOULD JUST ABOUT BE
4 EQUIVALENT TO WHAT INFLATION WOULD DO TO THOSE WAGES IN THE
5 FUTURE.

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13 WAS THAT DONALD FRESH WOULD BE PROMOTED, THAT HE MAY BECOME A SENIOR-
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15 VICE PRESIDENT, OR PRESIDENT OF THE COMPANY.

16 THOSE TYPES OF THINGS WERE NOT FIGURED IN, SO I
17 THINK HIS ANALYSIS IS CONSERVATIVE.

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23 IN 1979 DONALD FRESH'S ANNUAL EARNINGS WERE \$48,812, NOT
24 COUNTING BENEFITS, JUST HIS PAYCHECK.
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IF DONALD FRESH HAD BEEN LIVING AT THE TIME OF TRIAL, HE
WOULD HAVE BEEN MAKING \$69,576.
AND THAT IS THE BASE FIGURE THAT WAS USED BY MR.
NEFFELER IN DETERMINING THE PRESENT VALUE OF THE FUTURE
LOSS.

S.A.I.

FROM THOSE FIGURES YOU HAVE TO DEDUCT WHAT THE
CONSUMPTION WOULD HAVE BEEN FOR DONALD FRESH HIMSELF.

1 IN OTHER WORDS, THE SUPPORT THAT GOES TO THE
2 FAMILY IS NOT GOING TO INCLUDE WHAT DONALD FRESH SPENDS ON
3 HIMSELF OR WHAT IS ATTRIBUTABLE TO HIS PERSONAL CONSUMPTION.

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7 THAT INCLUDES EVERYTHING THAT HE WOULD CONSUME, HIS PORTION OF THE
8 FOOD, THE CAR PAYMENTS, THE HOUSE PAYMENTS AND SO ON.
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20 A HIGHER INCOME FAMILY, WHICH THIS FAMILY WAS,
21 WOULD HAVE BEEN CONSUMING \$31,341 IN 1983 OUT OF
22 THEIR INCOME; AND OF THAT \$7,459 WOULD HAVE GONE TO THE
23 CONSUMPTION OF THE HUSBAND.
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AND THEN WE GET TO THE OTHER PORTIONS, THE BENEFITS.

WE HAVE GOT THE EMPLOYEE PAY BENEFITS, THE PROFIT SHARING AND THE STOCK BONUS, AND YOU REMEMBER MR. NEFFELER, WHAT HE DID ON THOSE WAS SIMPLY TAKE THE PERFORMANCE OF THE COMPANY AND FIND OUT WHAT PERCENTAGE OF HIS INCOME THAT PERFORMANCE RELATED TO. IN OTHER WORDS, WHAT PERCENTAGE OF HIS INCOME THE STOCK BONUS WAS EACH YEAR.

AND THEN REPLACEMENT OF HOME SERVICES.

THE JUDGE HAS INSTRUCTED YOU THAT THAT'S A PROPER ITEM OF RECOVERY. I BELIEVE MR. NEFFELER USED AN AVERAGE OF 1.5 HOURS A DAY OR 1.2 HOURS A DAY THAT AN INDIVIDUAL WOULD SPEND DOING THINGS AROUND THE HOUSE, - PAINTING, FIXING, PLUMBING, WORKING ON CARS.

1 YOU HEARD THAT DONALD FRESH WORKED ON THE HOUSE.
2 THEY BUILT A HOUSE AND HE SPENT A LOT OF TIME BUILDING THINGS
3 IN THE HOUSE AND DOING THINGS FOR THE HOUSE.

4 OBVIOUSLY THAT TIME IS WORTH SOMETHING.

5 IT WAS ONLY CALCULATED ON A MINIMUM WAGE, SOMEONE
6 ELSE HAS TO COME IN AND DO THAT NOW. IF YOU HAVE TO CALL A
7 PLUMBER, IF YOU HAVE TO GET A PAINTER, THOSE TYPES OF THINGS HAS
8 TO BE PAID AND YOU ARE PROBABLY NOT GOING TO GET IT AT MINIMUM
9 WAGE.

