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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Hon. Roger M. Young Sr., Circuit Court Judge

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Circuit Court Case No. 2019-CP-10-05392  
S.C. Court of Appeals Case No. 2022-001795

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Kevin Staveley-O-Carroll,

Appellant,

v.

Fenix Automotive, LLC

Respondent.

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RECORD ON APPEAL

Volume 2

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL  
CIRCUIT  
Case no. 2019CP1005392

KEVIN STAVELEY O'CARROLL,

Plaintiff

-against-

FENIX AUTOMOTIVE, LLC.

Defendants.

MOTION FOR DAMAGES

(VIRTUAL)

DATE: August 25, 2021

TIME: 2:00 p.m.

HON.: ROGER M. YOUNG, SR.

Natalie A. Williams  
Court Reporter  
(914) 610-8863  
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1 MR. SOBIERAJ: Good afternoon, Your  
2 Honor. Damien Sobieraj here for Fenix  
3 Automotive.

4 THE COURT: I can hear you but I  
5 can't see you.

6 MR. SOBIERAJ: I do not have a  
7 video in my office, Your Honor.

8 THE COURT: Well, what century did  
9 you buy your computer in? I didn't know  
10 they made computers without cameras.

11 Are we waiting on anybody else?

12 MR. WESTBROOK WILLS: Your Honor,  
13 we are -- we have an expert witness who  
14 will be testifying. And we are getting him  
15 set up with the proper interface to be able  
16 to join in on our hearing, which apparently  
17 requires that he download some kind of an  
18 application onto his phone. And I see that  
19 it's about 30 seconds from being complete.  
20 Although, he will not be testifying until  
21 after our first witness. So, I don't  
22 believe we would have to hold up anything.

23 THE COURT: All right, well let's  
24 start then.

25 MR. WESTBROOK WILLS: Thank you,

1 Your Honor. Your Honor, this is a hearing  
2 on damages that is following a default  
3 judgment. I don't know if the Court is  
4 apprized of the -- just the general facts  
5 of the underlying case.

6 THE COURT: Well, I read your memo.  
7 He went to take his car in for repairs,  
8 they didn't repair it.

9 MR. WESTBROOK WILLS: Correct, Your  
10 Honor. Also important to our damages claim  
11 is that Mr. Staveley -- excuse me, my  
12 apologies, Dr. Staveley-O'Carroll, who is  
13 with us, he is the plaintiff. He has also  
14 provided a \$20,000 deposit towards the  
15 repairs, which was fully refundable upon  
16 demand. But as the deal broke down and the  
17 repairs were not being completed as  
18 promised, Dr. Staveley-O'Carroll did demand  
19 the return of the \$20,000 deposit, which  
20 was thereafter not returned. And that is  
21 going to be forming the basis of our  
22 conversion claim in the case, with regard  
23 to that deposit.

24 So, essentially, Your Honor has it  
25 in a nutshell. We have a -- somewhat of a

1 special vehicle, that is a 1969 classic  
2 Mercedes 280 SL. Our complaint alleges --  
3 and the position of the case in default, so  
4 the allegations -- the well-pleaded  
5 allegations are deemed admitted, of course.  
6 But the complaint alleges that  
7 Dr. Staveley-O'Carroll is the owner of the  
8 vehicle, and I'm going to call  
9 Dr. Staveley-O'Carroll to attest to the  
10 ownership and to the reasons for his  
11 decision to restore the vehicle, which we  
12 believe will be important for the Court's  
13 consideration on punitive damages we've  
14 requested. With that, Your Honor, if I may  
15 call our first witness?

16 THE COURT: All right.

17 MR. WESTBROOK WILLS: So, the  
18 Plaintiff would call Dr. Kevin  
19 Staveley-O'Carroll, who is with us today  
20 from Missouri, I believe.

21 THE WITNESS: Yes.

22 K E V I N S T A V E L E Y - O C A R R O L L, a  
23 Witness called on behalf of the Plaintiff, having been  
24 first duly sworn by the Court, was examined and  
25 testified as follows:

1 THE COURT: All right. Go ahead.

2 MR. WESTBROOK WILLS: Thank you,  
3 Your Honor.

4 THE COURT: Just to make sure we're  
5 all on the same page, this is a damages  
6 hearing. All of the allegations are deemed  
7 to be admitted and therefore, the plaintiff  
8 can introduce evidence, the defendant  
9 cannot introduce evidence but can only  
10 object to the evidence that the plaintiff  
11 offers, and may only cross-examine the  
12 plaintiff's witnesses. They're not allowed  
13 to call any witnesses on behalf of the  
14 defendant. Okay?

15 MR. WESTBROOK WILLS: Thank you,  
16 Your Honor. I may be a little rough here  
17 as far as understanding how to display  
18 exhibits. I believe I can -- normally I  
19 would have access to a share button at the  
20 bottom, but on my system here it's grayed  
21 out, so I don't have the option.

22 THE CLERK: Try it now, Mr. Wills.

23 MR. WESTBROOK WILLS: No luck.  
24 Well, this will only be important for our  
25 expert witness.

1 MR. SOBIERAJ: What are you -- are  
2 you trying to show what you provided me?

3 MR. WESTBROOK WILLS: Yeah.

4 MR. SOBIERAJ: Your Honor, I have  
5 no problem with sharing what he provided  
6 me, if we can get it up on the screen, if  
7 that will work.

8 MR. WESTBROOK WILLS: Yeah, well,  
9 thank you, Damien.

10 MR. SOBIERAJ: You want the  
11 plaintiff's exhibits that you sent Michael?

12 MR. WESTBROOK WILLS: Yes, I was  
13 going to put the Plaintiff's Exhibits and I  
14 was going to display the title to the  
15 vehicle, which I think is the first exhibit  
16 in there.

17 MR. SOBIERAJ: Let me see. There  
18 you go.

19 (Whereupon, Plaintiff's Exhibit 1  
20 is displayed.)

21 MR. WESTBROOK WILLS: Okay, thank  
22 you, great. That does help and these are  
23 copies so they're not in color, but perhaps  
24 we can still work on that -- figuring out  
25 what that share button is. But at any

1 rate, let me just ask this because we don't  
2 need color to understand this.

3 DIRECT EXAMINATION OF BY MR. WILLS:

4 Q Dr. Staveley-O'Carroll, I just  
5 wanted to see if you could identify this that's been  
6 marked as Plaintiff's Exhibit 1, as being the title to  
7 the vehicle that is at issue in this case?

8 A Yes.

9 Q And the vehicle then being --  
10 reading from the title, a 1969 Mercedes 2 SL class,  
11 with 126,000 miles. Is that correct?

12 A Yes.

13 Q This vehicle is titled, it appears,  
14 in your name and in someone else's name. Can you tell  
15 the Court who is the other person on the title?

16 A That is my ex-wife Moreen Lynn  
17 Staveley-O'Carroll. And in our divorce decree the  
18 Mercedes went to me because I inherited it from my  
19 mother.

20 Q I understand. So, this is a car  
21 that you inherited from your mother, you testified.  
22 Can you tell the Court the reason why you were  
23 interested in restoring the vehicle in the first  
24 place?

25 A Well, it was my mother's prize

1 possession, and she chose me to give it -- there's six  
2 children, and she chose me to give it to because she  
3 felt I would take care of it and would be in a  
4 position to take care of it. It was in good condition  
5 when we had this title here, it was drivable and quite  
6 good. She had already had the engine rebuilt and the  
7 interior re-done. It was in very good shape.

8 In the early 2000's in Pennsylvania  
9 it had a cracked head, so we weren't able to drive it  
10 and we were looking for someone that could restore the  
11 cracked head and really, you know, make the car in  
12 perfect condition.

13 Q So, is it fair to say that this car  
14 had meant more to you than just an average everyday  
15 car that you would have owned?

16 A Absolutely.

17 Q In your complaint we've alleged, as  
18 his Honor has said, allegations of the complaint --  
19 but essentially you were entered into a contract with  
20 Fenix Automotive to do the restoration, and at that  
21 restoration was never completed, correct?

22 A That's right.

23 Q How many years elapsed between when  
24 you first entered into the contract, to your  
25 recollection, and when you finally understood that the

1 work was not going to be done?

2 A We initially started working with  
3 them at the end of 2015, and about a year ago they  
4 cutoff all contact and had the car, and the \$20,000,  
5 and we couldn't -- we were in Missouri then and the  
6 car was back where we used to live, in Charleston.  
7 And we had to hire a lawyer and start pursuing it  
8 because they had the car and the money.

9 Q Is it true that you hired me to  
10 help you find the car even, because you had no idea  
11 where it was?

12 A Right. We had gone out there one  
13 time, we were worried that things weren't progressing  
14 and the communication that had been promised wasn't  
15 taking place. And we went out there and met with Mike  
16 at Fenix and he convinced us that -- one thing that I  
17 was concerned about, super concerned about even moving  
18 the car to Charleston at all, is the conditions there,  
19 the weather makes things rough.

20 MR. SOBIERAJ: Objection, Your  
21 Honor.

22 THE COURT: What?

23 MR. SOBIERAJ: I object, Your  
24 Honor. The witness is making a  
25 conclusionary statement regarding how the

1 elements of weather and how they effect car  
2 parts. He's not an expert in that field.

3 THE COURT: Overruled. Go ahead.

4 A So, I was worried during this whole  
5 rebuild. And we agreed with he would -- Mike would  
6 tear the car down completely so he could give a real  
7 and accurate appraisal of the work that needed to be  
8 done. And he promised me, reassured me, that he would  
9 protect it from the elements. And that was something  
10 that we discussed again and again, because this is a  
11 precious thing, more than just being a classic car, it  
12 was my mother's car. So, he promised that he would  
13 take care of this car. And he seemed like a person of  
14 his word and trustworthy, and the things on his  
15 website and people had recommended him. And really he  
16 came across, and still it's hard for me to even  
17 believe this has happened, honestly.

18 But we entered into the arrangement  
19 with Mike and then eventually when we went out there  
20 he said that he was moving shops and he was able to  
21 show me the shell of the car. The most recent work he  
22 said had been done, wasn't done and he said he's sorry  
23 about that, but, you know, he felt bad.

24 Q What year was that? Sorry to  
25 interrupt you, but what year was that when you saw the

1 vehicle with just the shell?

2 A It would have been April of -- it  
3 was April of -- let me see, I think I got it written  
4 down here--

5 Q Would that have been before the  
6 time when you provided the \$20,000 deposit or after?

7 A That was after.

8 Q Okay. After the \$20,000 deposit?

9 A Yes.

10 Q When you saw the vehicle at that  
11 time had any work -- further work been done on the  
12 car, to your knowledge?

13 A No. He tore down the car to it's  
14 complete barebones, then gave an accurate description  
15 of what it was going to cost to fix the car, and it  
16 was very detailed. He said, you know, you can't be  
17 exact, but it would be, you know, this was an accurate  
18 and detailed idea of what it was going to cost. So,  
19 we agreed that we would put -- we paid him \$3,225 to  
20 do that, and then we paid him \$2,600 to media blast  
21 the car. And then we entered into the agreement that  
22 we were going to give him \$20,000 and he would start  
23 working against that and give us regular updates as to  
24 his progress.

25 So, we made the deposit of \$20,000

1 and it said that that was refundable on demand, minus  
2 anything that had been spent in labor or parts. And  
3 then we didn't get updates. And when we started  
4 communicating with him, he would not respond at all.  
5 And then we communicated with him, he answered our  
6 e-mail and we said, we're coming out there. So, when  
7 we went out there he showed us the car, and at this  
8 time I was like, is everything else protected? He's  
9 like, yes, it's all in bins but we're moving shops to  
10 another place. So, that's what got me most upset is,  
11 you know, what I'm learning now is it hasn't been  
12 protected from the weather and he wasn't telling the  
13 truth when he said it was in bins.

14 Q Well, let me just ask one more --  
15 couple of questions along that line. It's admitted as  
16 you've alleged in the complaint, that you provided the  
17 \$20,000 and that that \$20,000 was refundable upon  
18 demand. And that you made a demand for the return of  
19 the \$20,000, and that's correct, right?

20 A Yes.

21 Q And you did not receive any return  
22 of your \$20,000, on your demand, correct?

23 A Correct.

24 Q Okay. As a result of the entire  
25 situation, you were required to hire me to bring a

1 lawsuit, is that correct?

2 A That's right. We felt very  
3 helpless. We were in another state, he had my  
4 mother's car, he had our money and he was completely  
5 unresponsive.

6 Q As a result of hiring me you had to  
7 incur expenses, legal expenses, and costs of action,  
8 correct?

9 A Yes.

10 Q Okay. And the cost to you of  
11 those -- of your legal expenses and of your costs to  
12 bring the action, are -- well, I'll ask you in this  
13 way. Have you incurred legal expenses to-date, in the  
14 amount of \$11,290?

15 A Yes.

16 Q Have you been caused to have  
17 expenses related to the action in the amount of  
18 \$1,312.49?

19 A Yes.

20 Q Do those expenses include fees that  
21 you expended to hire an expert witness in this case to  
22 testify as to the damages?

23 A Yes.

24 Q Dr. Staveley-O'Carroll, as we sit  
25 here today, you delivered a car -- is it correct you

1 delivered a car to Fenix and you've testified as to  
2 the condition that you believed that car was in when  
3 you delivered it.

4 A Yes.

5 Q You delivered it to Fenix, you paid  
6 them a certain amount to do some work, and you  
7 provided them a \$20,000 deposit, which was refundable  
8 upon demand. And as you sit here today, do you have  
9 either the car or the \$20,000 deposit that you  
10 provided?

11 A No. And even more concerning than  
12 that is I'm afraid the beautiful car was ruined.

13 Q As we sit here today, you have no  
14 car, correct?

15 A Right.

16 MR. WESTBROOK WILLS: Dr.  
17 Steveley-O'Carroll, I thank you for  
18 answering those questions. And I'll ask  
19 you to answer any cross-examination that my  
20 colleague here has for you.

21 THE COURT: Any cross?

22 MR. SOBIERAJ: Yes, Your Honor.

23 CROSS-EXAMINATION BY MR. SOBIERAJ:

24 Q Good afternoon, Dr.  
25 Steveley-O'Carroll. My name is Damien Sobieraj. I

1 appreciate you testifying this afternoon.

2 In your complaint it was alleged  
3 that the vehicle was delivered to my client, Fenix  
4 Automotive, in running condition. However, recently  
5 you just testified that you had delivered the car to  
6 my client for the purposes of repairing and bringing  
7 it into a running order, you had to repair the car to  
8 make it running. So, at the time when you filed the  
9 complaint -- or I should say, when you delivered the  
10 car to my client, that vehicle was not in fact in  
11 running, operable condition?

12 A No, it had a cracked head, but  
13 other than that it was in very good condition. But it  
14 had a cracked head so that it wasn't running, that  
15 needed to be repaired.

16 Q So, then the complaint and your  
17 representation when you filed this lawsuit that the  
18 vehicle was in running condition, was false?

19 A Well--

20 MR. WESTBROOK WILLS: Objection,  
21 Your Honor.

22 MR. SOBIERAJ: Your Honor, he just  
23 testified to the fact that the condition of  
24 the car, I should be able to cross-examine  
25 that.

1 THE COURT: Sustained.

2 Q The vehicle -- you said the vehicle  
3 brought in, you delivered to my client to repair and  
4 restore it, isn't it true that you agreed that the car  
5 would be restored to an everyday driver condition?

6 A Yes.

7 Q So, this was not a restoration job  
8 for a vehicle that was perfect or showroom quality?

9 A That's correct.

10 Q Going back to your prior testimony,  
11 you said the vehicle had a cracked head and it was,  
12 what, early 2000's, 2001 that the vehicle was no  
13 longer running?

14 A I don't think I said 2001, I'm not  
15 sure it was 2001, I'm not sure when it was. But it  
16 was in the early 2000's when the head was cracked and  
17 when we were looking for somebody that could fix that  
18 and just restore the entire thing.

19 Q Understood. What other problems do  
20 you recall that were problems with the vehicle,  
21 besides the cracked head?

22 A There was no real problem with the  
23 vehicle. Some of the engine had been taken apart and  
24 put in the back to assess the cracked head, but there  
25 was no other -- you know, it was in running order

1       besides the cracked head.

2                   Q           There wasn't any other problems  
3 with the car or conditions of the vehicle that he had  
4 to restore or repair?

5                   A           Well, I mean obviously there's many  
6 problems potentially that needs to be restored into  
7 perfect condition. But, you know, there were two ways  
8 to go here. We could just fix the cracked head or,  
9 you know, I had a person telling me oh, its a super  
10 valuable car, and you owe it to your mother's memory  
11 to make it in very good condition. Not like showroom  
12 quality better than it came off the lot, but, you  
13 know, to drive and in perfect condition. And to do  
14 that you want to media blast it, fix all the blemishes  
15 and then rebuild it perfectly so it will last for many  
16 years and you can give it to -- you know, it can be an  
17 heirloom in your family. And so that's what we  
18 intended to do with it, to redo everything so it could  
19 last, you know, forever.

20                   Q           Right, I understand that. But  
21 you're testifying that the conditioning of the car was  
22 that it wasn't that bad, except for the cracked head  
23 and if not for the cracked head, it would have been in  
24 running condition, is my understanding. Am I correct  
25 in my understanding?

1           A           That's my understanding, yes.

2           Q           So, if I told you that the vehicle,  
3 when you say it was just a cracked head, that the  
4 engine compartment was filled with rust, dry rot  
5 hoses, metal shavings, rats nests, looked like the  
6 vehicle had been stored as if it was junk. That is an  
7 inaccurate description? You're stating that that's an  
8 inaccurate description of the vehicle or condition of  
9 the vehicle when it arrived to my client?

10                   MR. WESTBROOK WILLS: Objection.

11                   That's testimony in support of a defense.

12                   THE COURT: Where is that statement  
13 coming from?

14                   MR. SOBIERAJ: That is -- I should  
15 be able to impeach him, Your Honor, and I  
16 actually would like to provide pictures to  
17 him to look at, for purposes of  
18 impeachment.

19                   THE COURT: Well, you don't get to  
20 put in any evidence.

21                   MR. SOBIERAJ: I understand that I  
22 don't get to introduce evidence, Your  
23 Honor, but I -- if I'm going to  
24 cross-examine I should be able to at least  
25 impeach the witness and his creditability.

1 And he's testified of the condition of the  
2 vehicle and I at least have things that  
3 would show that his testimony is in fact  
4 not credible, and false.

5 THE COURT: Well, you don't get to  
6 put in evidence.

7 MR. SOBIERAJ: I understand that,  
8 Your Honor. I --

9 THE COURT: You're not listening to  
10 what I'm saying. Putting in evidence would  
11 be impeachment evidence. So, the only  
12 thing that you get to do is cross-examine  
13 him and object to evidence that they put  
14 in. But you don't get to put in pictures  
15 yourself and say, well, it's for  
16 impeachment purposes. That's evidence, and  
17 you don't get to put it in.

18 MR. SOBIERAJ: Then could I at  
19 least ask the question that I posed to him  
20 without putting in a picture?

21 THE COURT: You can ask. I asked  
22 the question, what are you basing that on?

23 MR. SOBIERAJ: I'm basing that on  
24 the information that my client provided to  
25 me, of the condition of the vehicle at the

1 time that he delivered it to my client.

2 THE COURT: It's not in the  
3 pleadings, it's just something that your  
4 clients told you?

5 MR. SOBIERAJ: My understanding is,  
6 Your Honor, that the pleadings only state  
7 that the vehicle was in -- and let me go  
8 back so I don't misspeak, I'm looking at  
9 the plaintiff's pleading is that-- let's  
10 see -- the only statement that there was,  
11 was that the vehicle was -- at the time  
12 plaintiff delivered the Mercedes to Fenix,  
13 the vehicle was in running condition.  
14 There are no other facts regarding the  
15 condition of the vehicle, except for the  
16 facts that he just stated on direct  
17 testimony, and that which I'm soliciting  
18 from him now, Your Honor.

19 THE COURT: All right. I will  
20 allow you to ask the question. You are  
21 stuck with the answer.

22 MR. SOBIERAJ: Understood, Your  
23 Honor. I'll repeat the question.

24 Q If I told you that the vehicle,  
25 when it was delivered to my client, had metal

1 shavings, rats nests, birds nests, dry rot hose, was  
2 in parts in the trunk, besides the head, was it  
3 missing metal, missing lights, dents on the vehicle,  
4 rust in the engine compartment, rust in the trunk. If  
5 I told you that was the condition of the vehicle when  
6 it was delivered to my client, would that be a fair  
7 assessment of the condition?

8 A No, much of that would be news to  
9 me. You know, there was a light that was broken and  
10 there were parts in the trunk from the cracked head  
11 when that was taken apart to be assessed. The news  
12 been rats nests, and metal shavings and left out --  
13 because it wasn't left out. It was always covered, it  
14 was not left out. So, that wouldn't have been  
15 accurate.

16 Mike from Fenix Auto, actually was  
17 like, this car is awesome and it will be awesome. It  
18 wasn't like, this car is a mess and has been  
19 neglected, you know? People all agree, this car had  
20 enormous potential and wasn't in terrible shape. So,  
21 the car was definitely not perfect and I'm not saying  
22 it is.

23 I definitely don't want to tell you  
24 it was running, because it wasn't running, but if the  
25 cracked head was fixed, it would run. Everything else

1 ran. So, that's to the best to my knowledge. So, if  
2 that is true, you know, I didn't inspect the car. And  
3 I'm not -- beyond a regular person's knowledge of  
4 cars, I don't -- I didn't take it apart with Mike.  
5 But when you he took it apart he wasn't like, this car  
6 has been neglected, because it was never left outside,  
7 it was always, you know, undercover.

8 Q Where was the vehicle stored before  
9 it was delivered to my client?

10 A It was stored in my garage and  
11 before that it was stored in a garage where we had  
12 someone take it apart to assess, you know, fixing the  
13 cracked head.

14 Q In a garage, where was that garage?

15 A In Pennsylvania.

16 Q You said you came and visited Fenix  
17 Automotive, and that's when you saw the vehicle and  
18 the parts, and how they were stored?

19 A No, I didn't. I simply saw the  
20 shell that had been media blasted and painted and had  
21 some, you know, the damage there that had been covered  
22 with epoxy or something. He was redoing that. But I  
23 didn't see the other things and Mike told me that he  
24 was in the process of transferring his shop to another  
25 place and they were in storage. So, we didn't -- you

1 know, he reassured me then and on many occasions that  
2 he was appropriately taking care of the dismantled  
3 car, because that was a concern, a very grave concern  
4 of mine.

5 Q How did you come -- how did you get  
6 the pictures of the car parts?

7 A I hired Brook Wills, our lawyer,  
8 and he went over there. So, I had to hire a lawyer.  
9 I mean, Mike had cutoff communication, he had the car,  
10 he had the money and then it turns out when we go to  
11 investigation he's left everything out to get  
12 destroyed, which is the one thing he promised he  
13 wouldn't do.

14 Q So, the pictures were taken by  
15 Mr. Wills, your attorney?

16 A Yes. And Axel, who is an expert in  
17 automotive there--

18 MR. SOBIERAJ: Objection, Your  
19 Honor. He can't testify to the status of  
20 the other witness being an expert. It  
21 hasn't been established yet.

22 THE COURT: Okay. Go ahead.

23 Q With regards to the communications  
24 with my client, how many phonecalls would you say you  
25 had with Mr. Fitzgerald, Mike Fitzgerald?

1           A           Many. Over a five-year period, you  
2 know, we had many phone calls and e-mails back and  
3 forth over different -- I mean, several a year at any  
4 rate.

5           Q           During those phonecalls, didn't  
6 Mr. Fitzgerald make it clear that given the condition  
7 of the vehicle and what you were asking to do, that in  
8 fact, any restoration, anything he did with this to be  
9 able to restore it to the everyday driver that you had  
10 discussed, that it was an estimate, that the final  
11 cost could not be determined. But that, yes, he was  
12 going to try and keep the cost down, but it was, in  
13 fact, an estimate and there was no final number he  
14 could give you?

15                   MR. WESTBROOK WILLS: Objection as  
16 to the question, infers testimony on behalf  
17 of the defendant.