11 PUTTING ALL OF THIS TOGETHER FROM THE TIME OF DEATH TO THE
12 TIME OF TRIAL, THE TOTAL LOSS TO DATE IS \$194,400.

13 THE FUTURE LOSS YOU CAN SEE ON THE SECOND PAGE OF
14 EXHIBIT 35 IS AGAIN TAKING THE 69,000 SOME ODD DOLLARS OF WAGES
15 THAT WERE EARNED, THAT HE WOULD HAVE BEEN RECEIVING AT THE TIME
16 OF TRIAL IF HE HAD NO PROMOTION OR ANYTHING, JUST SIMPLY THEIR
17 INCREASES, MULTIPLIED BY HIS WORK LIFE EXPECTANCY, NOT
18 INCREASED FOR INFLATION.

19 THE SAME WAS DONE AS PREVIOUSLY TALKED ABOUT WITH
20 THE EMPLOYER BENEFITS FOR THE FUTURE, THAT HIL WOULD HAVE
21 RECEIVED, AND THE EMPLOYEE COST FOR REPLACING HOME SERVICES,
22 SAME CALCULATION, AND YOUR RESULT, YOU END UP WITH
23 \$1,693,700 LESS CONSUMPTION; THIS IS MULTIPLIED OUT OVER THE
24 FUTURE;
25
26

AND THE TOTAL LOSS OF FUTURE BENEFITS IS \$1,450,500.

YOU ADD THOSE TO THE LOSS TO DATE AND YOU HAVE \$1,644,900.

NOW, WE REALIZE, ALL OF US REALIZE THAT'S A LOT OF
4 MONEY, \$1,600,000, BUT YOU HAVE HEARD A LOT OF EVIDENCE IN
5 THIS CASE ABOUT DONALD FRESH'S QUALIFICATIONS, TWO MASTERS
6 DEGREES, BACHELOR DEGREE, WHAT KIND OF A WORKER HE WAS, A
7 HARD WORKER, LONG HOURS, WHAT KIND OF A PRODUCER HE WAS.

8 REMEMBER THE COOPERS WERE IN HERE AND TESTIFIED.

9 MR. NEFFELER TOLD YOU A LITTLE BIT ABOUT WHAT HE HAD FOUND IN THE
10 RECORDS, AND SO ON, BUT YOU HEARD, FOR INSTANCE, THAT DONALD
11 FRESH PRODUCED A CONTRACT FOR
S.A.I. THAT BROUGHT THE COMPANY \$400 MILLION; \$400 MILLION; AND

JUST THINK ABOUT WHAT THAT MEANS IN TERMS OF OUR

SOCIETY, IN TERMS OF ALL OF US.

14 A \$400 MILLION CONTRACT MEANS S.A.I. HAS GOT TO
15 HIRE MORE EMPLOYEES TO SERVICE IT. THAT MEANS MORE PEOPLE
16 GET JOBS. THOSE EMPLOYEES HAVE TO HAVE SPACE TO WORK, WHICH
17 MEANS MORE FACILITIES ARE USED, WHICH MEANS YOU NEED MORE
18 PEOPLE TO SERVICE THOSE FACILITIES.

19 YOU NEED MORE POWER AND ELECTRICITY TO TAKE CARE OF
20 THOSE FACILITIES.

21 WHEN YOU PRODUCE SOMETHING LIKE THAT, IT SPREADS
22 THROUGHOUT SOCIETY. YOU MAKE MORE JOBS FOR A LOT OF PEOPLE;
23 YOU MAKE MORE PROFIT FOR THE COMPANY; AND OUR SOCIETY REWARDS
24 HIGH PRODUCERS; IT AWARDS ACHIEVERS; AND
25

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1 TT'S ONLY PROPHR THAT IT DO SO BECAUSE THOSE TYPE OF PEOPLE
2 BENEFIT ALL OF US.