18                   THE COURT: He can answer the  
19 question, he's stuck with the answer.

20           A           We went back and forth in the  
21 discussions. And, you know, the reason he took the  
22 car apart to give the estimate was so he could give a  
23 very accurate estimate of what it would take to do  
24 this. So, yes, no estimate is 100 percent accurate,  
25 but this was a very detailed estimate and we were

1 relying on it being reasonably accurate. And he did  
2 not say, hey, this could be, you know, this could cost  
3 twice as much or anything like that. We thought that  
4 within \$10,000 or so, that would be the cost, the  
5 estimated cost. And that's why he gave such a  
6 detailed estimate.

7 Q Well, you say it was a detailed  
8 estimate. He didn't break down what the actual costs  
9 were going to be, he just gave you a round number and  
10 said it was an estimate and that the tally could run  
11 higher. He didn't break down the cost. You say  
12 detailed cost, but he never provided a break down--

13 THE COURT: You got to rephrase  
14 your questions, because it just sounds like  
15 you're testifying at this point.

16 MR. SOBIERAJ: Sorry, Your Honor.

17 Q During your conversation regarding  
18 the estimate, isn't it true that Mr. Fitzgerald never  
19 broke down his estimate into costs for labor  
20 materials?

21 A Well, we can see what he put in  
22 writing, it was pretty detailed what he was going to  
23 do. And so, it was not like, I'm looking at the car  
24 and saying oh, that's going to cost about \$60,000. He  
25 said exactly, you know, I think we can look at it as

1 an exhibit here. It was a detailed plan of action for  
2 all that was going to be done. And it was expected to  
3 be accurate. This was a detailed estimate that he  
4 took a long time to prepare and we expected it to be  
5 accurate. And he never afterwards said, it's liable  
6 not to be accurate. I mean, he didn't say this  
7 estimate is a problem.

8 Q So, he never called you -- you  
9 never had conversations after the \$20,000 deposit was  
10 placed, you never had a conversation with him where he  
11 stated that he could not, in fact, complete this  
12 restoration for this, approximately \$60,000, that it  
13 wasn't going to cost substantially more?

14 A No. In fact, when he went there he  
15 put -- and I think we've got it in the thing, when we  
16 went there, while we were there he wrote us a detailed  
17 letter, more or less, reassuring us and apologizing  
18 and promising to give -- I mean, he was very  
19 convincing. And there was no, I can't do this, or we  
20 would have tried to work something out. It was  
21 like -- there was no, I can't do this, I've given the  
22 wrong estimate, and me saying, well, you have to do it  
23 because you gave an estimate. That wasn't what was  
24 happening. I mean, maybe that's what was happening  
25 with him, but he wasn't communicating that to us.

1 MR. SOBIERAJ: Thank you,  
2 Dr. Staveley-O'Carroll, I have no further  
3 questions.

4 THE COURT: Redirect?

5 MR. WESTBROOK WILLS: Thank you,  
6 Your Honor.

7 REDIRECT EXAMINATION BY MR. WESTBROOK WILLS:

8 Q Dr. Staveley-O'Carroll, just  
9 looking at the plaintiff's exhibits here, I'm going to  
10 look at Plaintiff's Exhibit number 2 -- excuse me,  
11 number 6 I believe.

12 (Whereupon, Plaintiff's Exhibit  
13 number 6 was displayed.)

14 MR. WESTBROOK WILLS: Before I go  
15 any further, I realize that I didn't tender  
16 into evidence our first exhibit, which was  
17 the title. Your Honor, may I tender that  
18 into evidence that has been authenticated  
19 and recognized by Dr. Staveley-O'Carroll?

20 THE COURT: It's admitted.

21 (Whereupon, Plaintiff's Exhibit 1  
22 was admitted into evidence.)

23 MR. WESTBROOK WILLS: Thank you,  
24 Your Honor.

25 Q The next exhibit that we have is

1 Plaintiff's Exhibit number 6. Do you recognize this  
2 e-mail?

3 A Yes.

4 Q It appears that the subject line at  
5 the top is -- not the subject line, but the header  
6 address is Julie Staveley-O'Carroll.

7 A Yes.

8 Q And can you tell the Court who  
9 Julie Staveley-O'Carroll is?

10 A That's my wife, and she's here with  
11 me and she can testify if we need her to.

12 Q Okay. But you have seen this  
13 e-mail before, have you not?

14 A Yes.

15 Q This is an e-mail that was attached  
16 to your complaint as well, correct?

17 A Yes.

18 Q Okay. Is this the e-mail that you  
19 have mentioned, in which, among other communications,  
20 that Fenix Automotive gave you a detailed break down  
21 and costs associated with each of the aspects of the  
22 restoration?

23 A A detailed break down of all the  
24 work that was going to be done to give an accurate  
25 estimate of what it would cost.

1           Q           Okay. And do you recall, was this  
2 e-mail given -- was this detailed estimate either in  
3 this e-mail here itself here or it was represented to  
4 you verbally, was that given after such time as the  
5 vehicle had been disassembled completely?

6           A           Yes.

7           Q           And I believe you testified that  
8 the reason for getting the estimate after disassembly  
9 was so that they -- Fenix could give a much more  
10 accurate estimate, is that correct?

11          A           Yes. And you can see at the  
12 beginning of that letter, you know, he introduces it  
13 that he can't do with 100 percent confidence. That  
14 being said, "now that we have it stripped  
15 completely"-- "like I mentioned before, there are some  
16 areas that have some unknowns, and therefor the total  
17 bill is difficult to project with 100 percent  
18 confidence. That being said, I would estimate the  
19 total cost, parts, corresponding labor, to be around  
20 the \$60,000 mark. Like I mentioned, some things as  
21 the engine--" I can't see it in there. Maybe we  
22 could scroll down. But in this letter he specifies a  
23 very specific plan about what it's going to take to  
24 redo this and he gives an estimate of \$60,000.

25          Q           Okay. And I believe that you

1 testified earlier or it's stated in your complaint as  
2 well, that's deemed admitted, those allegations that  
3 part of the estimate included reusing as many parts on  
4 -- that existed on the vehicle that could be reused.  
5 Is that correct? To keep the cost down.

6 A Absolutely. And I didn't want to  
7 buy a new Mercedes 280 SL. I wanted my mother's 280  
8 SL to be rebuilt. And so, you know, it was very  
9 important to reuse as much as possible.

10 Q How much of the vehicle was  
11 represented --was going to probably be able to be  
12 reused?

13 A I don't know exactly, but I was  
14 given the impression that this was a car --

15 MR. SOBIERAJ: Objection, Your  
16 Honor. I think that's improper redirect.  
17 That was not testified previously and I  
18 think that's improper redirect, Your Honor.

19 MR. WESTBROOK WILLS: Withdrawn.  
20 Thank you, Dr. Staveley-O'Carroll, that's  
21 all the questions that I have for you.

22 THE COURT: Where is it in here  
23 about \$60,000? I'm just kind of looking  
24 through the list of exhibits that got  
25 e-mailed to me. I see \$20,000. But I

1 heard \$60,000 to do it totally, did I  
2 mishear something?

3 THE WITNESS: Your Honor, it's on  
4 the screen here.

5 MR. SOBIERAJ: It's Plaintiff's  
6 Exhibit 5, Your Honor. Which would be page  
7 14 of Plaintiff's exhibits. It's an e-mail  
8 from Mike Fitzgerald to Dr.  
9 Staveley-O'Carroll, dated December 8, 2017.  
10 I hope that helps. I believe it's page 14,  
11 at least that's what its showing up on  
12 mine.

13 THE COURT: Okay, 60K mark, okay.  
14 All right. Did you have any recross?

15 MR. SOBIERAJ: No, Your Honor.

16 THE COURT: You have another  
17 witness?

18 MR. WESTBROOK WILLS: Yes, Your  
19 Honor. Thank you, Dr. Staveley-O'Carroll.

20 THE COURT: Let's take a quick  
21 break.

22 (Whereupon, a brief recess was  
23 taken.)

24 (Whereupon, all parties are  
25 present. Proceedings resume.)

1 MR. WESTBROOK WILLS: If the Court  
2 is ready I'll be happy to proceed and call  
3 the next witness.

4 THE COURT: Fire when ready.

5 MR. WESTBROOK WILLS: Thank you,  
6 Your Honor. Plaintiff would call Axel, who  
7 is our expert, who we will submit as our  
8 expert witness, and we'll ask him his  
9 qualifications as soon as he's sworn in.

10 THE COURT: Is that a first name,  
11 last name or is he so famous he goes by one  
12 name?

13 MR. WESTBROOK WILLS: Axel, can you  
14 hear us?

15 THE WITNESS: Yes, can you hear me?

16 THE COURT: I can hear somebody  
17 going, "can you hear me?"

18 THE WITNESS: That's me.

19 MR. WESTBROOK WILLS: Would you  
20 state your name for the record?

21 THE WITNESS: Axel Reinert.

22 THE COURT: How do you spell that  
23 last name?

24 THE WITNESS: R-E-I-N-E-R-T.

25 DIRECT EXAMINATION BY MR. WESTBROOK WILLS:

1           Q.       Mr. Reinert, Axel, thank you.  
2       You're here today as an expert witness for the  
3       plaintiff to speak about the value of the vehicle and  
4       damages, correct?

5           A.       Yes.

6           THE COURT:   Does Mr. Reinert have a  
7       camera?

8           THE WITNESS:   I'm trying to see if  
9       I can get this thing to come on.  Is that  
10      on?  Hold on -- start video.

11          THE COURT:   There you go.

12          THE WITNESS:   Okay.

13          THE COURT:   Great.

14          Q.       Great.  Axel, would you -- your  
15      testimony will be used to give an opinion on damages  
16      and those are in relation to the certain values of the  
17      car.  Would you tell the Court what knowledge,  
18      education and experience that you have that qualifies  
19      you to testify to these matters?

20          A        Okay.  I founded and still own the  
21      largest independent Mercedes-Benz service facility in  
22      the State of South Carolina, a company called Star  
23      Motor Service.  For 35 years we have done restoration  
24      of service, automotive repair, exclusively on Mercedes  
25      automobiles.

1                   In our West Ashley location we have  
2 13, sometimes 15 technicians. 20,000 square feet  
3 under roof, all the latest technology, latest  
4 equipment. We do both bodywork and mechanical service  
5 and repair.

6                   I'm extensively trained yearly  
7 through the Mercedes-Benz Organization. And I keep on  
8 staff, fully qualified and certified technicians and  
9 body men.

10                  Q           Mr. Reinert, do you have education  
11 or training -- prior to your involvement with your  
12 present enterprise, do you have education and training  
13 in the area of automotive restoration and if so, could  
14 you describe that?

15                  A           Just what I've learned over the  
16 last 35 years in different courses and training  
17 through Mercedes. Before that, believe it or not, I  
18 have a degree in -- a bachelors of science degree in  
19 psychology from the College of Charleston.

20                  Q.           Do you have particularized  
21 knowledge, specialized knowledge with regard to this  
22 particular model Mercedes and any restoration process  
23 involved with that model?

24                  A.           Over the course of 35 years I  
25 probably restored more than 10 of the model we're

1 speaking about and I have a couple of those cars in my  
2 shop as we speak.

3 Q. And just to be clear, the model  
4 that we're speaking of is a 1969 Mercedes, 280 SL?

5 A. Correct. The 280 model was made  
6 from 1967 to 1971, with very few changes over those  
7 years.

8 Q. Okay. Thank you very much. Mr.  
9 Reinert, have you had an opportunity at this point to  
10 review the correspondence between the plaintiff and  
11 the defendant, Fenix Automotive?

12 A. Yes, I have.

13 THE COURT: Before you go any  
14 further, do you want to offer him as an  
15 expert?

16 MR. WESTBROOK WILLS: Thank you,  
17 Your Honor. Yes, I would offer Mr. Reinert  
18 as an expert in automotive restoration and  
19 particularly with regard to Mercedes.

20 THE COURT: Any objection? Or do  
21 you want to voir dire the witness.

22 MR. SOBIERAJ: I'd like to voir  
23 dire the witness, Your Honor. I just have  
24 a couple of questions.

25 THE COURT: Go ahead.

1 VOIR DIRE BY MR. SOBIERAJ:

2 Q. Mr. Reinert, this Damien Sobieraj,  
3 counsel for Fenix Automotive, the defendant. You said  
4 you had partially restored some Mercedes. How many  
5 Mercedes have you fully restored from start to finish?

6 A. I'd say six over the course of that  
7 time.

8 Q. Um, what time period?

9 A. Over the last seven -- year 2000 to  
10 the present. We didn't do the restoration work, we  
11 just did basic paint and bodywork. We entered that  
12 area of work starting in 2000.

13 Q. I missed the very first part of  
14 that sentence. Your restoration is just mainly paint  
15 and bodywork?

16 A. What we did up to the year 2000 was  
17 basically paint and bodywork, including mechanical  
18 work. But on this -- after 2000 we more heavily got  
19 into doing more restoration type work, and we've done  
20 at least six older models like 190 SL. And we have  
21 two full restorations going right now.

22 MR. SOBIERAJ: Without objection,  
23 Your Honor.

24 THE COURT: All right. He's an  
25 expert in the field of automotive

1 restorations, in particular Mercedes, it  
2 sounds like. You may continue with your  
3 examination.

4 MR. WESTBROOK WILLS: Thank you,  
5 Your Honor.

6 Q Mr. Reinert, we were discussing if  
7 you had an opportunity to review some of the  
8 correspondence between the plaintiff and the  
9 defendant? In particular, have you had an opportunity  
10 to review the correspondence which comprises the  
11 detailed estimate that we have used as an exhibit  
12 already that I will be able to now share it.

13 While that's loading, I was going  
14 to ask, have you had an opportunity to review a  
15 document that is marked as Plaintiff's Exhibit 6, that  
16 is attached to the complaint already, but which  
17 comprises the detailed estimate with the break down of  
18 each individual -- okay.

19 (Whereupon, Plaintiff's Exhibit 6  
20 is displayed.)

21 Q In this e-mail Fenix describes that  
22 process it's going through in the restoration of the  
23 vehicle. Are you familiar with the processes that are  
24 described and the work that is described in the e-mail  
25 that comprises the estimate that's reflected in this

1 Plaintiff's Exhibit 6?

2 A. Yes, I am.

3 Q. Okay. Are you able -- in looking  
4 at this detailed estimate, are you able to formulate  
5 an opinion as to the value or the cost as to each  
6 aspect of the restorations that are outlined in this  
7 estimate of your own opinion?

8 A. Some ballpark numbers, but without  
9 having personally inspected the car, it's difficult to  
10 do that. I see the numbers that are there, I find  
11 them to be reasonable, but further than that I really  
12 can't comment on that.

13 Q. Okay. I don't know if you're  
14 connected such that you were able to hear the  
15 testimony of Dr. Staveley O'Carroll in regard to the  
16 condition of the Mercedes when it was delivered to  
17 Fenix Automotive. Were you able to hear any of that  
18 testimony?

19 A. I did hear that, yes I did.

20 Q. Okay. As Dr. Staveley O'Carroll  
21 described the condition of the vehicle and with what  
22 you are able to understand as the condition of the  
23 vehicle from the estimate that is provided here, do  
24 you have an opinion to a reasonable degree of  
25 certainty as to the value of this particular Mercedes

1 at the time it was delivered to Fenix, in the  
2 condition that it has been testified to?

3 MR. SOBIERAJ: I'm going to object,  
4 Your Honor. The condition of the vehicle  
5 while testified by one witness, the expert  
6 is going to formulate an opinion on the  
7 condition of the vehicle based upon the  
8 opinion of the owner of the car and not any  
9 factual evidence with the actual condition  
10 the car was in.

11 THE COURT: Well, you have to give  
12 the basis for the opinion so, he may be  
13 able to give an estimate or not. He can  
14 tell us how he came up with that opinion  
15 and you're certainly entitled to  
16 cross-examine him on it. I'll allow the  
17 question. If he says he can give a value  
18 to a vehicle he hasn't seen, he can tell us  
19 how he came up with that number.

20 A. All I can do is go back through  
21 cars that we have worked on, given the same age, the  
22 same milage, we know how many miles were on it. And  
23 then what goes wrong with those cars, you know? The  
24 doctor testified that the car was in running condition  
25 except for the issue with the cylinder head, which is

1 a common problem on those cars. They overheat and the  
2 cylinder heads crack, so, I knew what that repair  
3 should be.

4 So, based on the average price or  
5 value of that car at that time being right around  
6 \$55-\$60,000 being in good decent running condition,  
7 subtract \$10-\$12,000 to redo the motor and, you know,  
8 talking about low \$40's in figure. I think based on  
9 vehicles that I see for sale at some of the  
10 Mercedes-Benz sites and I see what the cars sell for  
11 at all these auctions online now, I think that's a  
12 pretty solid number. You know, in the low \$40's.

13 Q. Would you put -- would you be able  
14 to put the value of the vehicle into a, in your  
15 opinion, into a specific range in the lower \$40's?

16 A. We could say, I don't know,  
17 \$42,000, somewhere around there. I know it's got to  
18 be more than \$30, upper \$30's. Somewhere in the low  
19 \$40's. Those cars are just that valuable. They're  
20 climbing in value everyday. Even just four or five  
21 years ago those cars already had a really good number.

22 Q. As part of your estimation on the  
23 price, as part of your opinion on the price at the  
24 time it went in, does the work that needed to be done  
25 that's outlined in the estimate, does that contribute

1 to, or support your opinion on the value of the  
2 vehicle when it was delivered to Fenix?

3 A. Well, reading over the e-mail that  
4 describes the condition of the car, I can just quote  
5 this right here. He says, "as I stated before, the  
6 metal is in overall good condition. The leather seats  
7 are not in bad condition. Anything that could be  
8 salvaged from the interior will be. Same with the  
9 top, it's all in good condition. All the glass is in  
10 good condition." So, based on his own writings, you  
11 know, I can get an opinion of what condition the car  
12 is in because he's the one who took it apart and he  
13 wrote it on paper what he found.

14 So, to me it's just an average  
15 120,000 mile car which, you know, 1969, it's going to  
16 have some wear and tear but I think the numbers good.

17 Q. The number being in the \$42,000  
18 range?

19 A. Yes. I think that's the number I'm  
20 happy with.

21 Q. Do you have an understanding in  
22 professional terms, what level of restoration that the  
23 plaintiff and the defendant had contemplated in their  
24 endeavor to restore the vehicle?

25 A. Whenever you approach a project

1 like this it's important that there is good  
2 communication there. But you also do not completely  
3 strip a car down to the last nut and bolt if all  
4 you're going to do is build a driver. There is no  
5 need to do that and that's what kind of surprised me  
6 when I saw the pictures and I saw the bare body shell.  
7 There was not a piece of trim left inside of it, not a  
8 piece of crumb left on the outside of it. All the  
9 glass was out of it. This was going to be a complete  
10 restoration. Every nut and bolt was removed, so it's  
11 not a --if you're going to do a driver you usually  
12 don't take the axles out, you usually don't completely  
13 strip the wiring harness out of the car. There are a  
14 lot of things you just don't do because it's not  
15 necessary and it doesn't make it better.

16 Q. Let me just redirect this question  
17 for you. Did you have an understanding that the  
18 parties did not contemplate restoring the vehicle to  
19 show quality?

20 A. I could kind of see that because  
21 some of the comments that he makes in his writing kind  
22 of point toward that, because he's talking about  
23 trying to save money here and there by not doing some  
24 things, but the problem with that is the pictures tell  
25 a different story, you know? It was completely

1 disassembled.

2 Q. Right. Let me see if I can ask you  
3 this question, in terms of final product in a  
4 restoration project are there --what are the different  
5 levels that usually people will try to restore a  
6 vehicle to? I'll ask you that, are there different  
7 levels?

8 A. There are, there are.

9 Q. What would be the absolute top  
10 quality that somebody would restore a vehicle to? How  
11 would that be characterized?

12 A. Concourse, factory, exact  
13 restoration. Every nut and bolt is correct, every  
14 hose clamp is correct, the materials on the interior  
15 correct, the carpet, the vinal, the leather.  
16 Everything is 100 percent as it was delivered from the  
17 factory.

18 Q. And that's not the level of  
19 restoration that these parties contemplated is it?

20 A. No, not what I'm seeing. I think  
21 that it wasn't to that level.

22 Q. Okay. Is show quality a level  
23 that's slightly below concourse level?

24 A. It is. It's quite a step down,  
25 simply because one thing -- just to explain it real

1 quick here. If you do a restoration on a car, the  
2 last 10 percent to make it perfect sometimes will  
3 consume about 90 percent of the money, because that's  
4 how expensive it gets. So, a lot of people they go 90  
5 percent restoration but then they live with those  
6 little 10 percent imperfections and that's what you  
7 call like a show car or a driver.

8 Q. Gotcha. And from reading the  
9 correspondence or your understanding of the parties  
10 agreeing with regard to level of restoration, did you  
11 have an understanding that this vehicle was not to be  
12 restored to show quality or concourse quality but to,  
13 you know, driver quality?

14 A. That's my impression.

15 Q. And can you tell us roughly what  
16 driver quality could be characterized as? What would  
17 be driver quality type of restoration?

18 A. Of course. Safety wise everything  
19 works. You know, tires new, brakes new, function,  
20 everything works as designed. It may not have, you  
21 know, factory radio, it may not have the correct  
22 carpeting or seat upholstery but it's a safe reliable  
23 car that you get in and drive to any point, the same  
24 way you could get in a new car and drive to any point.

25 Q. Okay. Great, thank you. Now, from

1 the knowledge that you have and based on your  
2 professional opinion and your knowledge of the value  
3 of these vehicles, coupled with your understanding of  
4 the condition the car was in when it went in, do you  
5 have an idea of what this particular car, this  
6 particular Mercedes here being restored, do you have  
7 an opinion as to what the value of that car would be  
8 if the restorations would have been completed as  
9 agreed?

10 A. Well, I did a little research and  
11 prepared myself for this and the numbers are pretty  
12 solid and consistent no matter which source I looked  
13 at. This car would probably be a number two  
14 condition, which is considered excellent, after the  
15 extensive work that was discussed was performed, and  
16 that would put the car above \$100,000 in value  
17 currently. And that number has been there for the  
18 last, probably five years. High numbers are as high  
19 as \$188,000 on some of these. The auction high in  
20 2020 for one of these cars that was rebuilt in Japan  
21 went for \$254,000.

22 So, I think that based on all those  
23 numbers realistically, cars are selling, I'd say,  
24 between \$100-\$120,000 depending on the color  
25 combinations and the overall condition. Whereas

1       concourse 100 percent restored cars are almost another  
2       \$50,000 on top of that.

3               Q.       Is it possible for you, in your  
4       estimation and your professional knowledge, to put the  
5       value of this car in a particular range, specific  
6       range?

7               A.       Are you talking about after the  
8       restoration?

9               Q.       Correct, sorry. After the  
10      restoration?

11              A.       Well, he's outlining what he's  
12      going to do, it's pretty thorough. I'd say \$115,000,  
13      I think it would sell for that. I think that's a  
14      value that that car could demand.

15              Q.       Okay, \$115,000, thank you. Do you  
16      know similar cars in similar conditions that sell for  
17      that kind of money?

18              A.       Oh, yeah. That's probably the most  
19      popular Mercedes selling right now. It's bringing the  
20      most money, they're online all the time. They're very  
21      popular on the auction market right now.

22              Q.       Do I understand you to say that  
23      that opinion of the value of the car, if it would have  
24      been restored, is based on your professional knowledge  
25      in the industry and on comparisons of vehicles that

1 are selling presently?

2 A. Correct.

3 Q. Thank you. Next, I wanted to ask  
4 if you've had an opportunity to see the car, to  
5 actually see the car as it's been since the beginning  
6 of this lawsuit?

7 A. Yes, I have.

8 Q. What --well, if you could just  
9 describe to the Court a little bit about what you've  
10 done to see the car and what it is that you discovered  
11 when you saw it and when -- first, let me ask this,  
12 when did you see the vehicle last?