3 AND SO IT'S IMPORTANT, I THINK, THAT WE RECOGNIZE
4 THAT AND REALIZE THAT THIS WAS A MAN WHO HAD ACHIEVED A LOT,
5 A LOT FOR HIMSELF PERSONALLY, BUT -- HE
6 NEVER TOOK HIS PERSONAL ACHIEVEMENTS BEYOND THAT WHICH HE
7 SHOULD HAVE.

HE DID WELL FOR HIMSELF. HE DID

12 WELL FOR HIS FAMILY.

13 HE HAD A TREMENDOUSLY BRIGHT FUTURE. HE WAS A
14 SUCCESSFUL INDIVIDUAL AND HE GOT A LOT OF PEOPLE A LOT OF
15 JOBS THROUGH HIS EFFORTS. AND FOR THAT REASON, HE WAS
16 ENTITLED TO WHAT HE RECEIVED AND HIS FAMILY IS ENTITLED TO
17 THEIR LOSS OF SUPPORT.

18 HE HAD A LOSS FOR THE PAST, THAT IS UP
19 TO THE TIME OF TRIAL, OF \$194,400 AND THE PRESENT VALUE OF THE
20 FUTURE LOSS, \$1,450,500, MAKING A TOTAL OF \$1,644,900.

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22
23 THE LAST ITEM I WILL BE ADDRESSING IS THE LOSS OF LOVE AND AFFECTION,
CARE, COMFORT,
24 COMPANIONSHIP AND MORAL SUPPORT.
25

1 THAT IS A VERY, VERY DIFFICULT AREA TO EVALUATE.

2 IT'S A DIFFICULT SUBJECT TO ADDRESS, BUT IT'S
3 SOMETHING THAT YOU HAVE TO DECIDE IN THIS CASE.

4 IT'S YOUR DUTY, AS THE JURORS, AS THE JUDGES OF THE
5 FACTS AND EVIDENCE, TO DECIDE WHAT THE WORTH OF SUCH A
6 LOSS IS.

7 THIS ISN'T A CASE ABOUT THE VALUE OF AN INVESTMENT,
8 A LOST INVESTMENT. IT'S A CASE ABOUT THE VALUE OF A HUMAN
9 BEING, AND YOU HAVE TO DECIDE WHAT THAT VALUE IS.

10 YOU HAVE TO DECIDE WHAT THESE THINGS, THIS CARE,
11 COMFORT, LOVE AND AFFECTION, COMPANIONSHIP AND MORAL SUPPORT
12 MEAN AND WHAT THEIR VALUE IS IN TERMS OF THIS CASE.

13 WHAT IS IT TO HAVE SOMEBODY THAT IS GOING TO SHARE
14 THE MOST PRIVATE THOUGHTS THAT YOU HAVE, DAY IN AND DAY OUT,
15 THAT'S GOING TO BE THERE WHEN YOU NEED THEM, THAT'S GOING TO
16 COMFORT YOU, THAT'S GOING TO CRY WHEN YOU ARE HURT, WHAT IS IT
17 WORTH TO HAVE SOMEBODY THAT'S GOING TO SHARE YOUR AMBITIONS
18 AND YOUR GOALS AND WITH YOU, TO SHARE EACH OTHER'S?

19 MARTHA AND DON FRESH HAD THE REST OF THEIR LIVES TO
20 LOOK FORWARD TO TOGETHER. THEY HAD SPENT FOUR YEARS MARRIED.
21 YOU HAVE HEARD WHAT KIND OF A RELATIONSHIP THEY HAD, HOW WELL
22 THEY GOT ALONG, THE FRIENDS THEY HAD, THE THINGS THEY ENJOYED
23 DOING TOGETHER; BUT WHAT IS THE VALUE OF LOSING SOMEBODY THAT'S
24 GOING TO SHARE THE BAD TIMES WITH YOU?