13 A. Um, I think about six months ago.  
14 That's the -- I saw it twice. The first time I was  
15 contacted by you, I think, and your client. And asked  
16 if I was familiar with the business and if I knew  
17 where the car was at. I knew of the place so I took  
18 it upon myself just to drive there and see if I can  
19 take a look at the car. I had a short conversation  
20 with the owner, with Mike, and I just told him, I was  
21 called about a car that was here and was asked to take  
22 a look at it, see what condition it was in. We talked  
23 briefly and I didn't get within 20 feet of the car.  
24 But I did see the car and the parts, and that's the  
25 extent of the visit.

1                   Then I made a second visit a month  
2 or so later and took some pictures for my own records.

3                   Q.           During your visit were you able to  
4 formulate an opinion as to the present condition of  
5 the vehicle and it's component parts?

6                   A.           Yeah, like I said, I got pretty  
7 close to it. There was tarp partially covering the  
8 body but you could see that the car was surface rusted  
9 and there was, you know, no parts were attached. It  
10 was still on what you call a rotisserie, which is a  
11 fixture that holds the body up and you can rotate it  
12 360 degrees so you can do some work on it. So, it was  
13 attached to that.

14                  Q.           Okay. Were there any parts of the  
15 car, as you were able to discern, that were being  
16 stored outside?

17                  A.           Yeah, everything was outside. The  
18 various parts, the sheet metal, the suspension piece,  
19 the engine piece, some of the interior, the metal top,  
20 the windshield glass. They were all just -- it was  
21 probably 10 or 15 bins, some of them with tops of them  
22 some of them without, just sitting around the parking  
23 area.

24                  Q.           Have you also had an opportunity to  
25 view photos, any photos of the vehicle during the

1 beginning process of the restoration, when, for  
2 example, the motor was being removed?

3 A. Yes, I have seen a couple of those.

4 Q. I want to show you some exhibits  
5 now if I can figure out how to get this one off.  
6 Okay, Axel?

7 A. Yes.

8 (Whereupon, a photograph was  
9 displayed.)

10 Q. I'll show you this photo, which was  
11 attached to an e-mail -- I represent to you was  
12 attached to a correspondence between the plaintiff and  
13 the defendant purporting to show the progress on the  
14 vehicle. Are you able to tell from this picture  
15 whether the vehicle that's depicted is the vehicle  
16 that's been restored in this lawsuit?

17 A. Well, you know, all the 113's  
18 that's what is considered -- the 113, all of them are  
19 the same. So, it looks like this car has been soda  
20 blasted or media blasted. You can tell the silver  
21 color and so, it is a 280 SL, but I can't say, yes,  
22 that's the car.

23 Q. Okay. I'll represent to you that  
24 we'll just assume that this is the car. If this is  
25 the car, are you able to tell from this picture what

1 is being-- what is depicted here?

2 A. That's the motor out of the 280 SL.  
3 You can see the cylinder head's been removed.  
4 Everything else looks like it's still on the motor,  
5 the ejection pump, power steering pump, ignition  
6 parts, hoses and stuff like that. So, it looks like  
7 somebody just removed the cylinder head from this for  
8 repair.

9 Q. Assuming that this is the motor and  
10 the transmission from our 280 SL--

11 A. Mhm.

12 Q. -- would this -- are you able to  
13 tell from this picture if the condition of the motor  
14 is consistent with what Dr. Staveley O'Carroll  
15 described as being the condition with his 280 SL when  
16 he delivered it to Fenix?

17 A. Exactly what I would expect to see  
18 based on what he said.

19 Q. All right. And I know it's  
20 difficult to tell exactly but just from your knowledge  
21 and expertise, looking at this particular engine and  
22 transmission, is it your opinion that that motor and  
23 transmission are capable of being reused, in the state  
24 that you can see it in this picture, assuming it is  
25 the vehicle that we're talking about here?

1           A.       Yeah, I mean this is something we  
2 do almost weekly, you know, you just take them apart,  
3 repair the damage and put them back together. That's  
4 what they call automotive repair.

5                       (Whereupon, a photograph was  
6 displayed.)

7           Q.       And then, another picture here,  
8 would this picture depict a vehicle that has been  
9 totally disassembled to your knowledge?

10          A.       Absolutely, I don't think you can  
11 go any further without gutting. The dashboard is  
12 welded in, all the gages are gone, the glove box  
13 insert is gone, the heating ventilation, everything is  
14 gone, steering column is gone, the shifter is gone.  
15 Yeah, this is basically what you call a body shell.

16          Q.       Okay. And at this point according  
17 to your experience and knowledge, once a car is at  
18 this stage, how accurate is it-- how accurate can you  
19 be in determining what the cost for restoration of the  
20 vehicle would be once the car is disassembled to this  
21 level?

22          A.       The main contributing factor to  
23 getting that number right is to discuss how you're  
24 going to put it back together now. Are you going to  
25 use factory carpet, are you going to use factory seat,

1 leather, are you -- you know, all those things. But  
2 if you have that conversation then you can nail it  
3 down to the last dime.

4 Q. Okay.

5 A. Because it's simply just adding up  
6 all the parts and adding up all the labor because the  
7 customer decided what he wants and it's your job to  
8 nail the price down.

9 Q. Did you understand -- do you have  
10 an understanding from your review of the  
11 correspondence in this case that the defendant and the  
12 plaintiff were going to endeavor to reuse as many  
13 parts as possible in the restoration process in order  
14 to limit the expenses that would be necessary to  
15 restore the vehicle?

16 A. Based on what was written, I think  
17 associated --that simplifies the process right there.  
18 Because he said, okay, we're going to reuse the seat  
19 so there's no question about how much leather  
20 upholstery is going to cost. You know, it goes  
21 into -- you have to get into much more detail than  
22 that. But I think the correspondence does a pretty  
23 good job, I mean, an estimate is an estimate and if  
24 you're within 10 percent you're probably doing it  
25 really well. And I think that this estimate, it

1 covers all the areas. But going forward it would  
2 require a lot more communication and a lot more  
3 agreement on details, which could seriously effect the  
4 price, but at the same time could reduce the price.

5 Q. Gotcha. Did you see anywhere in  
6 the correspondence or the detailed estimate whether or  
7 not Fenix was going to attempt to reuse any of the  
8 component parts that make up the suspension and  
9 brakes?

10 A. I saw some of that in here, hold on  
11 I have a copy in front of me. Yeah, it's -- in a  
12 restoration, you don't replace everything. You  
13 replace items and you recondition what you don't  
14 replace. So, there is no need to replace control arms  
15 unless they're rusted out or broken or damaged. So,  
16 what you do is you clean them, power coat them put new  
17 bushings in it and reuse it. On and on with all the  
18 components as you determine when you disassemble a  
19 car, you say this is reusable, this isn't, this needs  
20 to be replaced, and so on.

21 I would say of the structural parts  
22 and suspension pieces, everything but the interior,  
23 you can reuse 90 percent of the parts.

24 Q. Looking at the estimate that we saw  
25 that was reflected in Plaintiff's Exhibit number 6

1 that was attached to the complaint, does it appear  
2 that in the restoration process Fenix was going to  
3 reuse the original glass of the vehicle?

4 A. Yeah, I mean he wrote specifically  
5 right here, "all the glass seems in good condition."  
6 And he recommended that -- he actually says--

7 THE COURT: I think he broke up or  
8 --I don't hear him anymore.

9 MR. WESTBROOK WILLS: Oh, I don't  
10 hear him either. Can you hear us?

11 THE WITNESS: I can now.

12 MR. WESTBROOK WILLS: Okay. It  
13 seems like there was a little break up  
14 there in the transmission, would you be  
15 able to repeat the last few sentences that  
16 you said?

17 A. We were talking about the glass and  
18 I just referred to his e-mail again, where he said the  
19 glass is all in very good condition. And he said he  
20 also recommends that lot of times you reuse older  
21 glass if it's in good condition, because it gives the  
22 car a certain patina maybe, or it's preferable over  
23 putting brand new glass on.

24 Q. Is that something that you also  
25 recognize in your restoration projects?

1           A.           Yes. That's something that -- if  
2 there is nothing wrong with it you don't really have  
3 to replace it.

4           Q.           Okay. With regard to the  
5 transmission and the drive train, does it appear that  
6 they -- that Fenix intended to try and reuse any of  
7 those component parts in a restoration?

8           A.           Just like with the other ones, you  
9 know, you go through it and make sure everything's  
10 working fine. You replace the wear-out items, you  
11 replace the bushings, the supporting links, whatever  
12 shock absorbers you can do.

13          Q.           With regard to the engine and  
14 mechanical, could you comment on those with the same  
15 question?

16          A.           Well, in a job like this, I'd take  
17 the whole engine apart. I mean, it's been sitting for  
18 awhile with the cylinder head off of it, so it'd be a  
19 bad place to save money now to not go and do a full  
20 engine rebuild.

21          Q.           Based on what you saw when you  
22 viewed the car personally, when you visited and viewed  
23 the car, did it appear to you that the component parts  
24 that were contemplated being reused were still in a  
25 state for them to be useful in the restoration of this

1 particular vehicle?

2 A. Not much. I mean, you know,  
3 certain components of an automobile are exposed to the  
4 weather. So it doesn't really matter whether they're  
5 on the car or laying next to it. So, certain  
6 components you can reuse even if they're exposed to  
7 the weather. It's not -- it doesn't harm them unless  
8 they're sitting under water or just not stored  
9 correctly. Sometimes things, you know, bend or are  
10 damaged because they're not stored correctly. This  
11 time the interior stuff, you can't leave that stuff  
12 outside. You shouldn't even leave it out where the  
13 sun can get to it, you know, it should be boxed and  
14 out of the weather.

15 Q. I'd like to show you now what is  
16 Plaintiff's Exhibit 12.4, and I'll ask if you  
17 recognize what is in the picture that is displayed  
18 there. If you recognize that picture, can you  
19 describe it?

20 (Whereupon, Plaintiff's Exhibit  
21 12.4 was displayed.)

22 A. Yeah, that's the hard top from the  
23 car. I can't really recognize what is in the  
24 background but that silver piece hanging behind the  
25 chain fence, that's the removable hard top to the SL.

1 Q. Would you be able to tell where  
2 that picture is taken?

3 A. That's the fenced in lot at Fenix.

4 Q. It appears, from the picture, that  
5 it's raining. From this picture are we able to tell  
6 that at least the top here is exposed to the elements  
7 and the condition that they are in the photo?

8 A. Yeah, I would say that I think the  
9 main issue here is that the top itself is designed to  
10 be out in the weather but where it's rusting on its  
11 corners, that's where the locking part is. And it  
12 looks like it's sitting in the water, and that's not  
13 good for it. And then the leading edge in the  
14 left-side of your picture, that's an upholstered  
15 interior surface that's laying down on the ground too,  
16 so, you know, the head liner is getting wet inside.  
17 It's definitely not the way you want to store a top.

18 Q. Okay. And do you recognize that  
19 photo there as being the actual roof for this  
20 particular vehicle that is at issue in this lawsuit?

21 A. Well, it's the top that was there  
22 with the rest of the top when I saw that car.  
23 Whether -- again, like I said, with the body shell  
24 that could be another top they have there for paint, I  
25 don't know that. All I'm saying is it was in the same

1 location with all those bins you see in the background  
2 and all those other parts in it for that car. That  
3 would lead me to believe that that's the hard top that  
4 went with the car.

5 MR. WESTBROOK WILLS: So, in that  
6 case, Your Honor, we would like to tender  
7 Plaintiff's Exhibit 12.4 into evidence.

8 THE COURT: It's admitted.

9 MR. WESTBROOK WILLS: Thank you,  
10 Your Honor.

11 (Whereupon, Plaintiff's Exhibit  
12 12.4 was admitted into evidence.)

13 Q. Next, I'll show you Plaintiff's  
14 Exhibit 12.1 and I'll ask if you can recognize this  
15 photograph as being a picture of the component parts  
16 of the Mercedes that is at issue in this lawsuit?

17 (Whereupon, Plaintiff's Exhibit  
18 12.1 was displayed.)

19 A. Yes. But that's -- I can identify  
20 all those parts as being off a 280 SL, I mean, you got  
21 a stack of tires off that car, you got the fuel tank,  
22 the windshield, which unfortunately is broken down the  
23 middle, and the chrome frame around it. Then you got  
24 the convertible top with its frame and unfortunately  
25 my picture of myself is in the way so I can't really

1 see what's on the lower part of the photo. But these  
2 are all -- and there is a bumper -- those are all  
3 Mercedes 280 SL parts.

4 Q. If I zoom in -- I think I can zoom  
5 in, would you be able to describe -- I think this is  
6 pretty obvious, you describe the windshield in the  
7 back, are you -- I wonder if I can draw on this thing.  
8 Oh, yeah I can, look at that. Would you be able to  
9 identify and describe--

10 A. I can't see the bottom half of that  
11 picture.

12 Q. Oh. Is that where you can see  
13 something?

14 A. I hate to lose my feed by hitting  
15 the wrong button in this thing.

16 Q. Are you able to see the picture?

17 A. I see that whole picture but like I  
18 said my face is blocking the bottom of it.

19 Q. Oh, okay. Let me see if I can move  
20 this.

21 A. Yeah, I can see it. The thing  
22 right there in the center, that's the air conditioning  
23 compressor. To the left of that that's the power  
24 steering box. That's the sector that connects to the  
25 steering column. And to the right of that, that's

1 part of the suspension assembly. You can see the  
2 disassembly on the right, right below the bumper.  
3 But, yeah, those are all --that air conditioning  
4 compressor, that's junk. The steering box might be  
5 able to be saved but the fitting on the top of it is  
6 open so water has been getting in there. I mean  
7 that's junk, that's scrap metal.

8 Q. Scrap metal.

9 A. I mean he could probably reuse the  
10 suspension cross member, but those other parts right  
11 there, no.

12 Q. Are you able to identify in there  
13 any component part of the motor?

14 A. The cylinder head that was removed  
15 is on the, is to the left. Do you see the long silver  
16 valve cover? And then it's sitting on top of the  
17 head. The head is the lower piece which have the  
18 pipes coming off which go to your heater and you could  
19 see the spark plug hose right there on the side too.

20 Q. In your opinion and according to  
21 your expert knowledge, what is the effect of leaving  
22 this motor out exposed to the elements, in the manner  
23 that it is there?

24 A. Well, the valve cover can probably  
25 be saved. But the cylinder head, although the heads

1 made up of aluminum, it's got ferrous metal components  
2 to it which rust as soon as they're exposed to  
3 moisture. So, the valves, springs, cam shaft, all  
4 those other components, even though, you know, they've  
5 got the valve cover sitting on top of it, that's not a  
6 waterproof -- it's an attempt to protect it.

7 Q. Would this be, in your opinion, a  
8 part that would be reusable or that's advisable to  
9 reuse?

10 A. The cylinder head based on the  
11 doctor's testimony was cracked anyway, so they'd have  
12 to -- you know, you can take the components off of it  
13 that you need because a new cylinder head comes bare,  
14 it means it has no components bolted to it. You'd  
15 have to reassemble it off the parts you take of this  
16 old cylinder head. So, all of those parts that you  
17 would try to take off the cylinder head are not usable  
18 anymore.

19 Q. It's your opinion that they're not  
20 usable anymore in the condition that they are outside  
21 there?

22 A. Right, you can't do that, no.

23 Q. To refer back to your testimony  
24 with regard to the picture of the motor when it first  
25 came out of the vehicle, did the motor parts appear,

1 with the exception of the cylinder head, did the other  
2 motor parts appear to be reusable at that period of  
3 time, in the picture that you saw in the beginning of  
4 the restoration process?

5 A. Yeah, that was fine. That's -- it  
6 showed little dirt and grease from the road, normal  
7 wear and tear but you can tell it had been covered,  
8 there was no water standing in the cylinder boards,  
9 you know, there was no rust on top of the cylinder  
10 block other than ordinary surface rust that you see on  
11 anything. So, I would say that the engine block and  
12 everything that was just then removed was 100 percent  
13 reusable, all the components on that. Belts and hoses  
14 and stuff.

15 Q. With regard to the estimate, do you  
16 -- I think we saw earlier, did we see that much of the  
17 suspension of the vehicle was going to be attempted to  
18 be reused?

19 A. Correct, yeah.

20 Q. And then this picture do we see a  
21 depiction of components of the suspension?

22 A. We do. If you look just off center  
23 you can see the left shock absorber, then you see the  
24 upper control arm. And right behind the AC compressor  
25 and power steering box, you'll see that the lower

1 cross member and then on the right the corresponding  
2 components for the right side, all still bolted  
3 together. Nothings been done to that except that's  
4 been dropped out of the car. No repairs have been  
5 started on, it's all still complete with the breaks  
6 and everything on it.

7 Q. Okay. And in your opinion, in the  
8 state that they are in this photograph and as you saw  
9 them personally, are they still capable of being  
10 reused for this restoration project?

11 A. It would take a lot of work. What  
12 probably would have been a straight forward  
13 disassemble, clean paint and rebuild, it's going to  
14 turn into a major ordeal to get all that stuff  
15 working. All the bolts are rusted and frozen on  
16 there. Just disassembling that thing right now would  
17 be a nightmare.

18 MR. WESTBROOK WILLS: Your Honor, I  
19 believe the witness has testified that he's  
20 able to recognize the image here as being  
21 that of the vehicle components as he saw  
22 them personally, and we would therefor  
23 tender Plaintiff's Exhibit 12.1 into  
24 evidence.

25 THE COURT: All right, admitted.

1 MR. WESTBROOK WILLS: Thank you,  
2 Your Honor.

3 (Whereupon, Plaintiff's Exhibit  
4 12.1 was admitted into evidence.)

5 MR. SOBIERAJ: Brook, are you not  
6 planning on putting the other parts of your  
7 -- the photos into evidence that you  
8 submitted already?

9 MR. WESTBROOK WILLS: Those others  
10 are parts -- the detailed estimate is  
11 already in, it's part of the complaint.

12 MR. SOBIERAJ: I guess what I'm  
13 asking is, Plaintiff's Exhibit 12.1, 2, 3,  
14 4, 5, 6 and 7, are you not admitting all of  
15 those?

16 MR. WESTBROOK WILLS: Yeah, I  
17 haven't gotten to them yet though.

18 MR. SOBIERAJ: Okay.

19 THE COURT: Let's take a 10 minute  
20 break here.

21 MR. WESTBROOK WILLS: Okay, Your  
22 Honor, thank you.

23 (Whereupon, a brief recess was  
24 taken.)

25 (Whereupon, all parties were

1 present. Proceedings resumed.)

2 THE COURT: Okay, moving on.

3 MR. WESTBROOK WILLS: Your Honor, I  
4 want to show another picture that we've  
5 got. This is Plaintiff's Exhibit 12.7.

6 (Whereupon, Plaintiffs's Exhibit  
7 12.7 was displayed.)

8 Q. Mr. Reinert, are you able to  
9 recognize, this is Plaintiff's Exhibit 12.7, are you  
10 able to recognize what's pictured in 12.7?

11 A. More parts of the car. I think  
12 it's from the previous picture, we basically just  
13 swung to the left. So, we see the hood leaning  
14 against the building frame with the convertible top  
15 and the frame. This engine block you see to the right  
16 in the picture, that is not from the Mercedes, that  
17 looks like an old Chevolet, six cylinder. In the  
18 foreground the kind of odd looking thing sticking  
19 straight up, that's part of the rear axle, that's the  
20 control arm that holds it in place. Next to it you  
21 see the brake disk of the rear end. These are the  
22 other bins, some of them are open, some of them are  
23 closed. You see the one on the foreground that's kind  
24 of standing on end, I'm sure that that's where most of  
25 the interior and odds and ends are for this car. I

1 saw, I think, carpet in one of them, but I can't  
2 speculate as to what else is in those bins. Mostly  
3 what we see there is the rest of the car.

4 Q. Well, what is your opinion as to  
5 whether these components are still useful at all in  
6 the restoration process?

7 A. Well, I think the hood and the  
8 sheet metal parts, which are usually out in the  
9 weather anyway, that's not going to be an issue there.  
10 They might get some damage in the corners, of course  
11 has to be reworked. They're both made out of aluminum  
12 which is soft metal, easily scratched, easily damaged.  
13 The rear axle, you can see the rust on the brake parts  
14 there, that's useless, that's junk. The other  
15 components are just going to require a tremendous,  
16 double, triple labor than what it would have taken  
17 initially to get them back and some sort of useable  
18 condition.

19 MR. WESTBROOK WILLS: We would  
20 tender Plaintiff's 12.7 into evidence.

21 MR. SOBIERAJ: Without objection.

22 (Whereupon, Plaintiff's Exhibit  
23 12.7 was admitted into evidence.)

24 Q. Next, I'll ask this is Plaintiff's  
25 Exhibit 12.5 and Mr. Reinert, I'll ask if you can

1 identify those parts that are represented in that  
2 photograph.

3 (Whereupon, Plaintiff's Exhibit  
4 12.5 was displayed.)

5 A. Bottom right down there of course  
6 the steering wheel, that's made up of bakelite  
7 compound, similar to plastic, it doesn't like direct  
8 sunlight so that's junk. A couple of hub caps and  
9 then the intake manifold for the cylinder head is on  
10 the left there, that round hole, that's where the  
11 comstock valve is. And then to the right the fan  
12 blade and then those -- other pieces of the grill, the  
13 protection for the radiator and there is an exhaust  
14 pipe laying there too. Then again some more bins.

15 Q. In your opinion do these -- would  
16 these parts, with your knowledge of vehicles and their  
17 parts, would you consider that these parts have been  
18 exposed to the weather in this manner and in the  
19 manner that you witnessed yourself, would you consider  
20 that those parts have been degraded in value from  
21 their -- from the state in which the car was delivered  
22 to Fenix?

23 A. Oh, absolutely. I mean the  
24 steering wheel is useless. Of course the hubcaps and  
25 the radiator and those other pieces, not to the same

1 degree but at the same time again some of those are  
2 delicate parts and they get damaged as being in  
3 another box with something else without padding. So  
4 the answer to your question is yes.

5 Q. Do you have an opinion as to what  
6 is the value of these parts as they sit out in the --  
7 in the condition that they have become with regard to  
8 the restoration process project. What would be the  
9 value of these component parts now, in your opinion?

10 A. I'd say, it's very difficult to  
11 answer that question simply because there's so many  
12 components. What you've done, you've taken a complete  
13 automobile and completely taken the last screw that  
14 held everything together apart and you've got parts  
15 all over the parking lot now. As to some, do they  
16 have a value? Yeah, they have some value, but nothing  
17 that you can really put -- if I was to go to a  
18 junkyard and buy this stuff, you'd probably pay \$1,500  
19 for most of it. But you can't use it as is, I mean,  
20 the steering wheel, why would you buy that? It's not  
21 worth anything. The hubcap, okay, it can be cleaned  
22 up, the fan it can be cleaned up. Everything can be  
23 cleaned up to an extent, but there's no they've lost  
24 their value let's put it that way.

25 MR. WESTBROOK WILLS: I would like

1 to tender Exhibit 12.5 into evidence.

2 MR. SOBIERAJ: Without objection.

3 THE COURT: Admitted.

4 (Whereupon, Plaintiff's Exhibit  
5 12.5 was admitted into evidence.)

6 Q. In your professional opinion, with  
7 your knowledge of the industry, is it normal for a --  
8 is it normal practice for a restoration business to  
9 leave component parts of a vehicle that is being  
10 restored, out exposed to the weather in this manner?

11 A. Absolutely not.

12 Q. Is it in your experience, do you  
13 believe that it's fair to say that someone who a  
14 professional who left the component parts of a vehicle  
15 that is being restored out exposed to the weather in  
16 this manner, would you believe that they could have an  
17 expectation that no damage would occur to those parts  
18 that are left out?

19 A. Again, absolutely not.

20 Q. In your professional opinion, based  
21 on your knowledge of the industry and experience,  
22 would you consider leaving component parts of a  
23 vehicle that's being restored out exposed to the  
24 elements in the manner that you witnessed and you see  
25 in the pictures, would you consider that to be a

1 reckless disregard of the property of the owner of the  
2 vehicle?

3 A. Clearly, it would be.

4 Q. Is it your opinion that as a result  
5 of leaving the parts and components of this vehicle  
6 exposed to the elements, that they have degraded in  
7 value to the point where the restoration would be more  
8 expensive than originally forecasted?