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26

1 WHEN THINGS AREN'T GOING WELL, YOU HAVE GOT
2 SOMEBODY THERE THAT'S GOING TO COMFORT AND STAND BY YOU AND
3 SUPPORT YOU; AND THE GOOD TIMES, THE VACATIONS, THE TIMES
4 THAT YOU ENJOY TOGETHER WHEN EVERYTHING IS GOING WELL, WHEN
5 YOU GET YOUR PROMOTIONS, AND MARTHA DID HAVE SOMEBODY
 TO SHARE THOSE TIMES WITH.

7 ALSO THE LOSS OF LOVE AND AFFECTION, - SPIRITUALLY,
8 EMOTIONALLY AND PHYSICALLY, SOMEBODY THAT MAKES YOU A
9 COMPLETE INDIVIDUAL, A WHOLE PERSON, HOW DO YOU EVALUATE
10 THAT LOSS?

11 IT'S VERY, VERY DIFFICULT.

12 I MENTIONED TO YOU A FIGURE FROM THE VERY
13 BEGINNING OF THIS CASE, A TOTAL FIGURE THAT WE WOULD BE
14 ASKING FOR.

15 I THINK THAT IS AN AMOUNT BASED UPON MY EXPERIENCE
16 AND EVALUATION, THAT IS REASONABLE IN THIS
17 CASE.

18 YOU MAY DISAGREE.

19 WHAT THE LAWYERS TELL YOU IS A REASONABLE
20 AMOUNT IS NOT EVIDENCE. YOU HAVE TO DECIDE THAT. YOU HAVE
21 TO DECIDE WHAT IS JUST, WHAT'S FAIR AND WHAT'S REASONABLE.

22 YOU HAVE TO DECIDE THE ANSWER TO THAT IN YOUR OWN
23 CONSCIENCES AND WE CAN ONLY SUGGEST TO YOU.

24 YOU MAY THINK THAT THE FIGURE THAT I AM SUGGESTING,
25 AND WE TALKED ABOUT THE FIGURE BEFORE; IT'S NOT GOING TO BE
26 ANY SURPRISE TO YOU WHEN I PUT IT UP HERE; YOU MAY THINK
 IT'S TOO LOW; YOU MAY THINK IT'S TOO HIGH; I DON'T KNOW;
 BUT IT'S FOR YOU, LADIES AND GENTLEMEN, TO DECIDE.

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THIS ISN'T A DISCOUNT HOUSE. IT'S A COURT OF LAW.
IT'S THE LAST RESORT FOR THE PLAINTIFFS IN THIS CASE AND
THEIR FUTURE IS IN YOUR HANDS AND IT'S
AN IMPORTANT DECISION FOR YOU. I THINK THAT YOU HAVE ALL,
INDICATED ON VOIR DIRE THAT YOU WOULD FOLLOW THE COURT'S
INSTRUCTIONS AND THE COURT HAS INSTRUCTED YOU AS TO THE
AMOUNT OF DAMAGES, THE TYPE OF DAMAGES THAT ARE APPROPRIATE.

YOU WON'T BE HERE, LADIES AND GENTLEMEN, IN TWENTY
YEARS TO COME BACK TO COURT AND ADJUST THE VERDICT IF YOU
AWARD LESS THAN THE LIFE OF DONALD FRESH WAS WORTH.

YOU HEARD MR. NEFFBLER INDICATE THAT YEARS AGO,
SEVERAL YEARS AGO A DOLLAR AN HOUR WAS THE AVERAGE WAGE, THE
MINIMUM WAGE, AND IT'S UP OVER THREE DOLLARS NOW, AND YOU
KNOW WHAT INFLATION DOES TO MONEY. AND WHEN IT'S 10, 15 YEARS
FROM NOW AND THESE CHILDREN ARE FINISHING THEIR EDUCATION
AND GETTING INTO OTHER THINGS AND THE FAMILY GOES ON, AND
INFLATION HAS ERODED WHAT YOU HAVE AWARDED;
THEY CAN'T COME BACK TO YOU AND SAY, "CAN YOU TAKE
CARE OF THIS NOW AND GIVE US WHAT OUR FATHER AND OUR HUSBAND
WAS WORTH BACK THEN?"