9 A. That would be my opinion.

10 Q. If I could direct your -- direct  
11 you back to the exhibit that we saw before, I believe  
12 it was Plaintiff's Exhibit 6, was the estimate, the  
13 detailed estimate with the costs for each particular  
14 stage or each particular aspect of the restoration  
15 listed. I believe before -- I'll ask you, did you  
16 believe that that was a reasonable estimate for the  
17 restoration at that time, based on what you saw  
18 described in the estimate?

19 A. It's close, I would say. Based on  
20 our experience and the -- what's written here, like I  
21 said, deduct 10 percent, 15 percent on top of that,  
22 but that at the time seemed like a good number.

23 Q. And that number was around \$60,000?

24 A. Yeah, \$60,070. If you think about  
25 that, that's a lot of money. People throw numbers

1 around like they don't mean anything but if you think  
2 about how many people have \$60,000 laying around that  
3 they can just--

4 MR. SOBIERAJ: Objection, Your  
5 Honor.

6 THE COURT: Sustained.

7 Q. Based on what you know about the  
8 components that have been exposed to the elements in  
9 this particular vehicle and their condition presently,  
10 do you have an opinion as to what the cost of the  
11 restoration would be to complete now?

12 A. I would go with \$120,000. I think  
13 it's officially doubled the scope of the work.

14 Q. Okay. In your opinion is there any  
15 way that a professional in your industry under  
16 like-circumstances, would not have known that leaving  
17 the vehicle components outdoors exposed to the  
18 elements in the manner that we have seen them and you  
19 witnessed, was going to ruin those parts?

20 A. Of course they did.

21 Q. Mr. Reinert, do you have an opinion  
22 as to -- you've given us, and thank you for your  
23 opinion, you've given us what you believe, what you  
24 estimate the value or what you deem the value of the  
25 vehicle would have been had the restoration been

1 completed as agreed. And you also gave us the value  
2 of the vehicle as you have estimated the value to be  
3 at the time that the plaintiff delivered the vehicle  
4 to Fenix.

5 Do you have an opinion as to what  
6 the value of the vehicle is, today as we sit here, in  
7 the condition that it's in and the state of  
8 disassembly, the value of the vehicle that you  
9 witnessed the condition of it, do you have an opinion  
10 as to what the value of the total is actually?

11 A. Currently given by what's left of a  
12 car like that, about \$2,500. And this car sat outside  
13 now, I think, going on year six in the weather--

14 MR. SOBIERAJ: Objection, Your  
15 Honor. He said the car has sat outside. I  
16 don't believe the entire car was sitting  
17 outside.

18 A. Well, based on what I saw the  
19 condition of the car, I think that that car has a  
20 scrap value basically \$2,500, and then --and people  
21 will buy that and do the restoration, but they know  
22 they're going to stick \$120,000 into a restoration,  
23 so.

24 Q. In your opinion and your knowledge  
25 of the industry, is it common that someone who

1 restores a vehicle in the manner that is at issue  
2 here, is it common that a professional restoration  
3 operation would pay a deposit for work on the vehicle  
4 in advance of doing the work?

5 A. It is, if both parties agree.

6 Q. Okay. Is there a certain way that  
7 in your industry with which the money that is  
8 deposited must be handled by the company that's doing  
9 the restoration?

10 A. There is really no industry  
11 standard. They are trade organizations that encourage  
12 very active bookkeeping, almost like escrow account  
13 type thing. And we do a combination of probably all  
14 of the above depending on the scope of the work but  
15 there's really no rules out there. It's up to the  
16 individual shop and individual client to make that  
17 arrangement.

18 Q. So, hypothetically if a contract  
19 contained a provision that said the provision of  
20 \$20,000 would be fully refundable upon demand, then  
21 you would expect that upon demand the \$20,000 deposit  
22 would be returned, in this hypothetical?

23 A. Yes.

24 Q. Have you had an occasion to look at  
25 any figures that represent the cost of transporting

1 the vehicle in pieces rather than as an entire car,  
2 this particular vehicle?

3 A. Well, it'd be expensive for a  
4 number of reasons. Car is not rollable, you know,  
5 it's on a frame that doesn't belong with the car so  
6 the car would have to be removed from the frame. I  
7 don't know if we could even get to do that. I think  
8 it would have to be a combination between Fenix and a  
9 contractor, then just picking through all the stuff  
10 trying to figure out a bunch of labor hours, you  
11 probably have a guy out there eight or ten hours  
12 sorting through all that stuff and trying to figure  
13 out--

14 MR. SOBIERAJ: Objection, Your  
15 Honor. I'm not sure what he's testifying  
16 to. He was asked a question about  
17 transporting and now he's talking about  
18 picking apart pieces.

19 THE COURT: He's saying why it  
20 would cost so much to transport it, because  
21 it's in a bunch of pieces.

22 MR. SOBIERAJ: Your Honor, I  
23 object. He hasn't been qualified as an  
24 expert on the transportation of car parts.

25 THE COURT: Overruled. Go ahead,

1           you can answer.

2           A.           You'd have to hire somebody who can  
3 pay, provide a vehicle that could follow the car  
4 without wheels on it and then somebody to come in and  
5 load all the stuff up. It's something we don't do,  
6 you'd have to hire somebody to --even a moving company  
7 maybe, I don't know, but it's not going to be cheap.

8           Q.           Finally, with regard to your expert  
9 witness testimony and your evaluation of the documents  
10 and the efforts that you've put forth towards this  
11 providing your opinion, have you charged a fee for  
12 your service as expert witness?

13          A.           I have.

14          Q.           How much has your fee been for  
15 those expert witness services?

16          A.           \$1,000.

17          Q.           And that is a fee that is  
18 chargeable to Dr. Staveley O'Carroll?

19          A.           Right.

20                       MR. WESTBROOK WILLS: Thank you.  
21 Your Honor, I believe that's all I have.  
22 Mr. Reinert, if you'll be so kind as to  
23 answer the questions that my opposing  
24 counsel has on cross-examination. Thank  
25 you.

1 THE COURT: Cross.

2 MR. SOBIERAJ: Thank you, Your  
3 Honor.

4 CROSS-EXAMINATION BY MR. SOBIERAJ

5 Q. Good afternoon, Mr. Reinert. You  
6 gave an opinion as to the value of the vehicle based  
7 upon the testimony of Dr. Staveley O'Carroll, based  
8 upon the condition of the vehicle when it was  
9 delivered to Fenix Automotive.

10 If I told you that that car came in  
11 and it was not drivable, that the engine-- the head  
12 was sitting in the trunk, that the vehicle was filled  
13 with rats nests, metal shavings, dry rotted hoses,  
14 rusted out or rust in the trunk, rust in the engine  
15 compartment, broken headlights, dents in the car. If  
16 I told you that the vehicle was in that condition when  
17 it arrived to Fenix Automotive, would your opinion as  
18 to the value change?

19 A. I don't think so, because some of  
20 those things or mostly of what you described is not  
21 unusual for a car that age. I mean the rats nests of  
22 course is something that -- surface rust is normal and  
23 certain wear and tear overall over the years is normal  
24 and it doesn't really detract from the value of a car  
25 of that -- of a classic car like that.

1 Q. So, your testimony is that the  
2 value that you testified the vehicle was worth,  
3 approximately \$42,000 I believe is what you testified  
4 to, you're saying that based upon what I just  
5 described to you, the vehicle would not be worth any  
6 less than what was described by Dr. Staveley  
7 O'Carroll?

8 A. I would -- what I'm saying is the  
9 car itself, that motel the '69 280 SL, it doesn't  
10 matter whether it's that car or a different car, that  
11 particular model has a value.

12 Q. I understand that. But what I'm  
13 trying to find out is would there be a difference  
14 between the two?

15 A. Yeah, he sees the positive in it  
16 and he described a negative, but it's still the same  
17 car, it still has the same value. That's what I'm  
18 testifying.

19 Q. So, your testimony is that even if  
20 the condition was even substantially worse than what  
21 he described, there would be no change in the  
22 estimated value that you would place on it?

23 A. No, that's just the way that market  
24 is, that's the way those cars are. They have a value  
25 and that's -- that's what I'm testifying. I think

1 that's a good number, I don't think it would change.

2 Q. If that car came in with all those  
3 problems and let's say parts that had to be replaced,  
4 the engine had to be rebuilt, all those things had to  
5 be restored, you're saying that -- and it wasn't  
6 driving, it wasn't in drivable condition, wasn't even  
7 safe to drive because it didn't have headlights and  
8 everything was, you know, in disrepair, you're stating  
9 that that vehicle would not have any difference in  
10 value than how Dr. Staveley O'Carroll described it and  
11 what you said it was worth approximately \$42,000? Yes  
12 or no.

13 MR. WESTBROOK WILLS: Objection to  
14 the extent that the testimony has not been,  
15 nor the evidence by the plaintiff that that  
16 was the condition of the car. So, if this  
17 is a hypothetical.

18 MR. SOBIERAJ: He's an expert. He  
19 can give an opinion as to hypothetical,  
20 which is exactly what you had asked earlier  
21 when asking about the parts.

22 THE COURT: Well, I would say there  
23 is no evidence that it was filled with rats  
24 nests or anything like that. Because the  
25 only evidence that is in the record, which

1 was a detailed estimate of what it would  
2 cost by the defendant, doesn't say anything  
3 about all of these things. So, there's  
4 really no basis for this question in the  
5 first place.

6 I'm giving you a bit of leniency on  
7 the way you've --I've allowed you to phrase  
8 the question, and I know you're trying to  
9 say, well your client wants to say that  
10 this is the condition was now, but there is  
11 not evidence in the record that it was ever  
12 in that condition. So, you know, he's  
13 answered to the best that he needs to, in  
14 my opinion, because you're really --there  
15 is no evidence in the record that that car  
16 was in the condition that you're trying to  
17 ask, would that change your opinion about.

18 MR. SOBIERAJ: Understood, Your  
19 Honor. I'll retract the question.

20 Q. Mr. Reinert, when you came to your  
21 opinion you were provided pictures that Mr. Wells  
22 took, along with of course your testimony that you  
23 visited the vehicle. Is that correct?

24 A. That is correct. And the statement  
25 that Mike Fitzgerald, the Exhibit 5, I think.

1 Q. The e-mails, yes. But what I mean  
2 is as to the actual -- well, we'll go by that as well.  
3 The condition of the vehicle, you formulate your  
4 opinion based upon those pictures, your personal visit  
5 to the shop and the e-mails that you reviewed?

6 A. Right.

7 Q. Are you aware that the plaintiff  
8 had other pictures available of the vehicle, other  
9 than the ones that he showed you?

10 A. No, I'm not.

11 Q. Are you aware that there are other  
12 e-mails between Mr. Fitzgerald and Dr. Staveley  
13 O'Carroll regarding the work that was performed on the  
14 car and the condition of the vehicle?

15 A. I did see some, but I can't  
16 remember now how many. I know there was more than  
17 three or four, but I don't think there was more than  
18 six or eight.

19 Q. Okay. You stated that the value of  
20 the car if it had been returned to driver quality, I  
21 believe you stated your estimate was between \$100 to  
22 \$120,000, and about \$115,000 is what you concluded,  
23 had it been restored to the driver quality. That's  
24 what you would place the value on, is that correct?

25 A. That's what the drivers are selling

1 for now consistently, and that's based on my research  
2 like I said before on auction results, on  
3 Classicdriver.com.

4 Q. So, if I told you that a search of  
5 the website online would reveal cars in excellent  
6 shape at least driver quality as you stated, that  
7 ranged anywhere between \$40,000 and \$120,000, would  
8 that be a mistake?

9 A. I think --

10 MR. WESTBROOK WILLS: I object to  
11 that question.

12 THE COURT: Sustained.

13 Q. Is it correct to say that if you  
14 did a search for the same model Mercedes-Benz, same  
15 year, model and condition, that you would find a  
16 variety of prices for driver quality, that would range  
17 anywhere between \$40,000 and \$120,000?

18 A. I don't know what that number would  
19 be.

20 MR. WESTBROOK WILLS: Objection.

21 THE COURT: Sustained.

22 MR. SOBIERAJ: Your Honor, he said  
23 that he searched certain auction sites on  
24 the internet, I would think that my  
25 question would be fair to ask given that

1 he's actually testified to that same type  
2 of search.

3 THE COURT: Well, he gave you that  
4 he searched on the internet. You want to  
5 put in -- are you trying to get in evidence  
6 that there are particular websites?

7 MR. SOBIERAJ: No, Your Honor. I  
8 just was asking that is it correct to say  
9 that if he searched the website, that he  
10 might find numerous sites that give varying  
11 values in his range.

12 THE WITNESS: Can I comment on  
13 that?

14 THE COURT: Who is asking?

15 THE WITNESS: Axel.

16 THE COURT: Okay, yeah, go ahead.

17 THE WITNESS: Again, like I said  
18 earlier. This is a very specific model of  
19 a car. There weren't that many produced.  
20 The people that own them they watch the  
21 market--

22 MR. SOBIERAJ: All right, now I'm  
23 going to object, Your Honor, because it's  
24 nonresponsive. It was a simply yes or no  
25 question.

1 THE WITNESS: Oh, I'm sorry.

2 THE COURT: He could --

3 MR. SOBIERAJ: I just asked if he  
4 went online if a search would reveal a  
5 variety of prices. Now he's talking about  
6 what people want. I just asked a  
7 question--

8 THE COURT: Well, that's how you'd  
9 come up with a value of prices of a used  
10 car, is what people want.

11 MR. SOBIERAJ: Right, I understand  
12 that. But I didn't ask him what people  
13 want. I just asked him if you went online  
14 would the internet reveal auctions for cars  
15 ranging within that value. And now he's  
16 testifying as to what people want.

17 THE WITNESS: I can give you the  
18 high and the low value that I found.

19 THE COURT: You can answer that.

20 THE WITNESS: Low, \$47,200, average  
21 retail \$81,400, auction high \$254,600. So,  
22 to answer your question, yes, there are  
23 lower ones out there.

24 MR. SOBIERAJ: Thank you.

25 Q As to the value of the parts, you

1 reviewed the images that the plaintiff showed you.  
2 You couldn't see all the parts in those bins, correct?

3 A. No.

4 Q. So, you don't have an exact idea of  
5 all the different parts that were in those bins?

6 A. No.

7 Q. Or their condition?

8 A. I saw some.

9 Q. You saw some, but anything that was  
10 in a bin and covered, you wouldn't know what part was  
11 in there or the condition it was in?

12 A. Right.

13 Q. Is it fair to say that if those  
14 parts that were out there exposed to the weather, if  
15 those parts were in a condition that were not either  
16 restorable or were in a poor condition, that those  
17 parts, the value of those parts would not have been  
18 effected by being kept out there to begin with?

19 MR. WESTBROOK WILLS: Objection.

20 That's a roundabout way of testifying that  
21 the parts out there were not in the  
22 condition that Mr. Reinert has testified  
23 that he saw them in.

24 MR. SOBIERAJ: He doesn't know what  
25 condition the parts were prior to -- he

1           only knows as to what the condition of the  
2           parts were when he actually saw them. So,  
3           I'm just asking if the parts -- I don't  
4           know what the parts were. I'm asking his  
5           opinion if the parts were in a worse  
6           condition before they were stored outside,  
7           would it have reduced the value of that.

8                         THE COURT: Well, that's a  
9           hypothetical without a basis for it. There  
10          is not evidence to base your hypothetical  
11          question on. So, I will sustain the  
12          objection.

13          Q.           You testified that the value of the  
14          car in it's current condition would be a value of  
15          \$2,500, but would not -- the work that was performed  
16          on the vehicle, such as the car putting on the  
17          rotisserie, and the removal of the parts and  
18          cataloging of parts, would not those things have to be  
19          done for any restoration?

20                        A.           They would.

21          Q.           So is there not a value to that,  
22          that that work has already been performed?

23                        A.           Well, I don't think you could --  
24          you're putting on a rotisserie, I don't think there's  
25          really any value in that. The cataloging, I wasn't

1 aware that anything was cataloged.

2 Q. But the removing of the parts, the  
3 time, the labor, is all of those things -- all of the  
4 work that was performed if this had been taken to  
5 another company, say yours, to restore the vehicle,  
6 that work would have been required?

7 MR. WESTBROOK WILLS: Objection.

8 THE COURT: What is the basis if  
9 your objection?

10 MR. WESTBROOK WILLS: That counsel  
11 is in fact presenting a defense to the  
12 claims.

13 MR. SOBIERAJ: No, I'm actually  
14 just presenting a question regarding a  
15 value of the labor performed. I'm asking  
16 his opinion--

17 THE COURT: You can answer the  
18 question, if you can.

19 A. At this point, somebody said I want  
20 you to restore this car or finish, you know, whatever,  
21 get this car back together, there would be no credit  
22 for the work that's performed. In other words what's  
23 been done probably made the job twice as expensive as  
24 it would have been, because now you've got a big mess  
25 is what you've got, and that's not worth anything.

1           Q.       So, the removal of the parts that  
2 you would have to remove in a restoration, the  
3 sandblasting, all of those things because that's part  
4 -- if I'm not mistaken, the invoices that he submitted  
5 as part of his complaint, and I believe you probably  
6 reviewed those as well, and it was also in some of the  
7 e-mails was some of the work that he had done, you're  
8 saying none of that has any value?

9           A.       Simply because it's chaos. Nobody  
10 knows where anything is at. That's the most important  
11 part of a restoration, is being organized, and that's  
12 not happened here. It would double the amount of  
13 work, honestly, to sort through everything and find  
14 everything. All the little nuts and bolts and screws  
15 that you need to put on these parts, nobody knows  
16 where they are. They're probably in the bin  
17 somewhere, but that has no value. The only that's of  
18 value right there is the VIN number.

19          Q.       Mr. Reinert, have you heard of  
20 Fenix Automotive before today?

21          A.       Yes, when I went to see them.

22          Q.       So, you had no knowledge of Fenix  
23 Automotive operating prior to being contacted by Dr.  
24 Staveley O'Carroll's attorney?

25          A.       Correct.

1 Q. Do you know Mike Fitzgerald?

2 A. Not till I met him that day.

3 Q. Okay.

4 MR. SOBIERAJ: No further  
5 questions, Your Honor.

6 THE COURT: Any redirect?

7 MR. WESTBROOK WILLS: Just to the  
8 extent, Your Honor --

9 REDIRECT BY MR. WESTBROOK WILLS:

10 Q. Mr. Reinert, you testified that the  
11 value of the vehicle going in, so there is no  
12 confusion, based on your experience and your  
13 comparison that the value of the vehicle when it was  
14 delivered to Fenix was between \$42 and \$45,000, is  
15 that correct?

16 A. That's a good number, yes, sir.

17 Q. And that's based on your knowledge  
18 of the market, your comps and what your expert opinion  
19 is with regard to this particular vehicle, correct?

20 A. That's correct.

21 MR. WESTBROOK WILLS: Okay, thank  
22 you.

23 MR. SOBIERAJ: Can I  
24 recross-examine, Your Honor?

25 THE COURT: Go ahead.

1 RE-CROSS-EXAMINATION BY MR. SOBIERAJ:

2 Q. Just one question. Based on your  
3 opinion as asked by counsel, you did not actually see  
4 the vehicle when it arrived at Fenix Automotive. So,  
5 you only have the testimony of Dr. Staveley O'Carroll  
6 to determine the actual condition of the vehicle, when  
7 it arrived at Fenix Automotive, is that correct?

8 A. That's not correct, because I also  
9 have Mike Fitzgerald's Exhibit 5.

10 Q. I apologize, you have the e-mail.  
11 So, the e-mails and the testimony of Dr.  
12 Staveley-O'Carroll, but you did not actually see the  
13 vehicle, neither pictures or in person, what the  
14 condition was when it actually arrived at Fenix  
15 Automotive?

16 A. That is correct.

17 MR. SOBIERAJ: Thank you.

18 THE COURT: Okay. Takes care of  
19 that witness. Did you have any other  
20 witnesses?

21 MR. WESTBROOK WILLS: No other  
22 witnesses, Your Honor.

23 THE COURT: All right. Here's what  
24 I propose we do. I'm going to give you 10  
25 days to come up with a proposed order

1           telling me what you're asking for. In  
2           other words, do your argument in the form  
3           of a proposed order, laying out what you're  
4           asking for and why. And then send it to  
5           opposing counsel, I'll give him five days  
6           to come up with something that he wants to  
7           file in response, and then I will let y'all  
8           know what my final order will be.

9                   MR. WESTBROOK WILLS: Perfect, Your  
10           Honor.

11                   MR. SOBIERAJ: Thank you, Your  
12           Honor.

13                   MR. WESTBROOK WILLS: Thank you for  
14           hearing us this afternoon.

15                   THE COURT: You're welcome. We'll  
16           hear from ya'll in a couple of weeks.

17                   (Time noted: 4:53 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

PLAINTIFF'S  
EXHIBITS

**MVA**

**MARYLAND CERTIFICATE OF TITLE**  
**DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR VOIDS.**

L0082703

VEHICLE IDENTIFICATION NO. <b>11304410008062</b>	YEAR <b>69</b>	MAKE <b>MERZ</b>	BODY STYLE <b>2S</b>	CLASS <b>L</b>	ODOMETER <b>126000</b>	BRAND <b>B</b>	TITLE NUMBER <b>26487251</b>
EXCEPT <b>N/A</b>	GR. VEH. WT. <b>OGN/A</b>	GR. COMB. WT. <b>OGN/A</b>	FEE (TAGS) <b>\$13.90</b>	INSPECTION DATE <b>N/A</b>	DATE ISSUED <b>05/29/97</b>		

OWNER'S SOUND EX DRIVER LICENSE NO. CO-OWNER'S SOUND EX DRIVER LICENSE NO.

NAME(S) AND ADDRESS OF REGISTERED OWNER(S)

**KEVIN F STAVELEY-OCARROLL**  
**MAUREEN LYNN STAVELEY OCARROLL**  
**10717 DAVIS AVE**  
**WOODSTOCK MD 21163**

ODOMETER CODES

CONTROL NO

L0082703

L0082703

I, THE UNDERSIGNED, HEREBY CERTIFY THAT AN APPLICATION FOR THIS TITLE WAS FILED WITH THE MOTOR VEHICLE DIVISION OF THE MARYLAND DEPARTMENT OF TRANSPORTATION AND THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

I, THE UNDERSIGNED, AM RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN AND I STATEMENT THAT THE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

**LIEN RELEASE**

MARYLAND

SPECIALLY ISSUED ON THE DATE SET FORTH ABOVE

ADMINISTRATOR OF MOTOR VEHICLES

CONTROL NO

(This is not a Title No.)

L0082703





**FeNiX Automotive LLC**  
 1947 Belgrade Ave  
 Charleston, SC 29412  
 United States  
 (843)469-0503  
 mike.fitzgerald@fenixgarage.com  
 http://www.fenixgarage.com

# INVOICE

**BILL TO**  
 Kevin Stavely

**INVOICE # 1157**  
 DATE 03/14/2016  
 DUE DATE 03/14/2016  
 TERMS Due on receipt

DATE	ACTIVITY	QUANTITY	RATE	AMOUNT
03/14/2016	<b>Abrasive Media Blasting</b>	1	2,600.00	2,600.00
16	Fabrication of metal brackets to mount 1969 Mercedes 280SL to car rotisserie. Factory and aftermarket seam chaulking and rubberized undercoating removed by hand where very thick. Vehicle was then blasted to bare metal using a GeoBlaster "green" certified blaster loaded with fine grit glass beads. 800lbs of media was used in blasting (twenty 40lb bags). This blasting process uses water to cool the panels as the blasting takes place ensuring no deformation of the sheetmetal from excessive heat. This is very important for a unibody car such as this. Entire unibody of car was blasted - underside, interior, under dash, etc. Areas of previously repaired accidents were found and all Bondo and sealer was removed down to the bare steel in all areas. All rust was removed in all areas. After blasting, car was sprayed with a anti-rust Phosphoric chemical to inhibit heavy rust while metal work is completed. Car is now ready to have metal repaired and all body work completed. Price includes all preparation, materials, labor and machine use to date to prepare the vehicle for body work.			

We appreciate your business!

**BALANCE DUE**

**\$2,600.00**



**FW: Invoice from Fenix Automotive LLC for disassembly of 1969 Mercedes 280SL**

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Wed, Oct 9, 2019 at 3:54 PM

**From:** Julie Staveley-O'Carroll <jsoc@kw.com>  
**Sent:** Friday, August 19, 2016 6:38 PM  
**To:** jeffjacobelli@msn.com  
**Cc:** Staveley-OCarroll, Kevin F. <ocarrollk@health.missouri.edu>  
**Subject:** Fwd: Invoice from Fenix Automotive LLC for disassembly of 1969 Mercedes 280SL

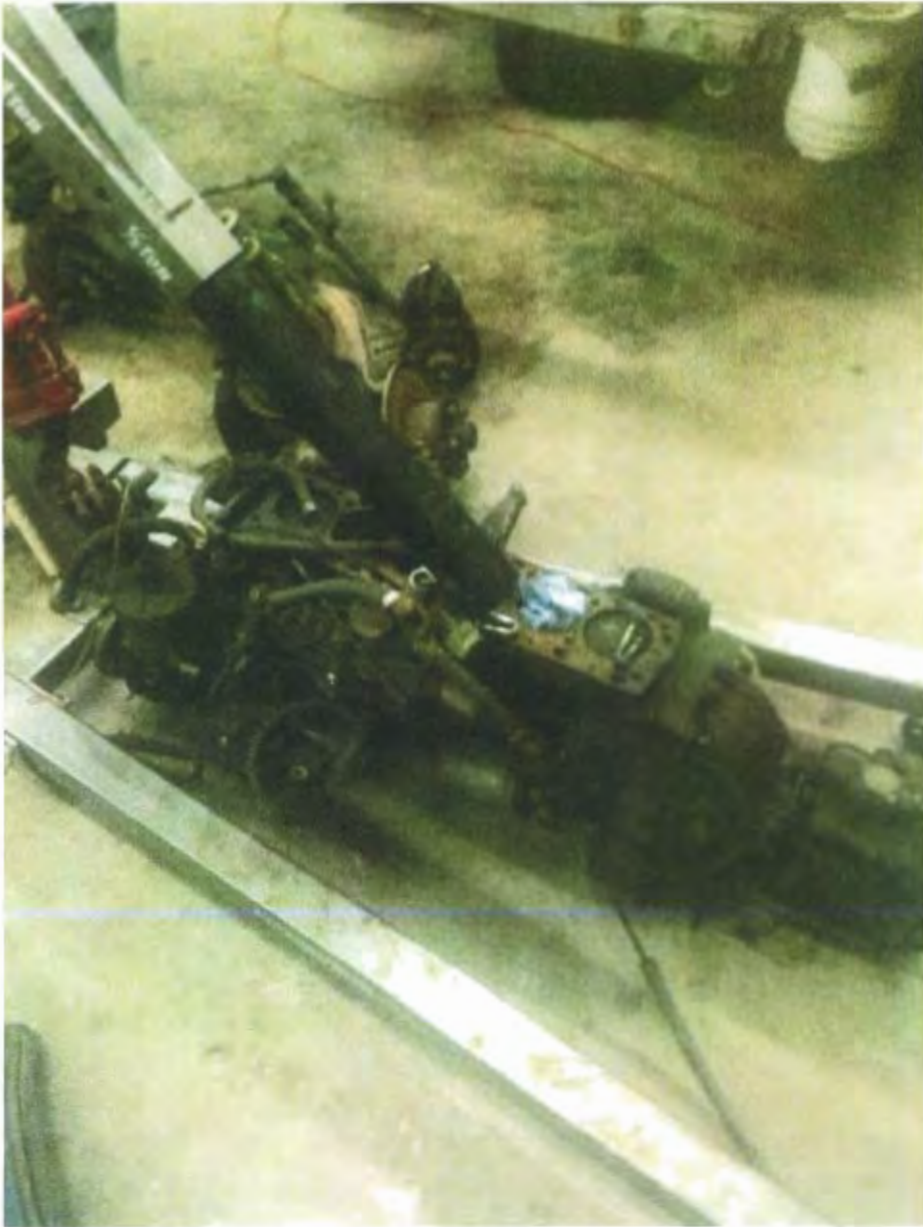
Sent from my iPhone

Begin forwarded message:

**From:** Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
**Date:** October 26, 2015 at 6:00:33 PM CDT  
**To:** david@davidgnmm.net, jsoc@kw.com  
**Cc:** Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
**Subject:** Re: Invoice from Fenix Automotive LLC for disassembly of 1969 Mercedes 280SL

Im not sure that the pictures sent correctly while attached to the invoice. Ive attached them here. -MF











Mike Fitzgerald  
Fenix Automotive LLC  
843-469-0503  
<http://www.fenixgarage.com>

On Oct 26, 2015, at 6:57 PM, FeNix Automotive LLC <[quickbooks-email@intuit.com](mailto:quickbooks-email@intuit.com)> wrote.

# FeNix Automotive LLC

INVOICE	DUE DATE	BALANCE DUE	<a href="#">View invoice</a>
1093	10/26/2015	\$3,225.00	

Dear Kevin and Julie Stavely,

Here's your invoice for the disassembly of the entire vehicle. We appreciate your prompt payment. I am always available by phone or email if you have any questions or would like to discuss the project. The next step is media blasting off all the old paint, rust, and body filler away to reveal the state of the metal underneath. Overall, the car is in excellent condition, with only a few problem rust areas that are visable so far. Once you give the go ahead to have the car media blasted I will provide a full report of the condition and pinpoint any areas that need attention. Again, please dont hesitate to call or email me. I would be more than happy to talk to you about the process! Ive attached a few pictures to give you an idea of the condition and the overall scope. If you would like any more pictures, or are curious of a certain area I have hundreds more - we catalog and document all aspects of a build. Thanks for your business! -MF

Mike Fitzgerald  
 Fenix Automotive LLC  
 843-469-0503  
 mike.fitzgerald@fenixgarage.com

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<Invoice\_1093\_from\_FeNix\_Automotive\_LLC.pdf>



**FeNix Automotive LLC**  
 1947 Belgrade Ave  
 Charleston, SC 29412  
 United States  
 (843)469-0503  
 mike.fitzgerald@fenixgarage.com  
 http://www.fenixgarage.com



# INVOICE

BILL TO  
 Kevin Stavely

INVOICE # 1093  
 DATE 10/26/2015  
 DUE DATE 10/26/2015  
 TERMS Due on receipt

DATE	ACTIVITY	QTY	RATE	AMOUNT
09/01/20 15	<b>Services:General Mechanics</b> Initial disassembly of entire 1969 Mercedes 280SL. All parts removed and cataloged with corresponding hardware where appropriate. Empty shell is now ready for media blasting to remove rust, paint, and body fillers. Hourly rate for disassembly is reduced to 75.00 per man hour down from normal shop rate. Billable hours for breakdown are below as follows:	0	0.00	0.00
09/14/20 15	<b>Services:General Mechanics</b> September 8, 2015 - 2 people, 4 hours. 8 hours total. Began breakdown. Chrome, trim, removed doors, hood, trunk lid, and hardtop, windshield glass.	8	75.00	600.00
09/16/20 15	<b>Services:General Mechanics</b> September 16, 2015 - 1 person, 5 hours. Remove engine and transmission, begin clearing engine bay. Strip trunk and catalog all parts that were in trunk.	5	75.00	375.00
09/23/20 15	<b>Services:General Mechanics</b> September 23, 2015 - 1 person, 2 hours. Finish stripping engine bay.	2	75.00	150.00
09/28/20 15	<b>Services:General Mechanics</b> September 28, 2015 - 1 person 7 hours. Disassemble entire interior including dash, steering, carpet, seats, windshield moldings, and all interior parts.	7	75.00	525.00
10/09/20 15	<b>Services:General Mechanics</b> October 9, 2015 - 2 people 1.5 hour. 3 hours total. Remove convertible top, hinges, and brackets. Remove factory tar coating from convertible hold area.	3	75.00	225.00

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/13/20 15	<b>Services:General Mechanics</b> October 13, 2015 - 1 person 6 hours. Remove front and rear subframes, suspension, and remainder of drivetrain.	6	75.00	450.00
10/14/20 15	<b>Services:General Mechanics</b> October 14, 2015 - 2 people 4 hours. 8 hours total. Remove rocker panels, steel patch panels in rusted floors, trunk lid gasket, sound deadening coating from interior, gas tank, and wiring harness.	8	75.00	600.00
10/19/20 15	<b>Services:General Mechanics</b> October 19, 2015 - 1 person 2 hours. Disassembly of door panels and stripping of doors to prepare for media blasting.	2	75.00	150.00
10/20/20 15	<b>Services:General Mechanics</b> October 20, 2015 - 1 person 2 hours -final disassembly of loose parts from body shell. All nuts, bolts, and fasteners removed. All rubber/plastic body drain plugs removed. Car shell is ready for media blasting.	2	75.00	150.00

We appreciate your business!

BALANCE DUE

**\$3,225.00**



66K

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Wed, Oct 9, 2019 at 3:51 PM

**From:** Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
**Sent:** Friday, December 8, 2017 10:17 AM  
**To:** Staveley-OCarroll, Kevin F. <ocarrollk@health.missouri.edu>  
**Subject:** Re: Mercedes 280sl

Like I mentioned before there are some areas that have some unknowns and therefore the total bill is difficult to project with 100 percent confidence. That being said, I would estimate the total cost (parts and corresponding labor) to be around the 60k mark. Like I mentioned, some things such as the engine rebuild and metal work can be pretty accurately pinned down. If we need less parts than expected this number can come down. However if we run into a problem such as a grinding transmission gear (I don't expect this) it could add to the cost. Most business I do I prefer to have a hard number, however with a scope as open ended and big as this its difficult. In my experience, the best thing is to keep a very open line of communication. I like to send a weekly, or sometimes twice mostly email update with pictures outlining the work that was done, the parts that were used, and the estimated remaining cost as well as the balance of deposit remaining. Ive never had a problem with this method as it leaves little room for miscommunication. I know it still seems like quite a bit of money, but keep in mind its a large project - Im very aware of your desire to keep the cost down while not compromising on critical areas, and knowing that will allow me to make decisions to rein in the costs.

The first step will be to have all the metal work done repairing the rust and holes, and then having the vehicle sprayed with a 2 part epoxy to lock everything in. Simultaneously, we can begin to have the engine rebuilt, the suspension, transmission, etc steamed and gone thru and rebuilt where necessary. From start to finish, a good rule of thumb for the entire project will be about 6 months. We shoot for quicker. The first deposit that will be required would be enough to cover the engine rebuild as well as some of the metal work. 15-20k deposit should be sufficient as to not hold up progress on these bigger ticket areas. Like I mentioned, I have a spreadsheet of running credits and debits that I update daily that is available whenever you ask. Hope this clears up a bit of the ambiguity, and please let me know if you have any questions! -MF

[Quoted text hidden]

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Wed, Oct 9, 2019 at 3:51 PM



From: Julie Staveley-O'Carroll julieatricandance@gmail.com  
Subject: Mercedes Proposal  
Date: December 9, 2017 at 8:28 AM  
To: Kevin F. Staveley-OCarroll kocarrollik@missouri.edu

Sorry it took so long to get this to you. Things have been hauling over here while we wrapped up a few big projects. Better late than never I hope.

So now that we have the Mercedes stripped completely and have been able to take a full detailed look at the condition of it all, here is what the status of it is. I will try to be as detailed as possible without going too overboard with technical details. If you have ANY questions at all concerning what the procedure is we are taking or cost of a particular area or part is, please ask. I'll break it down into a few major components which encompass the majority of the project. Of course there are many smaller parts and jobs that are needed too, but this will give us a general overview of what it will take to get the 280SL back to operating condition. I have given some very loose outlines of what I believe costs will be given my experience. Some may be more, and some may be less in reality. This is more to make sure we are in the same ballpark and not as a strict estimate. Also, keep in mind that some areas can be worked on simultaneously. For example, there is no reason the engine can't begin its rebuild at the same time the vehicle is having body work done. Other things, such as paint need to wait until the bodywork is finished in order to start. Having a basic idea of the prices helps to see generally what needs to be done without feeling that there is no end!

### **Body**

Currently the body is stripped to bare metal. All body fillers and repairs that were done over the years (many done very poorly) have been removed. This vehicle is a unibody car so it does not have a dedicated frame. The engine body acts as one structure, and this makes it all more important that the vehicle is solid. As I stated before, the metal is overall in good condition, with a few areas that need metalwork. This is to be expected with any car from 1969. The major offending areas are the inside of the truck floor, the passenger side floorboard, the rear frame rails, the headlight pockets, the rear passenger fender as well as the rear bumper area. There is evidence that the vehicle had been in a few collisions and repair work was done on top of the damage. The front passenger side fender looks to have been cut out and repaired, however this was probably very early on in its life as they used a gold brass as a welding agent which stopped being common in the early 70s. This repair is very good and does not need to be addressed. However the rear of the car needs some metalwork to shape it back to its original form. Once rust is cut out and new metal is fabricated to fit, the body can begin to have the bodywork done to return the car to a uniform pre-paint condition. This is a fairly lengthy step, but very important. It's not atypical for a vehicle in this shape to require over 200 hours of bodywork, primers, and sanding. It's one of the bigger time eaters of any vehicle for sure! Metal work and bodywork is no small chore, but done right is something that yields fantastic results and not something that needs to be repeated. Please keep in mind that we are not talking a simple repair with some body filler slapped on. This is a "metal up" repair done to replicate the factory condition. This area represents one of the bulks of the expenses since it's just a ton of man-hours. It can vary from the 15-25K range all depending on how fast the metalwork takes, and how specific you want the car restored. You really only have 1 good shot at doing this part of the job unless you want to break the vehicle completely down again so my recommendation is to get as much value from this step as you can since this is a car that is appreciating very well and a badly restored body puts a sour taste in the mouth of anyone buying or appraising it.

### **Paint**

Of course currently the vehicle has no paint. Proper body work and prep make this step a little less intense than it otherwise would be. We have a few options here - we can either return the car to its original color, or we can go with a custom color of your choosing. In terms of value of the car, the factory color may be the best bet. People like cars that are restored to factory specs. They tend to hold the value the best. But in the end it's completely up to you! We can go as stock or as wild as you

the value the best. But in the end its completely up to you: we can go as stock or as wild as you choose. Typical paint jobs for a complete car like this (entire inside of vehicle, outside, undercarriage, tops, door panels, removable convertible hart opt, etc) run in the 8,000 ballpark. Some colors run more than others and it all depends on the amount of wet sanding and finishing you choose to have done. There is a substantial difference in cost between a show car paint job and a daily driver. Sometimes very significant difference, in quality, and in cost.

## **Suspension & Brakes**

Most of the hard suspension parts like control arms and axles can be reused. They all need to be rebuilt with new rubber bushings, ball joints, etc, but theres no need for replacing everything with new. The springs may need to be replaced as there is a possibility they have sagged over many years of use. Brakes are pretty shot and will require quite a bit. The hydraulic portion of the system will need to be replaced and anything the brake fluid touched has corroded from years of sitting. Plan for a few thousand in parts costs for these areas.

## **Tires & Wheels**

Tires will need to be replaced of course. Thats around 800. The wheels are stock and we can most likely have them refurbished and possibly rechromed. I like to keep as many stock parts as possible and refurbish them back to factory specs. This not only saves money from having to buy replacements, but lends a more authentic feel to the vehicle. Also good for the cars value.

## **Interior**

The interior is about a 4/10. The good thing is most of it is all there. The bad is that much of it is really showing its age. The dash panels and hand carved wooden vent inserts are all garbage. These can get a bit expensive to replace, but some good quality reproductions are made which can help keep costs down. The gauges and most of the dash pieces will need to be refurbished and cleaned, inspected and assessed for use. The carpet will need to be replaced. The leather seats are actually not in horrible condition. We may be able to get away will just resting them. They don't look brand new, but they are not torn. It all depends on how well they will clean up and cost of rebuilding the foam in them versus buying new seats. Anything that can be salvaged and reused on the interior will be. This is one area we will need to look further into concerning costs, as while nothing itself is terribly expensive, there are quite a lot of components.

## **Convertible top**

The convertible soft top will need to be replaced. Its actually not in horrible condition, but it does have a few small rips in it. Its also slightly faded which may look bad with a fresh paint job. I don't have a price on this top quite yet. Its a fairly heavy duty canvas top, so we will need to source a quality replacement. The removable hardtop is in good condition, only needing paint and bodywork. The headliner on the inside of it is pretty dingy and showing its age and I would recommend replacing as well.

## **Glass**

All of the glass seems in good condition. Its certainly not crystal clear, but thats actually ok. Its usually better to keep original glass as opposed to replacing for a more clean new piece. Again, it lends authenticity to the vehicle and as long as its not cracked I don't see a reason to replace.

## **Chrome & Britework**

With the exception of a few small areas, most all of the chrome work is present. That's a good thing! These pieces are actually made out of aluminum in many areas and therefore they can be polished. Any pics that are damaged or have heavy corrosion will need to be replaced. But I'm hopeful that quite a bit of it can be salvaged and reused. Unfortunately, unlike steel pieces which are chromed, repairing aluminum pieces is much more impractical. Sourcing new trim where necessary is the best bet.

### **Transmission & Drivetrain**

The transmission is a 4 speed manual. The good thing about these older manual transmissions is that they tend to last quite a bit longer than their automatic sibling. What we will need to do for this trans is have it opened up and inspected to make sure no teeth are missing off any of the gears, there is an acceptable amount of wear, and that everything in the inside is as it should be. A minor rebuild of the trans may be necessary, but these are fairly straight forward boxes so the cost is not excessive. The driveshaft can be reused with some refurbishing of the joints. The rear differential will be opened up and inspected. The main areas that will need to be inspected and addressed if needed is the bearings and the ring and pinion. As long as it shows an acceptable amount of wear, we can refurbish the part and use the original axle. It will require new putter bears, seals, etc, - all standard procedure for rebuilding a rear diff axle in any car.

### **Engine & Mechanical**

The engine and most of the mechanical components need a complete overhaul. The engine was brought in to us with the cylinder head completely removed and most of the engine taken apart. It will require complete disassembly, machining, acid cleaning, and reassembly with fresh parts. This is a numbers matching (original engine the car came with from the factory) car so I would HIGHLY recommend rebuilding this engine instead of trying to source another one. Rebuild costs for these engines can be a bit high, but there's really no way around it. Every moving part needs to be touched and either machined or replaced. I would budget at least 10,000 for engine rebuilding. This is to do it the right way, using factory fasteners (important) and not half-assing any of the cleaning and machining steps. To put that price in perspective, already rebuilt engines can be had for around the 8500 mark. These would be lacking some of the parts you need and would require additional costs as well. But more importantly, it would not be the factory engine. That fact makes the car much more valuable. Much more so than the small extra cost associated with rebuilding the original engine. Also, I want to reiterate that I am doing my best to try and loosely estimate the costs realistically. When cost of rebuilding the factory engine is compared in real world terms (taking account total cost once finished) I believe rebuilding the factory engine will actually be the less expensive route as well. As for the rest of the mechanical systems - they will all need to be inspected one by one and repaired where necessary. Basically, anything that has a rubber component will need to be replaced. Hoses, hydraulic lines, fuel injection system, and AC components will all need to be replaced fairly intensely. The radiator is damaged fairly badly and will need to be replaced. Labor cost for this part of the project is not very high. Parts costs will be the bulk of the expense. There is however no real short way around needing a part. I do my best to source not only the highest quality I can find, but also a competitive price for you. There's usually a give and take and the cheaper parts end up costing more in the long run. Quality is very important on a build like this, but it helps to be aware of costs where possible! Again, any parts that the car has now that can be refurbished and used will be the first option.

### **Plan of Action**

I hope this helps to give you more of an overview on what it will take for this project. This is a very desirable, and very valuable car. So, while the costs to restore are nothing to scoff at, it is certainly a car worthy of the expense. Overall, it's a great candidate for this and one we would love to help you complete. As I mentioned before, some things can be done simultaneously, and some need to be ordered one after another. Here is what I propose moving forward with the project: The first thing that needs to be done is rust repair, metal work, and final body work. As pointed out above, this is a substantial cost, but also a huge portion of the restoration. While the body is being worked on, the engine can be stripped, assessed, and begin the machining work needed to restore. This project can

engine can be stripped, accessed, and begin the machine work needed to restore. This project can move very quickly in that way. To avoid racking up a large bill and to make sure we are communicating on a regular basis about not only the completion of the vehicle, but the cost associated, I would like to set up a deposit system. We agree on an amount that we hold in deposit and use to pay for parts, outsourced work, etc. Nothing excessive - usually we do a 5,000-10,000 deposit for a project such as this. This allows us to keep the project moving without constantly reaching out to you about buying needed parts etc. As always, a daily log of labor and parts costs is kept and available to you at any time. When the invoice with us reaches the amount of the deposit, we will review what has been done, hours, parts, etc, and talk to make sure everything is on track both project wise and cost wise. Then the deposit is renewed and we proceed with the next steps. A basic timeframe can be put in place this way to ensure that once the project begins the rebuilding stage it doesn't drag out. I have had good experience working with customers like this as it allows us to work and do what we need to do to keep the project moving, and also ensures you the peace of mind that everything is progressing in a timely manner and costs are meeting your expectations.

I look forward to hearing from you with any concerns or thoughts you have. As always, please feel free to give me a buzz anytime at [843-469-0503](tel:843-469-0503) or email me here. I have loads and loads of pictures of everything I discussed here, so if there is anything particular you'd like to see let me know. I didn't attach any here because I figured I had been long winded enough! Thanks for your patience the past few weeks as we wrapped up a few large jobs. Look forward to hearing your thoughts!

--

Julie Staveley-O'Carroll  
**573-864-1146**



**FeNix Automotive LLC**  
 1947 Belgrade Ave  
 Charleston, SC 29412  
 United States  
 (843)469-0503  
 mike.fitzgerald@fenixgarage.com  
 http://www.fenixgarage.com



# INVOICE

**BILL TO**  
 Kevin Stavely

**INVOICE #** 1585  
**DATE** 12/12/2017  
**DUE DATE** 12/12/2017  
**TERMS** Due on receipt

DATE	ACTIVITY	QTY	RATE	AMOUNT
12/12/2017	<p><b>Deposit</b>            Deposit on vehicle restoration - 1969 Mercedes 280SL. Amount to be deposited in customers account to be used as payment towards future parts and labor. This is not payment for any past work or parts. Upon receiving this deposit customer will have a credit on their account in the total amount due here. As discussed, a running ledger of costs will be tracked daily and available to customer at any point it is requested. This ledger will be reviewed via email at the end of each 2 week period or whenever a major milestone has been completed. When deposit reaches a zero balance budget and scope of work will be reviewed to determine any departures from estimated budget. At this point the deposit will be renewed and work will continue. This deposit is fully refundable to the client on their request minus any parts and labor that have been deducted to that date. Fenix estimates a completion date of 6 months from commencement of work. This is an estimate and due to the nature of the work it may vary.</p>	1	20,000.00	20,000.00

We appreciate your business!