IT'S UP TO YOU TO DO THAT NOW TO MAKE SURE YOUR
AWARD IS FAIR, JUST AND REASONABLE, SO WHEN YOU LOOK BACK AT
1983 AND YOU REMEMBER YOUR EXPERIENCE HERE FOR SEVERAL
MONTHS, YOU WILL REMEMBER THAT THE VERDICT THAT YOU
AWARDED DIDN'T Demean THE MEMORY OF DONALD FRESH BUT IT

STOOD AS A MONUMENT TO HIM.

Go back to p 5774

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1 THIS IS THE IMPORTANT THING; THE LOSS OF SUPPORT DOESN'T TAKE
ITS TOLL LIKE THE LOSS OF LOVE AND AFFECTION -- THAT'S
3 THE GUTS OF THE WHOLE THING; THAT'S SOMETHING THAT
4 REALLY CAN'T BE REPLACED.

6 ---THE VALUE OF THAT IS SOMETHING
THAT THE FAMILY IS NEVER GOING TO SEE AGAIN. IT'S WORTH AT
7 LEAST AS MUCH AS THE LOSS OF SUPPORT

8 THIS IS A SUCCESSFUL INDIVIDUAL, NOT ONLY IN HIS
9 BUSINESS PURSUITS BUT ALSO IN HIS FAMILY LIFE AND WITH HIS
10 CHILDREN AND WITH HIS WIFE.

11 AND I AM SUGGESTING TO YOU THAT YOU AWARD A
12 FIGURE HERE THAT IS COMPARABLE TO WHAT YOU ARE AWARDING FOR
13 LOSS OF SUPPORT.

14
15 NOW THE JUDGE HAS TOLD YOU THAT IN THIS CASE
16 YOU CAN'T AWARD ANY PUNITIVE DAMAGES AGAINST PORSCHE. IN
OTHER WORDS, YOU CAN'T AWARD WHAT WE CALL PUNITIVE OR
EXEMPLARY DAMAGES, DAMAGES TO SET AN EXAMPLE OR PUNISH A
PARTY.

20 THOSE KIND OF DAMAGES ARE NOT ALLOWED IN WRONGFUL-
21 DEATH CASES, IN SPITE OF THE CONDUCT OF PORSCHE IN THIS CASE, BUT YOU CAN
22 AWARD
23 THE FAMILY THE MONEY THAT IT IS ENTITLED TO.

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C
1 AND THIS, LADIES AND GENTLEMEN, IS WHAT WE SUBMIT TO YOU THEY ARE
2 ENTITLED TO.

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7 AND I WOULD SUBMIT TO YOU, AND I TOLD YOU INITIALLY THAT
8 THIS IS AN IMPORTANT CASE, NOT JUST BECAUSE OF ITS VALUE BUT
9 BECAUSE OF THE POWER THAT YOU HAVE
WITH YOUR VERDICT TO GET A MESSAGE ACROSS, TO GET A MESSAGE BACK TO
11 WEISSACH. YOUR VERDICT HAS TO BE THE ANECDOTE FOR THE POISON THAT WE
12 HAVE SEEN.

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YOU HAVE TO TELL THIS MANUFACTURER, THIS ARROGANT
MANUFACTURER THAT IT'S GOING TO BE CHEAPER IN THE LONG RUN TO
BUTLD A FENCE AT THE TOP OF THE HILL THAN TO HAVE AN
AMBULANCE WAITING IN THE VALLEY DOWN BELOW.

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NOW I HAVE TALKED TO MY CLIENTS AND THEY BELIEVE IN OUR
SYSTEM OF JUSTICE AND THEY BELIEVE THAT YOU WILL DO THE RIGHT
THING.
THANK YOU, LADIES AND GENTLEMEN.