**BALANCE DUE**

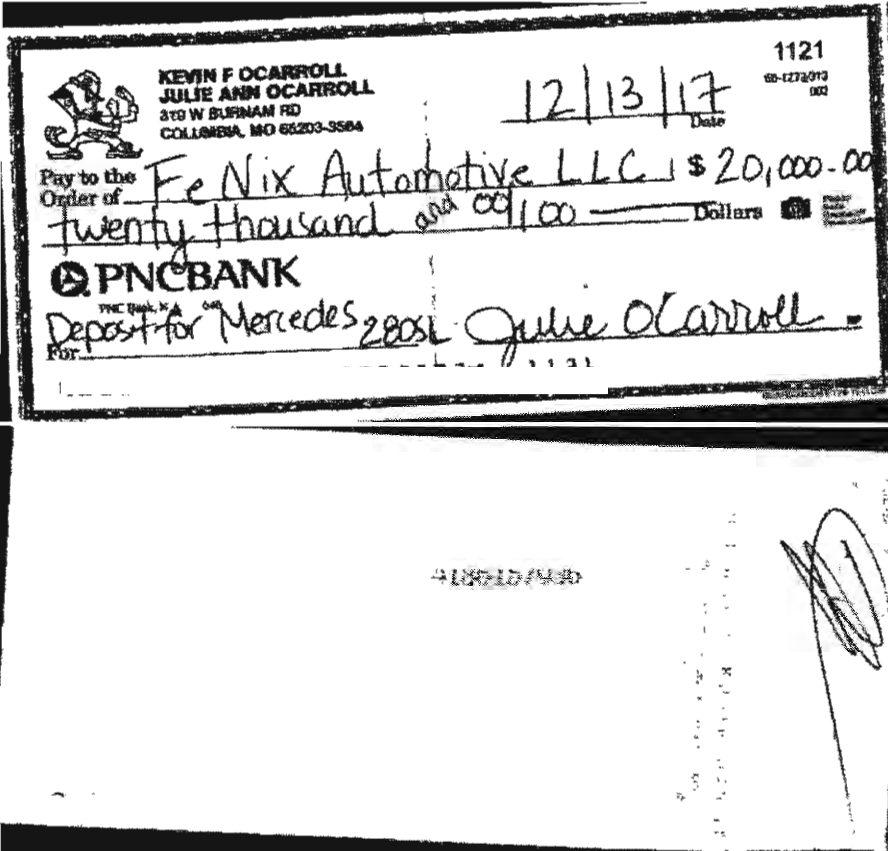
**\$20,000.00**



PNC Online Banking

Date	Description	Amount	Account
12/18/2017	Check 1121	\$20,000.00	

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Julie Staveley-O'Carroll <julieafricandance@gmail.com>

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## Mercedes 280SL

18 messages

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>

Fri, Sep 28, 2018 at 7:25 AM

To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>, "Kevin F. Staveley-O'Carroll" <ocarrollk@missouri.edu>

Dear Mike,

Kevin and I have both reached out to you by phone repeatedly over the past several months. You have not responded. At this point, we are gravely concerned about the Mercedes. We have paid thousands of dollars and you hold our very valuable asset. We feel extremely taken advantage of because you know we do not live in the area. We have trusted you because we were told you were trustworthy.

Please honor your agreement and follow up with us immediately.

Julie and Kevin Staveley-O'Carroll

--

**Julie Staveley-O'Carroll**  
**573-864-1146**

---

**Mike Fitzgerald** <mike.fitzgerald@fenixgarage.com>

Fri, Sep 28, 2018 at 8:02 AM

To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Cc: "Kevin F. Staveley-O'Carroll" <ocarrollk@missouri.edu>

Julie and Kevin-

I apologize greatly for being hard to reach. We have been so busy I havent had a good chance to catch up on voicemails. By far the easiest way to reach me is over email, or even a text message to the number you have. I assure you, im not avoiding your calls!

The mercedes is making good pace. We have most of the suspension ready to bolt back on the subframe and most of the metalwork is complete and ready for primers and many weeks of block sanding for paint. Its been over in the metal shop most of this time, but as soon as we have a spot open up in the body shop it will find a new home there where we can get it back into color. The spot we are putting it should be open by october 8th (deadline of the current project in there) so not much longer before we can prep for the paint application. Ill make a point to take some pictures and shoot them over to you both here.

Again, sorry for being so MIA. Phone is so easy to miss especially before 9am when were running around getting everything opened up. If you'd rather speak on the phone Id of course be more than happy to - just shoot me a time on email when would be a good time to call and I can make sure I do that. Thanks. -MF

Mike Fitzgerald  
Fenix Automotive LLC

mike.fitzgerald@fenixgarage.com  
843-469-0503  
1947 Belgrade Ave  
Charleston, SC 29407

[Quoted text hidden]

RECORD 360

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
Cc: "Kevin F. Staveley-OCarroll" <ocarrollk@missouri.edu>

Fri, Sep 28, 2018 at 8:07 AM

That's great Mike! Thank you. We were getting worried. Some pictures would be helpful too.

All the best,

Julie and Kevin  
[Quoted text hidden]

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
Cc: "Kevin F. Staveley-OCarroll" <ocarrollk@missouri.edu>

Tue, Apr 2, 2019 at 5:57 AM

Hi Mike. Kevin and I are coming to Charleston next week. We look forward to seeing the progress you outlined in your previous email on September 28th of last year.

All the best,

Julie and Kevin

On Fri, Sep 28, 2018 at 8:03 AM Mike Fitzgerald <mike.fitzgerald@fenixgarage.com> wrote:

[Quoted text hidden]  
[Quoted text hidden]

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**Mike Fitzgerald** <mike.fitzgerald@fenixgarage.com>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>  
Cc: "Kevin F. Staveley-OCarroll" <ocarrollk@missouri.edu>

Tue, Apr 2, 2019 at 9:38 AM

Sounds great! Look forward to showing you what's happened. I was actually just thinking how I need to give you an update on the way into the shop this morning so seeing your email was timely. We are in the process of a buildout on a new building we are moving into in a few months so I am really all over between the two locations. Let me know around what day/time you plan on swinging by so I can make 100% sure I'm here to finally meet the two of you. Look forward to it. -MF

Mike Fitzgerald  
Fenix Automotive LLC

mike.fitzgerald@fenixgarage.com  
843-469-0503  
1947 Belgrade Ave  
Charleston, SC 29407  
[Quoted text hidden]

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
Cc: "Kevin F. Staveley-OCarroll" <ocarrollk@missouri.edu>

Tue, Apr 2, 2019 at 11:00 AM

Great!! We will let you know a more specific time soon. We haven't quite planned everything out yet. Will be in touch!!

Sent from my iPhone  
[Quoted text hidden]

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>, "Kevin F. Staveley-OCarroll" <ocarrollk@missouri.edu>

Thu, Apr 4, 2019 at 5:56 PM  
RECORD 361

Hi Mike. Kevin and I could meet you Tuesday or Wednesday. Would you please let us know a time that would work well for you and the location?

All the best,

Julie

[Quoted text hidden]

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>  
Cc: "Kevin F. Staveley-O'Carroll" <ocarrollk@missouri.edu>

Mon, Apr 8, 2019 at 9:08 AM

Hi Mike. Tomorrow (Tuesday) is going to work the best for us. When is a good time for you and what is the address of the location of the car?

Sent from my iPhone

[Quoted text hidden]

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**Mike Fitzgerald** <mike.fitzgerald@fenixgarage.com>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Mon, Apr 8, 2019 at 10:04 AM

Tomorrow can work. Let me get back to you in just a bit about the exact time. Our address is 1947 Belgrade Ave Charleston, SC 29407. Its a blue metal building with an "available" sign on it, haha. We've been here 6 years but are in the process of moving to a MUCH needed larger shop this month, so I apologize for being all over. I may need to meet with an insurance broker about our new building in the morning, but Im thinking sometime between 11-2 would work if that works? I can be flexible though if not. -MF

Mike Fitzgerald  
Fenix Automotive LLC

mike.fitzgerald@fenixgarage.com

843-469-0503

1947 Belgrade Ave

Charleston, SC 29407

[Quoted text hidden]

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**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>

Mon, Apr 8, 2019 at 1:27 PM

Thanks Mike! Let us know and sometime between 11-2 should work.

Sent from my iPhone

[Quoted text hidden]

---

**Fenix Automotive** <mike.fitzgerald@fenixgarage.com>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Mon, Apr 8, 2019 at 5:06 PM

Hey, sorry been all over today. Want to just say sometime around 1pm? If it needs to be earlier that's fine too- just let me know. -MF

Sent from my iPhone

[Quoted text hidden]

---

**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>  
To: Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>

Mon, Apr 8, 2019 at 6:34 PM

RECORD 362

We will be there around 1:00. Thank you and see you tomorrow.

Sent from my iPhone

[Quoted text hidden]

---

**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>

Tue, Apr 9, 2019 at 7:45 AM

To: Fenix Automotive <mike.fitzgerald@fenixgarage.com>

Hi Mike. Would it be possible to meet at 2:30 or 3:00? If not, we'll keep 1:00.

All the best,

Julie

Sent from my iPhone

[Quoted text hidden]

---

**Fenix Automotive** <mike.fitzgerald@fenixgarage.com>

Tue, Apr 9, 2019 at 7:56 AM

To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Sure, that's no problem at all. Let me know if anything changes, but I'm flexible. -MF

Sent from my iPhone

[Quoted text hidden]

---

**Julie Staveley-O'Carroll** <julieafricandance@gmail.com>

Tue, Apr 9, 2019 at 7:59 AM

To: Fenix Automotive <mike.fitzgerald@fenixgarage.com>

Great!! We wanted to take advantage of the nice weather. We will see you then!

Sent from my iPhone

[Quoted text hidden]

---

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>

Wed, Oct 9, 2019 at 3:49 PM

To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

[Quoted text hidden]

---

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>

Wed, Oct 9, 2019 at 3:50 PM

To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

---

**From:** Mike Fitzgerald <mike.fitzgerald@fenixgarage.com>

**Sent:** Friday, September 28, 2018 8:03 AM

**To:** Julie Staveley-O'Carroll <julieafricandance@gmail.com>

**Cc:** Staveley-OCarroll, Kevin F. <ocarrollk@health.missouri.edu>

**Subject:** Re: Mercedes 280SL

Julie and Kevin-

RECORD 363

---

**Staveley-OCarroll, Kevin F.** <ocarrollk@health.missouri.edu>  
To: Julie Staveley-O'Carroll <julieafricandance@gmail.com>

Wed, Oct 9, 2019 at 3:50 PM

[Quoted text hidden]



Fenix Automotive LLC  
1947 Belgrade Ave  
Charleston SC 29412  
United States  
(843)469-0503  
mike.fitzgerald@fenixgarage.com  
<http://www.fenixgarage.com>

Tuesday, April 9, 2019

This letter is written as intent to commit to the completion of the restoration project for Kevin Staveley by September 1<sup>st</sup>, 2019. The restoration consists of a 1969 Mercedes 280SL which has been at our shop, Fenix Automotive since 2016. Due to a long period of slow progress, Fenix Automotive commits to have the project finished and ready for delivery by September 1<sup>st</sup>.

Budget and deposit constraints are as outlined in previous email correspondence. Fenix Automotive also commits to an end of week email update every week to cover all progress from previous week. Email will be sent by end of Sunday. Any departures from previously discussed budget or timeline will be made known weekly.

In Good Faith

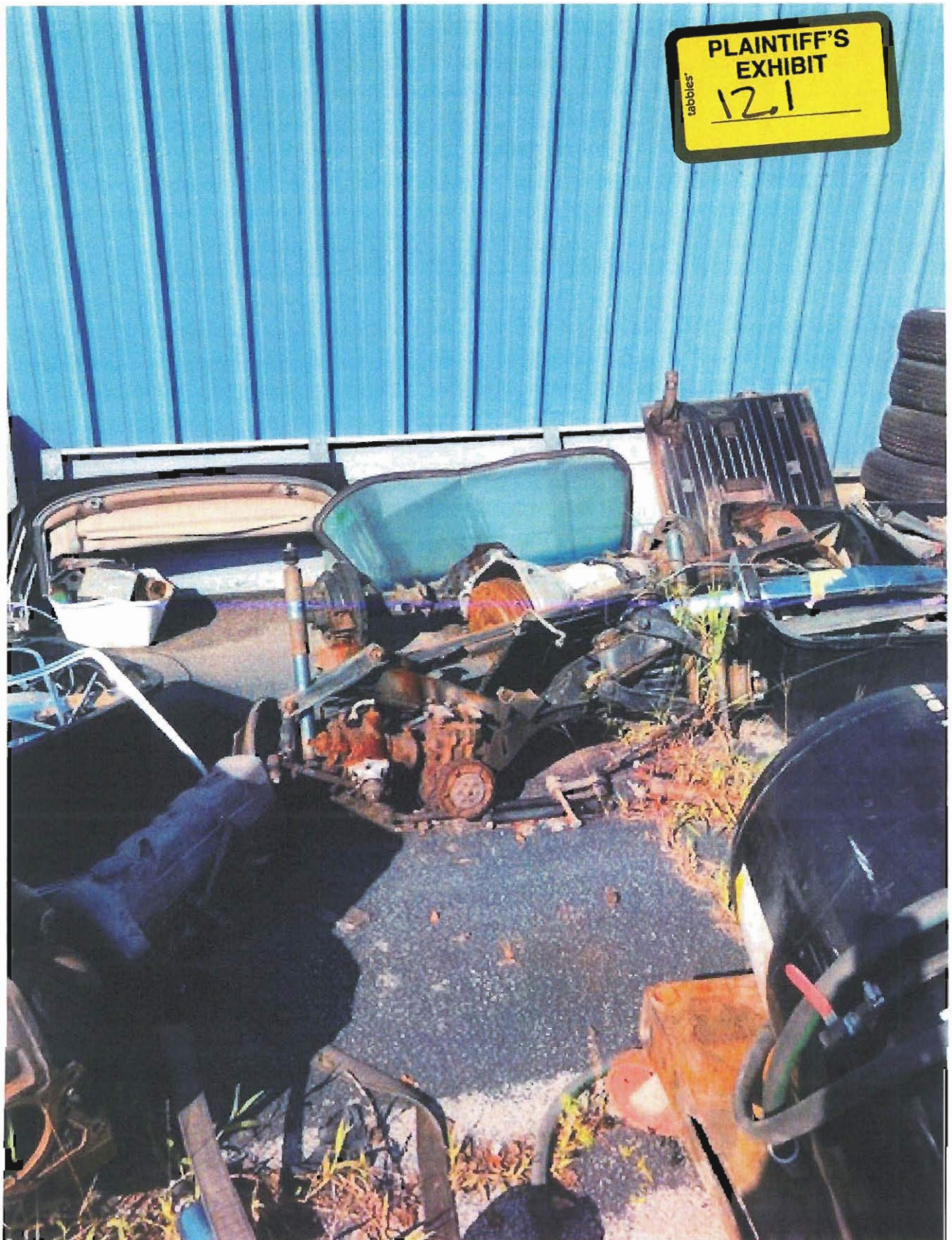
Mike Fitzgerald  
Owner  
Fenix Automotive, LLC

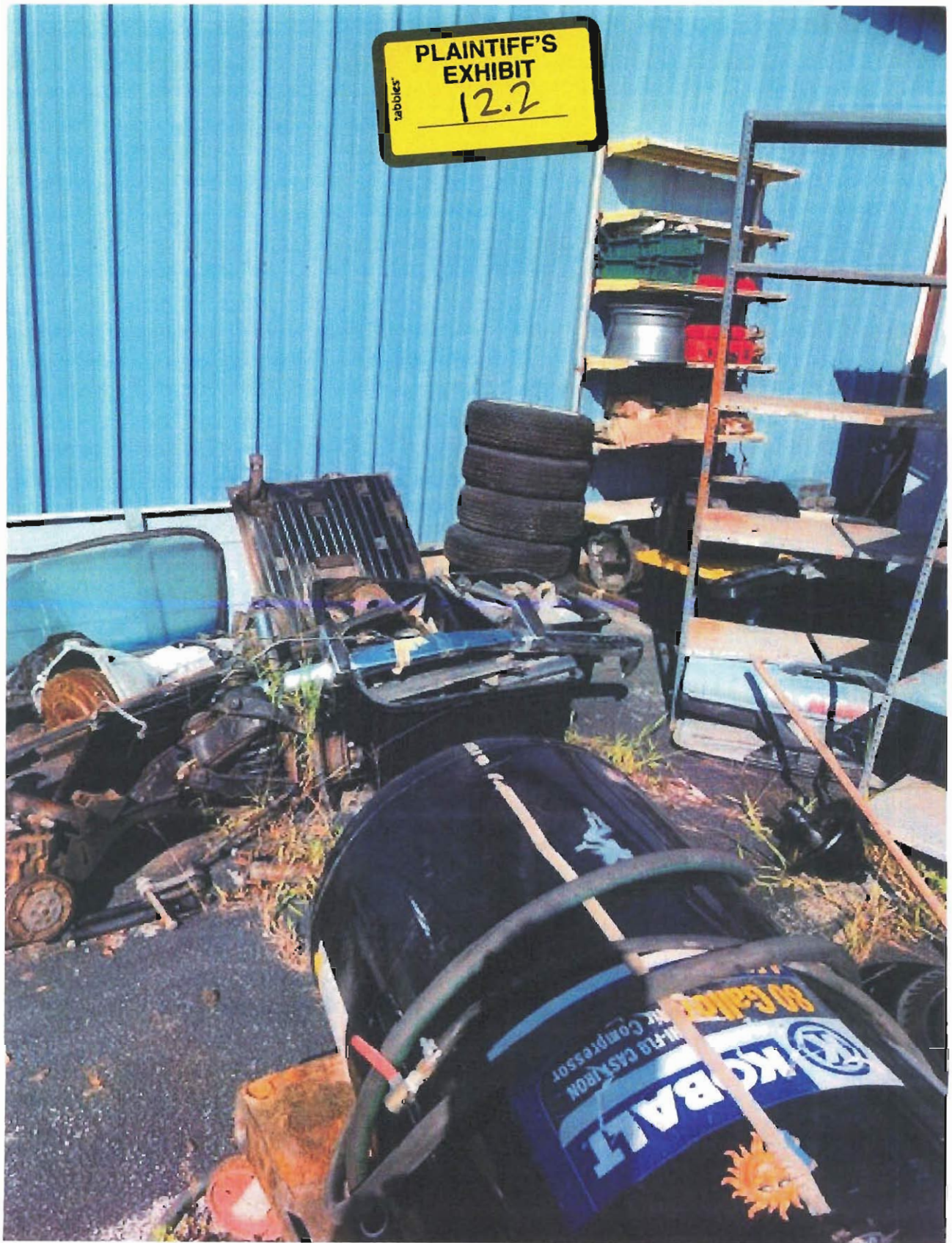


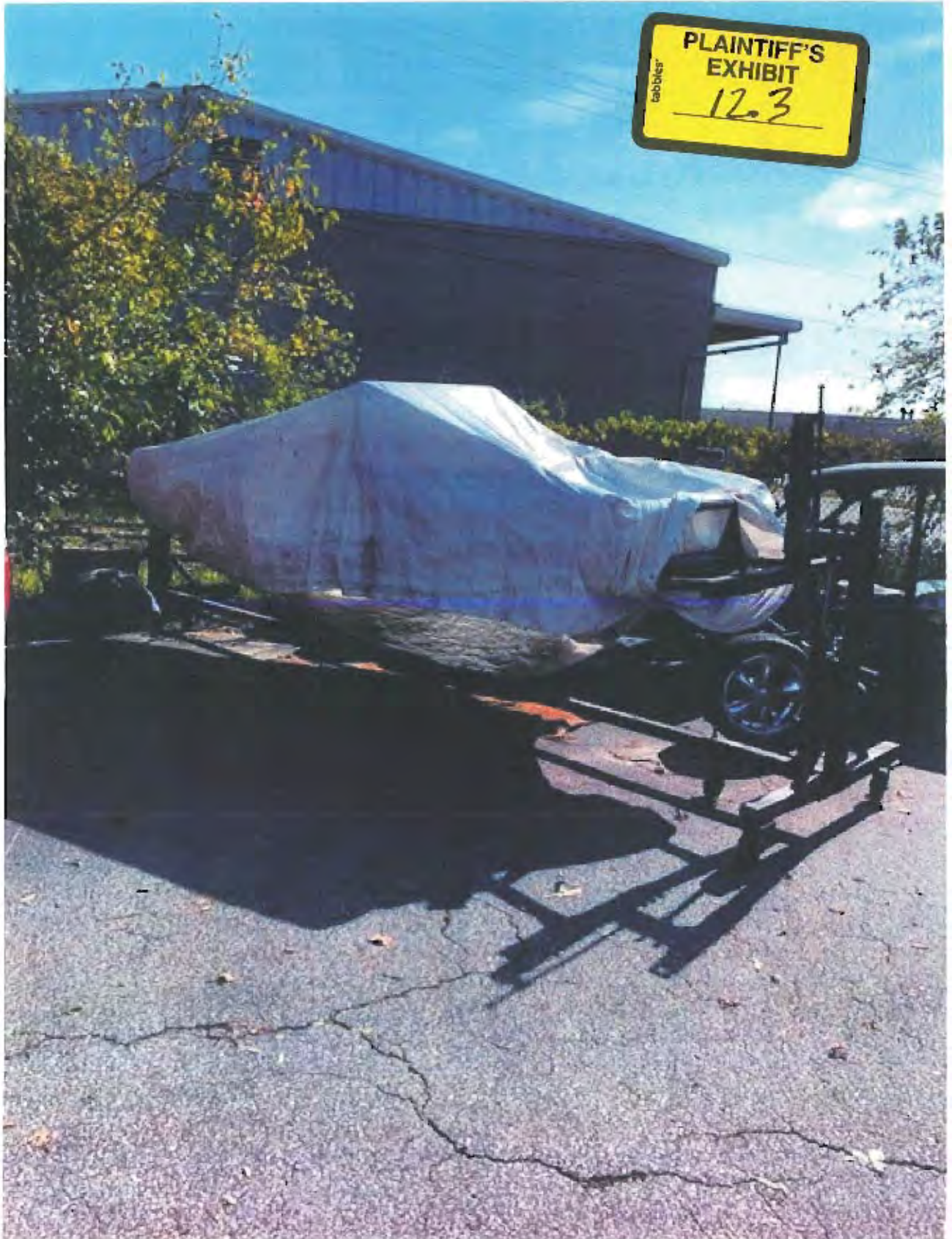
tabbles:  
**PLAINTIFF'S  
EXHIBIT**  
11.1



tabbles  
**PLAINTIFF'S  
EXHIBIT**  
11.2



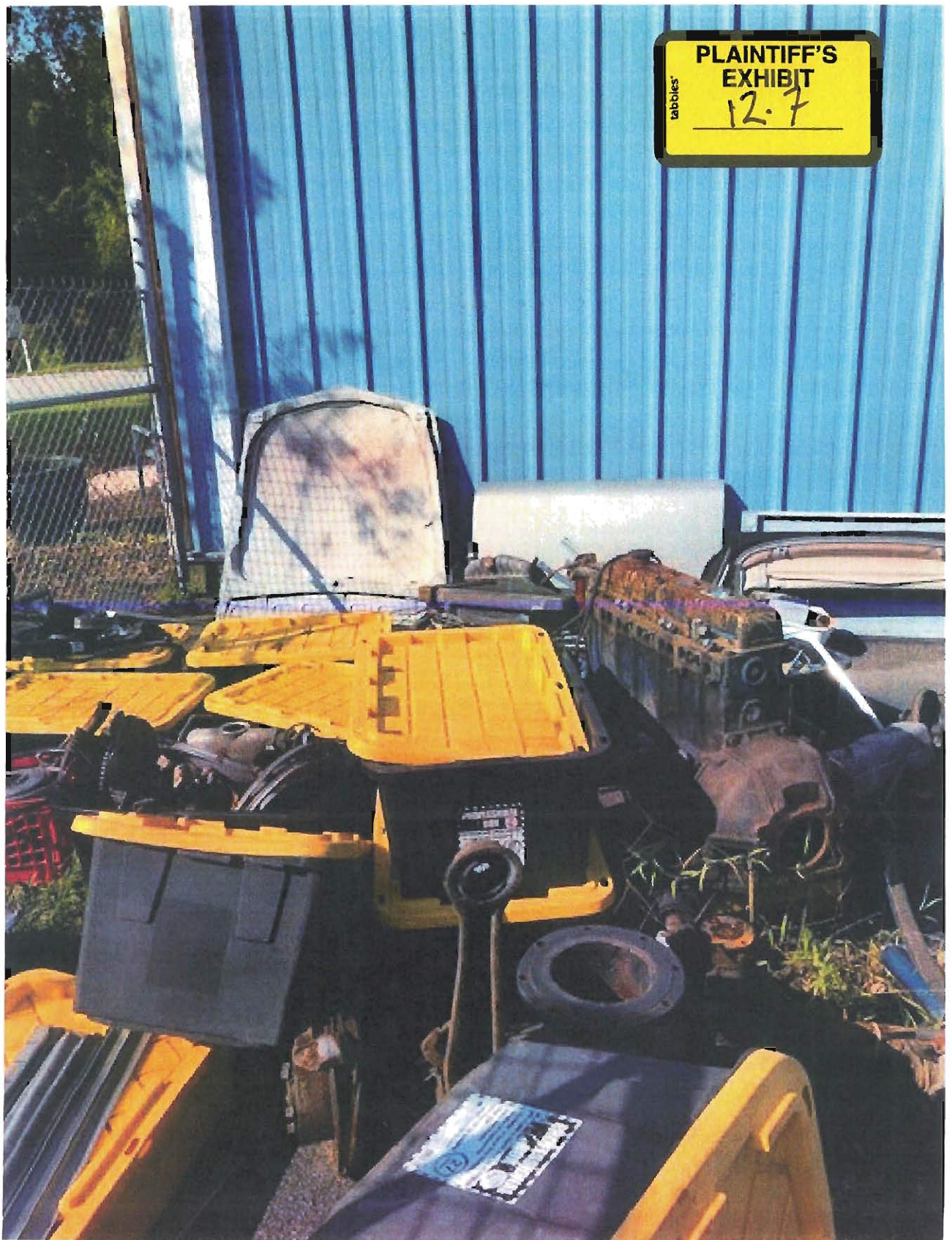












PLAINTIFF'S  
EXHIBIT  
12.7



**From:** CRLS - Damien [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)  
**Subject:** RE: 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive Llc - MMFDAM-Motion for Damages  
**Date:** September 17, 2021 at 2:06 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) [ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)  
**Cc:** Warren Wills [wwills@wwillslaw.com](mailto:wwills@wwillslaw.com), [arigney@charlestoncounty.org](mailto:arigney@charlestoncounty.org)



Mr. Secrist,

Attached is Plaintiff's revised proposed order with my changes, both in a clean copy PDF format and redlined WORD version. I have made changes in accordance with the testimony provided by the Plaintiff and his expert and the information contained in Plaintiff's Exhibits, also attached, which he submitted into evidence.

Have a nice weekend!



Damien A. Sobieraj, Esquire  
Cooper River Legal Services, LLC  
Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt Pleasant, SC 29465  
Office: (843) 881-2244 x222  
Mobile: (843) 408-6555  
Facsimile: (843) 849-0209  
Email: [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)

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---

**From:** Warren Wills [<mailto:wwills@wwillslaw.com>]  
**Sent:** Friday, September 17, 2021 11:52 AM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** CRLS - Damien <[damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)>;  
[arigney@charlestoncounty.org](mailto:arigney@charlestoncounty.org)  
**Subject:** Re: 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive Llc - MMFDAM-Motion for Damages

Mr. Secrist,

In reviewing the proposed order I submitted to the Court and Mr. Sobieraj last week for his review and response, I found a mistake I made with regard to part of the proposed award. I

sent a revised proposed order to Mr. Sobieraj with the correction, and I am also attaching that revise proposed order here (in .docx and .pdf, as my Mac version of Word creates some formatting that does not appear the same on other versions of Word). I realize this correction to the proposed order is on the late side, and to the extent it is not objectionable on that basis, we would certainly not be opposed to Mr. Sobieraj being allowed a some extra time to respond, if he needs it, in order to evaluate and consider the proposed correction. Thank you, Mr. Secrist.




Proposed Order  
of Jud...d.docx



Proposed Order  
of Jud...py.pdf



Plaintiff's  
Exhibits.pdf

**From:** Damien Sobieraj damien@cooperriverlegalservices.com   
**Subject:** 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive LLC - Motion to Alter or Amend Judgment  
**Date:** October 14, 2021 at 3:33 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) ryounglc@sccourts.org  
**Cc:** Warren Wills wwills@wwillslaw.com, arigney@charlestoncounty.org

DS

Mr. Secrist,

I just e-filed a Motion to Alter or Amend Judgment because I made an error in the calculation of the damages for the Breach of Contract cause of action and, therefore, the total amount of damages awarded. Attached is a copy of my motion, and for your convenience, I have also attached a WORD version of the proposed Amended Order and amended Form 4 included in my motion.

Thanks,



Damien A. Sobieraj, Esquire  
Cooper River Legal Services, LLC  
Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt Pleasant, SC 29465  
Office: (843) 881-2244  
Mobile: (843) 408-6555  
Facsimile: (843) 849-0209  
Email: [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)

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CRLS - Motion  
to Alter...-14.pdf



Amended Order  
of Jud...4.docx



Proposed Form  
4 by C...4.docx

**From:** Young, Roger Law Clerk (Michael Secrist) ryounglc@sccourts.org   
**Subject:** RE: 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive LLC - Motion to Alter or Amend Judgment  
**Date:** October 14, 2021 at 3:39 PM  
**To:** Damien Sobieraj damien@cooperriverlegalservices.com  
**Cc:** Warren Wills wwills@wwillslaw.com, arigney@charlestoncounty.org



Mr. Wills,

Do you have any objections to Mr. Sobieraj's calculations and proposed order to amend?

**Michael E. Secrist**

Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

---

**From:** Damien Sobieraj <damien@cooperriverlegalservices.com>  
**Sent:** Thursday, October 14, 2021 3:34 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>  
**Cc:** 'Warren Wills' <wwills@wwillslaw.com>; arigney@charlestoncounty.org  
**Subject:** 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive LLC - Motion to Alter or Amend Judgment

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Mr. Secrist,

I just e-filed a Motion to Alter or Amend Judgment because I made an error in the calculation of the damages for the Breach of Contract cause of action and, therefore, the total amount of damages awarded. Attached is a copy of my motion, and for your convenience, I have also attached a WORD version of the proposed Amended Order and amended Form 4 included in my motion.

Thanks,



Damien A. Sobieraj, Esquire  
Cooper River Legal Services, LLC  
Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt Pleasant, SC 29465  
Office: (843) 881-2244  
Mobile: (843) 408-6555  
Facsimile: (843) 849-0209  
Email: [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)

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**From:** W. Westbrook Wills III [wwills@wwillslaw.com](mailto:wwills@wwillslaw.com)  
**Subject:** Re: 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive LLC - Motion to Alter or Amend Judgment  
**Date:** October 14, 2021 at 3:53 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) [ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)  
**Cc:** Damien Sobieraj [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com), [arigney@charlestoncounty.org](mailto:arigney@charlestoncounty.org)



Mr. Secrist,

I have just read over the pleading yet. I have no objection to his filing it, although I don't agree with the calculation, and I submit that the figure he states for the current value of the vehicle is not correct according to the testimony of our expert. There are also other figures that went into the damages calculation that we believe are inconsistent with the expert's testimony. As such, we, as well, have a motion to alter, amend, or reconsider we would like to file. Would you be able to let me know who was the Court Reporter for the damages hearing? I am going to need to order a transcript. Thanks very much.

W. Westbrook Wills III  
The Law Office of W. Westbrook Wills III  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
Fax (866) 922-8596

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On Oct 14, 2021, at 3:39 PM, Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)> wrote:

Mr. Wills,  
Do you have any objections to Mr. Sobieraj's calculations and proposed order to amend?

**Michael E. Secrist**  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

---

**From:** Damien Sobieraj <[damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)>  
**Sent:** Thursday, October 14, 2021 3:34 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** 'Warren Wills' <[wwills@wwillslaw.com](mailto:wwills@wwillslaw.com)>; [arigney@charlestoncounty.org](mailto:arigney@charlestoncounty.org)  
**Subject:** 2019CP1005392 -Kevin Staveley O'Carroll VS Fenix Automotive LLC - Motion to Alter or Amend Judgment

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Secrist,

I just e-filed a Motion to Alter or Amend Judgment because I made an error in the calculation of the damages for the Breach of Contract cause of action and, therefore, the total amount of damages awarded. Attached is a copy of my motion, and for your convenience, I have also attached a WORD version of the proposed Amended Order

convenience, I have also attached a WORD version of the proposed Amended Order and amended Form 4 included in my motion.

Thanks,

<image001.jpg>

Damien A. Sobieraj, Esquire

Cooper River Legal Services, LLC

Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464

Mail: P.O. Box 2439, Mt Pleasant, SC 29465

Office: (843) 881-2244

Mobile: (843) 408-6555

Facsimile: (843) 849-0209

Email: [damien@cooperriverlegalservices.com](mailto:damien@cooperriverlegalservices.com)

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# The South Carolina Court of Appeals

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FAX: (803) 734-1839  
www.sccourts.org

February 17, 2022

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

## REMITTITUR

Re: Kevin Staveley-O'Carroll v. Fenix Automotive, LLC  
Lower Court Case No. 2019CP1005392  
Appellate Case No. 2021-001351

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen*

CLERK

Enclosure

cc: Warren W. Wills, III, Esquire  
Damien Andreas Sobieraj, Esquire

RECORD 383

THE LAW OFFICE OF  
W. WESTBROOK WILLS III

CIVIL TRIAL LAWYER  
P.O. BOX 822  
FOLLY BEACH, SC 29439

TELEPHONE: (843) 805-6300  
FACSIMILE: (866) 922-8596  
wwills@wwillslaw.com

W. WESTBROOK WILLS III  
*Admitted in Georgia & South Carolina*

November 10, 2022

**VIA U.S. MAIL**

Hon. Roger M. Young, Sr.  
Circuit Court Judge  
Charleston County Judicial Center  
100 Broad Street, Suite 368  
Charleston, SC 29401

**RE: *Kevin Staveley O'Carroll v. Fenix Automotive, LLC*; Civil Action No.:  
2019CP1005392: October 6, 2021 Order of Judgement for Damages and  
Plaintiff and Defendant's Motions to Alter or Amend.**

Dear Judge Young:

I represent the Plaintiff in the above-referenced action, which involved a contract for the restoration of Plaintiff's classic Mercedes by Defendant and negligence by the Defendant which Plaintiff alleged resulted in the total loss of the vehicle's value.

Back in September of 2021, after we obtained a default judgment against the Defendant, Your Honor presided over a damages hearing, via Virtual Courtroom. During the damages hearing, the Court heard testimony from the Plaintiff and Plaintiff's expert witness with regard to the relevant values, damages, and extent of Plaintiff's loss. Following the hearing, Your Honor asked each party to submit proposed orders, to include proposed applicable measures and calculation of damages based on the evidence and testimony presented at the hearing. The proposed orders each party thereafter submitted to the Court contained differing and inconsistent damages calculations. These damage calculation differences were due, in large part, to respective counsel's differing recollection of the testimony of Plaintiff expert as to the prior, present, and expected value of the Mercedes, or as reflected in their notes from the hearing.

On October 6, 2021, the Court entered its Order of Judgment for Damages ("Order") finding for Plaintiff in the total amount of \$65,239. *A copy of the Court's October 6, 2021 Order of Judgment for Damages is attached for reference as Annex "A."*

On October 14, 2021, counsel for Defendant filed a motion to alter or amend judgment alleging as a basis that 1) he had inadvertently included an incorrect amount of \$2,500 for the current value of the vehicle in the formula for the Breach of Contract damages on page 8 of the Order; 2) the correct amount for the current value of the car is \$10,000 as stated on page 5 of the Order in Paragraph 17 of the Finding of Facts; and 3) counsel's error caused a miscalculation in the damages set forth on pages 8 and 9 of the Order for the Breach of Contract cause of action. Therefore, Defendant argues the total damages awarded on page 16 of the Order in the Summary of Judgment should be reduced by an additional \$7,500.

On October 15, 2021, counsel for Plaintiff filed his Motion to Alter, Amend, and Reconsider alleging as a basis that the Court, in making its award of damages, based some or all of its calculations on incorrect amounts supplied by Defendant, which are substantially inconsistent with the uncontested testimony of Plaintiff's expert during the damages hearing. Specifically, at paragraph 6 of the Order, the Court stated as part of its Find of Facts that "[a]t the time Plaintiff delivered the Mercedes to Defendant, the vehicle was in poor condition and had a value of between \$20,000 and \$25,000, based on the testimony of Mr. Reinert . . ." At paragraph 17 of the Order the Court made the finding that "[b]ased on the uncontested testimony of Mr. Reinert, the Court finds the Mercedes would have had a value of between \$42,000 and \$120,000 had the Defendant restored it as agreed in its contract with Plaintiff. Instead, in its present condition and state, the Mercedes currently has a value of \$10,000."

Plaintiff believed, and submitted in his proposed order of judgment, that Mr. Reinert's actual testimony was that the Mercedes had a value of between \$41,000 and \$45,000 at the time Plaintiff delivered it to Defendant and would have had a value of between \$115,000 and \$120,000 had it been restored as agreed. Finally, Plaintiff submitted Mr. Reinert testified the Mercedes currently has a value of \$2,500 in its present condition.

Around the same date in October of 2021, counsel for Plaintiff order a copy of the relevant portion of the damages hearing transcript containing Mr. Reinert's testimony ("Transcript") with the intention of submitting it with a memorandum of law in support of his Rule 59(e) motion. *A copy of the transcript of Axel Reinert's expert witness testimony from the August 25, 2021 damages hearing is attached for reference as Annex "B."*

Reference to the Transcript clears up any doubt as to the values to which Mr. Reinert testified, which are as follows:

As to the value of the Mercedes when Plaintiff delivered it to Defendant to perform the restoration work, Mr. Reinert testified in his expert opinion the Mercedes had a value of approximately \$42,000 See Transcript at 9:20-11:16.

As to the value the Mercedes would have had had the contract restorations been performed, Mr. Reinert testified in his opinion the Mercedes would have been worth \$115,000. See Transcript at 17:1-25.

As to the actual present value of the Mercedes, Mr. Reinert testified in his opinion the Mercedes, as it sits today, is worth approximately \$2,500. See Transcript at 42:14-21.

On November 2, 2022, prior to Plaintiff receiving the Transcript, the Court entered an order denying Plaintiff's motion, without briefing or a hearing. The Court's Order denying reconsideration pertained to Plaintiff's motion only, and it does not appear the Court ever entered an order ruling on Defendant's Rule 59(e) motion.

On November 17, 2021, Plaintiff filed his Notice of Appeal on the same grounds as those set out in his motion to alter amend and reconsider. Thereafter, on motion of the Defendant/Respondent, the Court of Appeals dismissed Plaintiff's appeal, without prejudice, on the basis that Defendant's Rule 59(e) motion is still pending before the trial court. *A copy of the Court of Appeals' January 28, 2022 Order dismissing the appeal is attached for reference as Annex "C."*

This letter is to bring the issue to the attention of the Court, and to request it enter an order with its ruling on Defendant's October 14, 2021 Rule 59(e) motion. Furthermore, because both Plaintiff and Defendant's motions to alter or amend relate, in part, to the values to which Mr. Reinert actually testified at the hearing, we are hopeful the Court can simply refer to the enclosed transcript excerpt of the relevant portion of his testimony and correct the Order of Judgment either in ruling on Defendant's pending Rule 59(e) motion, or on its own initiative pursuant to Rule 60(a).

Utilizing the same measures of damage and method of calculating as the Court used in the Order of Judgment, but substituting in the corrected figures, as testified to by Mr. Reinert, the damages for Plaintiff's breach of contract and negligence causes of actions should be calculated as follows:

Breach of Contract (Order, p. 8): (\$115,000 - \$2,500) – (\$65,000 - \$42,000) totaling **\$89,500** (as opposed to \$40,450); and

Negligence (Order, p. 11): (\$42,000 - \$2,500) totaling **\$39,500** (as opposed to \$21,125).

Applying those corrected figures within the overall calculation of damages, the total amount of the judgment should be **\$113,789** (as opposed to \$65,239).

Thank you, Judge Young, for your consideration of this matter.

Very truly yours,



W. Westbrook Wills III

Annexes (as stated)

cc: Kevin Staveley O'Carroll  
Damien Sobierja, Esq.

# ANNEX

## A

|                           |   |                                   |
|---------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS      |
|                           | ) | FOR THE NINTH JUDICIAL CIRCUIT    |
| COUNTY OF CHARLESTON      | ) |                                   |
|                           | ) | Case No.: <u>2019-CP-10-05392</u> |
| KEVIN STAVELEY-O'CARROLL, | ) |                                   |
|                           | ) |                                   |
| Plaintiff,                | ) | ORDER                             |
| -vs-                      | ) | OF                                |
|                           | ) | JUDGMENT FOR DAMAGES              |
| FENIX AUTOMOTIVE, LLC,    | ) |                                   |
|                           | ) |                                   |
| Defendant.                | ) |                                   |
| _____                     | ) |                                   |

Plaintiff Kevin Staveley-O'Carroll ("Plaintiff" or "Staveley-O'Carroll") brought this action against Defendant Fenix Automotive, LLC ("Defendant" or "Fenix") on October 21, 2019 alleging causes of action for breach of contract, negligence, conversion, and unjust enrichment. The record reflects that Plaintiff properly served Defendant with a copy of the Summons and Complaint on November 13, 2019. On January 28, 2020, after Defendant failed to file an answer or otherwise respond to the Complaint, Plaintiff filed and Affidavit of Default and Motion for Default Judgment, which the Court granted its Order dated January 29, 2020. Subsequently, Plaintiff filed his Motion for Damages and requested for a damages hearing.

On August 25, 2021, the parties having been duly and properly notified, the Court held a hearing on the issue of damages via WebEx. Present at the damages hearing via video/audio were Plaintiff appearing with his counsel W. Westbrook Wills III, Esq. and Axel Reinert ("Mr. Reinert"), his expert witness in automotive restoration. Damien A. Sobieraj, Esq. appeared on behalf of Defendant. Plaintiff's expert witness was duly qualified, without objection, to give expert testimony as to issues related to the damages in the matter. Plaintiff and Mr. Reinert's testimony was taken, evidence was received, and the entire record in the case was considered by

the Court.<sup>1</sup> The Court makes the following Findings of Fact and Conclusions of Law as required by SCRCPC, Rule 52. Any Finding of Fact which is more appropriately characterized as a Conclusion of Law shall be treated as such, and vice-versa.

### FINDINGS OF FACT

Based on Defendant's admissions by default of the allegations of Plaintiff's Complaint, and having considered the testimony and evidence presented at the damages hearing, Plaintiff has established the following facts by a preponderance of the evidence, unless otherwise specified.

1. Plaintiff is an individual residing in Columbia, Missouri.
2. Defendant is a South Carolina limited liability company engaged in the business of automotive restoration.
3. The parties are properly subject to the jurisdiction of the Court, and the Court has subject matter over the matters raised in the pleadings.
4. Defendant was properly served with a copy of Plaintiff's Summons and Complaint, which it failed to answer or otherwise respond, resulting in the entry of default judgment against it.
5. In 2015, Plaintiff entered into a contract with Defendant to restore his classic 1969 Mercedes 280 SL ("the Mercedes"), which he delivered into Defendant's possession and care at Defendant's place of business for that purpose.
6. At the time Plaintiff delivered the Mercedes to Defendant, the vehicle was in poor

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<sup>1</sup> As Defendant was in default and default judgment having been entered against it, the Court took testimony and received evidence from and on behalf of Plaintiff only, and limited Defendant's participation in the hearing to cross-examination and objecting to evidence by its counsel. See Howard v. Holiday, Inc. 271 S.C. 238, 246 S.E.2d 880 (1978)(limiting a defendant's participation in a post-default hearing to cross-examination and objection to plaintiff's evidence); see also Limehouse v. Hulsey, 404 S.C. 93, 116, S.E.2d 566, 579 (S.C. 2013)(reaffirming Howard).

condition and had a value of between \$20,000 and \$25,000, based on the testimony of Mr. Reinert, Mr. Reinart testified that (i) he based his opinion regarding the value of the Mercedes on his observation of the Mercedes only after Defendant had disassembled the Mercedes and had already performed work on the vehicle, (ii) he did not personally observe the condition of the Mercedes when Plaintiff delivered the vehicle to Defendant, (iii) he did not review any photographs showing the condition of the Mercedes prior to Defendant disassembling the Mercedes and beginning work on the vehicle. Furthermore, Mr. Reinert did not identify any industry resources used by him to assist him with his valuation of the Mercedes as delivered to Defendant.

7. Plaintiff and Defendant agreed Defendant would restore the Mercedes to a “daily driver” condition, and that Defendant would provide Plaintiff a detailed estimate of the total cost and time required to perform the restoration project after completely disassembling the Mercedes. Defendant informed Plaintiff in their conversations and emails that the total cost to restore the Mercedes may increase as the project progressed and Defendant determined what original parts could be reused versus rebuilt or replaced.

8. Between September of 2015 and March of 2016, Defendant performed initial work on the Mercedes including completely disassembling it and preparing the body for anticipated metalwork and submitted invoices to Plaintiff for such work totaling \$5,825.00, which Plaintiff paid in full.

9. 22 months later, in December of 2017, Defendant provided Plaintiff a detailed estimate for the remainder of the restoration of the Mercedes, which it represented would cost approximately \$60,000, and would take approximately six months.

10. To keep the total cost of the remainder of the restoration process as close to the \$60,000

estimate as possible, Plaintiff and Defendant specifically agreed that, wherever possible, Defendant would make use of the Mercedes's existing parts and components.

11. At Defendant's request, Plaintiff provided it a \$20,000 deposit, which Defendant specifically represented it would maintain, in trust, in a separate account, and against which it would bill for restoration work on the Mercedes going forward. Defendant also represented to Plaintiff that any unused portion of the \$20,000 would be returned to Plaintiff upon his request.

12. The evidence and testimony before the Court demonstrates, and the Court finds, that after Plaintiff provided the \$20,000 deposit, Defendant failed to complete the restoration of the Mercedes, as agreed, and it remains to this day in an unrestored and completely disassembled state, in Defendant's possession.

13. Moreover, the evidence, testimony, and Defendant's admissions establish that after disassembling the Mercedes, Defendant stored a great many of its parts and components outdoors on the ground or in plastic bins, exposed to the elements and weather, where they have remained since April 2019.

14. From the photographs submitted in evidence and personal observation, Mr. Reinert identified many of the parts and components of the Mercedes, including the vehicle's motor, windshield, suspension, drivetrain, exterior finishes and chrome, and an array of interior components, which he testified were in a severe degradation condition or ruined as a direct result of Defendant leaving them outdoors in the weather over a a few years, but Mr. Reinart also conceded he did not have firsthand knowledge of the condition of these parts when the Plaintiff delivered the Mercedes to Defendant. Mr. Reinert further testified that, if many of those parts and components were in good condition when the Mercedes was delivered to Defendant, then these parts could have been reused in the restoration of the Mercedes. However, due to their present

condition, Mr. Reinert opined many of those parts and components may no longer be usable for the restoration project, or may now require very extensive refurbishment.

15. Mr. Reinert testified that, based on Plaintiff and Defendant's agreement, the total actual cost of the restoration of the Mercedes at the time of the parties' original agreement would reasonably have been between \$60,000 and \$70,000 dollars. However, Mr. Reinert believed that because of the degradation to many of the parts of the Mercedes due to Defendant failure to properly protect them from damage, the current cost to restore the vehicle is likely to be double that figure.

16. Plaintiff alleged, Mr. Reinert testified, and the Court finds, that Defendant knew or should have known that storing the subject parts and components of Plaintiff's Mercedes outdoors, exposed to the elements over a period of years could result in their degradation or ruination. Mr. Reinert testified that by doing so, Defendant deviated from the standards of care, professionalism, and best practices for businesses in the automotive restoration industry.

17. Based on the uncontroverted testimony of Mr. Reinert, the Court finds the Mercedes would have had a value of between \$42,000 and \$120,000 had Defendant restored it as agreed in its contract with Plaintiff. Instead, in its present condition and state, the Mercedes currently has a value of \$10,000.

18. In September of 2019, as Defendant had still failed to complete the restoration of the Mercedes, Plaintiff made a demand on Defendant for the return of his \$20,000 deposit, which Defendant also failed to return to him.

#### **CONCLUSIONS OF LAW**

Plaintiff filed his action against Defendant alleging causes of action for breach of contract, negligence, conversion, and unjust enrichment for which he has prayed for actual,

consequential, special, and punitive damages as proven at trial, together with attorney's fees and costs of the action. The Defendant failed to answer or otherwise respond to Plaintiff's Complaint, and default judgment was entered against it.

A defendant in default admits liability but not the damages as set forth in the prayer for relief. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203 723 S.E.2d 597, 603 (S.C. App. 2012); see also Renney v. Dobbs House, Inc., 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981). The amount of damages in a default action must be proved by the preponderance of the evidence. Id.; see Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct. App.1988) ("A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered."). As to punitive or exemplary damages, the Plaintiff has the burden of proving by clear and convincing evidence the Defendant's demonstrated misconduct was willful, wanton, or with reckless disregard for the Plaintiff's rights. See Mishoe v. Qhg of Lake City, Inc., 621 S.E.2d 363, 366, 366 S.C. 195 (S.C. 2005). "A conscious failure to exercise due care constitutes willfulness." Id.

Based on the pleadings, admissions, and the uncontroverted evidence and testimony presented by Plaintiff and his expert witness at the damages hearing, the Court finds and concludes as follows:

#### **Breach of Contract**

Plaintiff and Defendant entered into a valid contract for the restoration of Plaintiff's Mercedes, supported by consideration, and creating rights and obligations between the parties, under which Defendant agreed to restore the vehicle to a "daily driver" condition, and Plaintiff agreed to pay Defendant for parts and labor associated with the restoration. Pursuant to the parties' contract, Defendant invoiced Plaintiff for the initial restoration work it performed in the

amounts totaling \$5,825.00, which Plaintiff paid in full. Thereafter, Plaintiff provided Defendant a \$20,000 deposit towards the remainder of the vehicle restoration, which Defendant was to hold in a separate account, as agreed, however, Defendant did complete the restoration of the Mercedes. Furthermore, after Plaintiff discovered Defendant had not performed its obligations, as promised, and demanded the return of his \$20,000 deposit, as agreed, Defendant failed to deliver it. The Court finds Defendant has breached its contract with Plaintiff entitling Plaintiff to contract damages.

Damages in a breach of contract action are to put the non-breaching party in the position he or she would have been in had the breach not occurred and the contract were performed. See Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67(Ct. App. 1996)(purpose of damages for breach of contract is to put plaintiff in as good a position as he or she would have been if the contract had been performed). Compensation for lost profits or value is recoverable as damage in a breach of contract action where the estimate of such lost profit or value is not based wholly on speculation and conjecture. Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942); South Carolina Federal Savings Bank v. Thorton-Crosby Development Co., 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990); Global Protection Corp. v Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998)(absolute certainty of data on which lost profits are estimated not required; must be such reasonable certainty that damages are not based wholly on speculation and conjecture and certain standard or fixed method by which profits or value may be estimated and determined with a fair degree of accuracy is sufficient).

The proper measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach. Tomlinson v. Mixon, 626 S.E.2d 43, 50, 367 S.C. 467 (S.C. App. 2006); South Carolina Fin. Corp. v. West Side Fin. Co., 236 S.C. 109, 113 S.E.2d 329

(1960). “In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed.” Id.; Collins Entm't., Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005).

Here, therefore, as damages for Defendant’s breach of contract, Plaintiff is entitled to the difference between the fair market value of the Mercedes as restored to the agreed upon condition and its present value, minus the difference between the cost of the restoration work and the amount the Plaintiff already paid toward that cost. According to the uncontroverted testimony of Mr. Reinert, the fair market value for the Mercedes as restored to the agreed “daily driver” condition would have been between \$42,000 and \$120,000, the average of which amounts to \$81,000. Mr. Reinert did not identify any industry resources from which he used information to formulate his estimated fair market value of the Mercedes, relying upon general internet searches for sales listings of similar Mercedes. He further testified that based on the parties agreement at the time of its making, the reasonable cost of the labor and parts would have been between \$60,000 and \$70,000 dollars, the average of which amounts to \$65,000. Plaintiff also paid Defendant a total of \$25,825 towards the total cost of the restoration. Plaintiff’s actual damage resulting from Defendant’s breach of contract can, therefore, be expressed as  $(\$81,000 - \$2,500) - (\$65,000 - \$25,825)$  and totals \$39,325.

Under the foregoing measure, Plaintiff is also entitled to the return of the vehicle in its present state. Mr. Reinert testified that shipping of the vehicle in its present disassembled state to a Charleston location will cost a fee of \$525 which includes tarping, and two hours of loading and unloading, plus \$100 dollars per hour for additional time. Mr. Reinert testified that in his opinion, loading and unloading the Mercedes in its disassembled condition would likely take

several hours. The Court finds Plaintiff is entitled to consequential damages associated with shipping the Mercedes to another location in Charleston in the amount of \$1,125.

Plaintiff is entitled to actual and consequential damages as a result of Defendant's breach of contract in the total amount of \$40,450, including the cost to return the vehicle, plus the costs and expenses of the action.

### Negligence

Plaintiff's contract with Defendant for the restoration of the Mercedes and his delivery of the vehicle to Defendant for that purpose created a bailment. "A bailment is created by the delivery of personal property by one person to another in trust for a specific purpose, pursuant to an express or implied contract to fulfill that trust." Hadfield v. Gilchrist, 538 S.E.2d 268, 343 S.C. 88, 95 (S.C. App. 2000); Home Indent Co. v. Harleysville Mut. Ins. Co., 252 S.C. 452, 460, 166 S.E.2d 819, 824 (1969)("Bailment has been defined as the delivery of a chattel for some express or particular purpose upon a contract, express or implied, that, after the purpose has been fulfilled, then the chattel shall be redelivered to the bailor, or otherwise dealt with according to his directions.").

The bailment contract between Plaintiff and Defendant created a duty in Defendant to exercise due care in safekeeping of Plaintiff's Mercedes, see Harris v. Burnside, 261 S.C. 190, 199 S.E. 2d 65, 67-8 (1973)(citing Fortner v. Carnes, 258 S.C. 455, 189 S.E.2d 24), and in its repair, see id. (citing Edwards v. Charleston Sheet Metal, 253 S.C. 537, 172 S.E.2d 120). Breach of the duty of care arising under a bailment contract constitutes a tort. Id. at 195, 68.

In action involving a bailment alleging the tort of negligence, the bailor is entitled to be compensated for all losses that are the natural consequence and proximate result of the bailee's negligence. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 180, 463 S.E.2d 636 (S.C. App.

1995)(citing 8 Am.Jur.2d Bailments § 346 (1980)). Damages are proximately caused if they are the foreseeable result of the defendant's tortious act. Id. (citing Young v. Tide Craft, Inc., 270 S.C. 453, 242 S.E.2d 671 (1978)). Further, the liability of a bailee under a bailment for mutual benefit, as we have here, arises upon a showing that (1) the goods were delivered to the bailee in good condition, (2) they were lost or returned in a damaged condition, and (3) the loss or damage to the goods was due to the failure of the bailee to exercise ordinary care in the safekeeping of the property. Hadfield v. Gilchrest, 343 S.C. 88 at 99. Importantly, the burden is on the bailee, and not on the bailor, to demonstrate the bailee used ordinary care in storing and safekeeping the property. Id.

Punitive damages are recoverable for negligence, which is so reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness. Solanki v. Wal-Mart Store # 2806, 410 S.C. 229, 237, 763 S.E.2d 615 (S.C. App. 2014)(referencing Bell v. Atl. Coast Line R. Co., 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943)). “If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care.” Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

In the present action, pursuant to the parties’ agreement, Plaintiff delivered his Mercedes into the Defendant’s possession which created a bailment for mutual benefit. As such, Defendant (bailee) owed Plaintiff (bailor) a duty of care both in the safekeeping and in the repair of Plaintiff’s vehicle. Based on the admitted allegations in Plaintiff’s Complaint and the evidence and testimony of Plaintiff and Mr. Reinert at the damages hearing, the Court finds the Defendant failed to exercise due care in restoring the Plaintiff’s vehicle and in safekeeping its parts and components by storing many of them outdoors in such a manner as to allow them to be

directly exposed to the weather over a period of a few years. Such failure to exercise due care by Defendant proximately resulted in the severe degradation or ruination of some parts and components of Plaintiff's Mercedes, which not only reduced its value from the time Plaintiff delivered it to the Defendant, but also may have doubled the cost to restore the vehicle to the "daily driver" condition.

Furthermore, based on the testimony of the Plaintiff and Mr. Reinert and the photographic evidence entered into the record, the Court finds by a standard of clear and convincing evidence, that Defendant knew or should have know that storing the parts and components of Plaintiff's Mercedes on the outdoors on the ground or in bins and exposed to the weather and elements over a period of a few years would result in the very damage that was ultimately occasioned by such failure to exercise even slight care in safeguarding them. Mr. Reinert testified that Defendant's actions constituted an absolute departure from industry standards and best practices, that Defendant or it's agents or employees were conscious of such departure and the damage that would result, and that such acts or omissions amounted to a reckless disregard for Plaintiff's property. The Court finds such damages were foreseeable and avoidable by Defendant.

As stated above, based on the evidence and testimony, at the time Plaintiff delivered the Mercedes to Defendant, the vehicle had a value of between \$20,000 and \$25,000, the average of which amounts to \$22,500. Presently the vehicle is worth \$10,000. The damage occasioned to the Mercedes by the negligence of the Defendant has reduced its value by \$12,500, and Defendant is liable to Plaintiff in that amount.

While Plaintiff has requested punitive damages, "to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review..." *Gamble v. Stevenson*, 305 S.C. 104,

112, 406 S.E.2d 350, 354 (S.C. 1991). The Court when conducting such a review may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. *Id.* at 112. After conducting such review, this Court has found no evidence of (i) an excessive duration of conduct, (ii) concealment by Defendant, (iii) the existence of similar past conduct, or (iv) that Defendant has any ability to pay such an award, and this Court declines to award any punitive damages under Plaintiff's negligence cause of action.

Under the theory of negligence, Defendant is liable to Plaintiff for the return of the Mercedes and for compensatory damages in the amount of \$13,625, including the cost of transport, , plus the costs and expenses of the action.

### **Conversion**

Plaintiff's claim of conversion relates the \$20,000 deposit Plaintiff provided Defendant, and that Defendant failed to return upon Plaintiff's demand, as agreed.

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights." Green v. Waidner, 284 S.C. 35, 324 S.E.2d 331 (S.C. App., 1984); Powell v. A.K. Brown Motor Co., 200 S.C. 75, 78, 20 S.E.2d 636, 637 (1942). Money may be the subject of conversion, when it is capable of being identified, and there may be conversion of determinate sums even though the specific coin and bills are not identified. See Owens v. Andrews Bank & Trust Co., 220 S.E.2d 116, 265 S.C. 490, 497 (S.C. 1975); 89 C.J.S. Trover and Conversion § 23, p. 541 (1955).

The measure of actual damages in an action for conversion of personal property is the value of the property with interest thereon from the date of conversion to the date of trial. Id.; Long v. Gibbs Auto Wrecking Company, 253 S.C. 370, 171 S.E.2d 155 (1969), Mims v. Bennett, 160 S.C. 39, 158 S.E. 124 (1931).

The measure of damages for a willful and intentional conversion, where the property is converted with knowledge of the owner's rights in the property, is the highest market value of the property with interest up to the time of trial, including any additional value due to additions or improvements made by the converter. See Green, 284 S.C. 35, 324 S.E.2d 331; Industrial Welding Supplies, Inc. v. Atlas Vending Co., 276 S.C. 196, 277 S.E.2d 885 (1981); Gregg v. Bank of Columbia, 72 S.C. 458, 52 S.E. 195 (1905); Restatement (Second) of Torts Section 927 (1981); 1 Am.Jur.2d Accession and Confusion Section 29 (1962). Punitive damages are permitted in a conversion claim where the evidence shows the conversion was done recklessly and with conscious indifference to the owner's rights. Long v. Gibbs Auto Wrecking Co., 253 S.C. 370, 171 S.E.2d 155 (1969); Lumpkin v. Allstate Insurance Co., 251 S.C. 19, 159 S.E.2d 852 (1968).

In the present case, based on the admitted allegations of the pleadings and the testimony and evidence presented to the Court, the Plaintiff, after paying for the totality of the restoration work performed on his Mercedes to a certain point, provided Defendant a \$20,000 deposit in advance of the remainder of the work. Defendant was to maintain the \$20,000, in trust, a separate account to bill against for restoration work going forward, and of which any unused portion would be refundable to Plaintiff on demand. Thereafter, Defendant failed to complete the restoration of Plaintiff's vehicle. When Plaintiff discovered that fact some 20 months later and demanded the return of his deposit money, Defendant did not return it to him, and has still

not returned it. Defendant has knowingly, consciously, and willfully deprived Plaintiff of possession and ownership of a determinant sum of money, and is liable to Plaintiff for conversion of his deposit money in the amount of \$20,000, plus interest at the legal rate since Plaintiff demand on September 11, 2019 for its return in the amount of \$3,095 totaling \$23,095.

Under his conversion action, Plaintiff has again requested punitive damages, “to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review...” *Gamble v. Stevenson*, 305 S.C. 104, 112, 406 S.E.2d 350, 354 (S.C. 1991). The Court when conducting such a review may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. *Id.* at 112. After conducting such review, this Court has found no evidence of (i) an excessive duration of conduct, (ii) concealment by Defendant, (iii) the existence of similar past conduct, or (iv) that Defendant has any ability to pay such an award, and the Court declines to award any punitive damages under Plaintiff's conversion cause of action.

Under a theory of conversion, Defendant is liable to Plaintiff for actual in the amount of \$23,095, plus costs and expenses of the action.

#### **Costs of Action**

Based on the record, including the attorney's fee and expenses affidavit filed in the case by his attorney, Plaintiff has been caused to incur costs and expenses associated with bringing and prosecuting the action in the amount of \$1,694, which includes the fee of \$1,000 charged by his expert witness for his services, as attested to by Mr. Reinert during the damages hearing.

Plaintiff is entitled to recover from Defendant his costs and expenses in the total amount of \$1,694.

#### **Attorney's Fees**

Plaintiff also requested an award of attorney's fees. "Attorney's fees are not recoverable unless authorized by contract or statute." Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997). Plaintiff and Defendant did not agree to the recovery of attorney's fees in any contract, and Plaintiff has not cited any statute by which this Court may award him attorney's fees. Consequently, the Court denies Plaintiff's request for an award of attorney's fees.

#### **Summary of Judgment**

The Court finds Defendant is liable to Plaintiff, as described above, on Plaintiff's causes of action for breach of contract, negligence, and conversion. Because the Court is awarding Plaintiff contract damages on the basis of a valid contract between the parties, the Court has not considered Plaintiff's unjust enrichment claim. See Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942)(Relief under a theory of unjust enrichment is not available if an action is based on the existence of a contract).

Plaintiff is not permitted a double recovery for a single wrong. To prevent that outcome, Plaintiff is required to elect his remedies. See Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (S.C. 1996) (citing Thompson v. Watts, 281 S.C. 504, 316 S.E.2d 393 (1984)(The purpose of election of remedies is to prevent a double recovery for a single wrong.)). However, an election of remedies is not applicable where remedies are addressed to different wrongs, requiring different or additional elements and standards of proof. See Thompson v. Watts, 316 S.E.2d 393, 281 S.C. 504 (S.C. 1984)(citing Tzouvelekas v. Tzouvelekas, 206 S.C. 90, 33 S.E.2d 73, 74

(1945)(Election of remedies is the act of choosing between different remedies allowed by law on the same state of facts.)).

Based on Defendant's liability to Plaintiff on his causes of action for breach of contract, negligence, and conversion, as set out above, and applying the doctrine of election of remedies, the Court finds judgment for the Plaintiff is appropriate in the following amounts:

- a) for breach of contract in the amount of \$40,450;
- b) for negligence in the amount of \$21,125, reduced by \$40,450 for a total of \$0;
- c) for conversion in the amount of \$23,095;
- d) for the return of the Mercedes to Plaintiff; and
- e) for Plaintiffs costs and expenses in the amount of \$1,694.

**IT IS HEREBY ORDERED AND ADJUDGED** that judgment against Defendant be and is hereby entered in favor of Plaintiff in the total amount of \$65,239. Defendant is also hereby ordered to prepare the Mercedes and its parts and components in such a manner that within 30 days of this Order becoming final, they may be available for pick-up and transport to a location in Charleston, South Carolina to be designated by Plaintiff.

**IT IS SO ORDERED** in Charleston, South Carolina, this \_\_\_\_\_ day of September 2021.

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Hon. Roger M. Young  
Circuit Court Judge

KEVIN STAVELEY-O'CARROLL  
PLAINTIFF(S)

FEXNIX AUTOMOTIVE, LLC  
DEFENDANT(S)

|                                  |  |   |
|----------------------------------|--|---|
| Submitted by: Damien A. Sobieraj | Attorney for : <input type="checkbox"/> Plaintiff        | <input checked="" type="checkbox"/> Defendant |
|                                  | or<br><input type="checkbox"/> Self-Represented Litigant |   |

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
| KEVIN STAVELEY-O'CARROLL                     | FENIX AUTOMOTIVE, LLC                    | \$65,239.00  |
|  |  | \$   |
|  |  | \$   |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

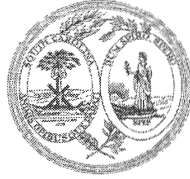
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date





Charleston Common Pleas

**Case Caption:** Kevin Staveley O'Carroll VS Fenix Automotive Llc

**Case Number:** 2019CP1005392

**Type:** Order/Damages

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2021-10-07 12:20:40 page 19 of 19

# ANNEX

## B

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL  
CIRCUIT  
Case no. 2019CP1005392

KEVIN STAVELEY O'CARROLL,

Plaintiff

-against-

FENIX AUTOMOTIVE, LLC.

Defendants.

MOTION FOR DAMAGES  
(VIRTUAL)

DATE: August 25, 2021

TIME: 2:54 p.m.

HON.: ROGER M. YOUNG, SR.

Natalie A. Williams  
Court Reporter II-Circuit Court  
South Carolina Judicial Branch  
(914) 610-8863  
nwilliams@sccourts.org

1       A P P E A R A N C E S:

2  
3  
4       THE LAW OFFICE OF W. WESTBROOK WILLS III  
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12  
13       COOPER RIVER LEGAL SERVICES, LLC.

14       Attorneys for the Defendant

15       BY: MR. DAMIEN SOBIERAJ

16       1002 Anna Knapp Blvd #204

17       Mt. Pleasant, SC 29464

18       (843) 881-2244

1 (Whereupon, previous hearing  
2 proceedings took place.)

3 MR. WESTBROOK WILLS: If the Court  
4 is ready I'll be happy to proceed and call  
5 the next witness.

6 THE COURT: Fire when ready.

7 MR. WESTBROOK WILLS: Thank you,  
8 Your Honor. Plaintiff would call Axel, who  
9 is our expert, who we will submit as our  
10 expert witness, and we'll ask him his  
11 qualifications as soon as he's sworn in.

12 THE COURT: Is that a first name,  
13 last name or is he so famous he goes by one  
14 name?

15 MR. WESTBROOK WILLS: Axel, can you  
16 hear us?

17 THE WITNESS: Yes, can you hear me?

18 THE COURT: I can hear somebody  
19 going, "can you hear me?"

20 THE WITNESS: That's me.

21 MR. WESTBROOK WILLS: Would you  
22 state your name for the record?

23 THE WITNESS: Axel Reinert.

24 THE COURT: How do you spell that  
25 last name?

1 THE WITNESS: R-E-I-N-E-R-T.

2 DIRECT EXAMINATION BY MR. WESTBROOK WILLS:

3 Q. Mr. Reinert, Axel, thank you.  
4 You're here today as an expert witness for the  
5 plaintiff to speak about the value of the vehicle and  
6 damages, correct?

7 A. Yes.

8 THE COURT: Does Mr. Reinert have a  
9 camera?

10 THE WITNESS: I'm trying to see if  
11 I can get this thing to come on. Is that  
12 on? Hold on -- start video.

13 THE COURT: There you go.

14 THE WITNESS: Okay.

15 THE COURT: Great.

16 Q. Great. Axel, would you -- your  
17 testimony will be used to give an opinion on damages  
18 and those are in relation to the certain values of the  
19 car. Would you tell the Court what knowledge,  
20 education and experience that you have that qualifies  
21 you to testify to these matters?

22 A. Okay. I founded and still own the  
23 largest independent Mercedes-Benz service facility in  
24 the State of South Carolina, a company called Star  
25 Motor Service. For 35 years we have done restoration

1 of service, automotive repair, exclusively on Mercedes  
2 automobiles.

3 In our West Ashley location we have  
4 13, sometimes 15 technicians. 20,000 square feet  
5 under roof, all the latest technology, latest  
6 equipment. We do both bodywork and mechanical service  
7 and repair.

8 I'm extensively trained yearly  
9 through the Mercedes-Benz Organization. And I keep on  
10 staff, fully qualified and certified technicians and  
11 body men.

12 Q Mr. Reinert, do you have education  
13 or training -- prior to your involvement with your  
14 present enterprise, do you have education and training  
15 in the area of automotive restoration and if so, could  
16 you describe that?

17 A Just what I've learned over the  
18 last 35 years in different courses and training  
19 through Mercedes. Before that, believe it or not, I  
20 have a degree in, a bachelors of science degree in  
21 psychology from the College of Charleston.

22 Q. Do you have particularized  
23 knowledge, specialized knowledge with regard to this  
24 particular model Mercedes and any restoration process  
25 involved with that model?

1           A.           Over the course of 35 years I  
2 probably restored more than 10 of the model we're  
3 speaking about and I have a couple of those cars in my  
4 shop as we speak.

5           Q.           And just to be clear, the model  
6 that we're speaking of is a 1969 Mercedes, 280 SL?

7           A.           Correct. The 280 model was made  
8 from 1967 to 1971, with very few changes over those  
9 years.

10          Q.           Okay. Thank you very much. Mr.  
11 Reinert, have you had an opportunity at this point to  
12 review the correspondence between the plaintiff and  
13 the defendant, Fenix Automotive?

14          A.           Yes, I have.

15                    THE COURT: Before you go any  
16 further, do you want to offer him as an  
17 expert?

18                    MR. WESTBROOK WILLS: Thank you,  
19 Your Honor. Yes, I would offer Mr. Reinert  
20 as an expert in automotive restoration and  
21 particularly with regard to Mercedes.

22                    THE COURT: Any objection? Or do  
23 you want to voir dire the witness.

24                    MR. SOBIERAJ: I'd like to voir  
25 dire the witness, Your Honor. I just have

1 a couple of questions.

2 THE COURT: Go ahead.

3 VOIR DIRE BY MR. SOBIERAJ:

4 Q. Mr. Reinert, this Damien Sobieraj,  
5 counsel for Fenix Automotive, the defendant. You said  
6 you had partially restored some Mercedes. How many  
7 Mercedes have you fully restored from start to finish?

8 A. I'd say six over the course of that  
9 time.

10 Q. Um, what time period?

11 A. Over the last seven -- year 2000 to  
12 the present. We didn't do the restoration work, we  
13 just did basic paint and bodywork. We entered that  
14 area of work starting in 2000.

15 Q. I missed the very first part of  
16 that sentence. Your restoration is just mainly paint  
17 and bodywork?

18 A. What we did up to the year 2000 was  
19 basically paint and bodywork, including mechanical  
20 work. But on this -- after 2000 we more heavily into  
21 doing more restoration type work, and we've done at  
22 least six older models like 190 SL. And we have two  
23 full restorations going right now.

24 MR. SOBIERAJ: Without objection,  
25 Your Honor.

1 THE COURT: All right. He's an  
2 expert in the field of automotive  
3 restorations, in particular Mercedes, it  
4 sounds like. You may continue with your  
5 examination.

6 MR. WESTBROOK WILLS: Thank you,  
7 Your Honor.

8 Q Mr. Reinert, we were discussing if  
9 you had an opportunity to review some of the  
10 correspondence between the plaintiff and the  
11 defendant, in particular have you had an opportunity  
12 to review the correspondence which comprises the  
13 detailed estimate that we have used as an exhibit  
14 already that I will be able to now share it.

15 While that's loading, I was going  
16 to ask, have you had an opportunity to review a  
17 document that is marked as Plaintiff's Exhibit 6 that  
18 is attached to the complaint already, but which  
19 comprises the detailed estimate with the break down of  
20 each individual -- okay.

21 In this e-mail Fenix describes that  
22 process it's going through in the restoration of the  
23 vehicle. Are you familiar with the processes that are  
24 described and the work that is described in the e-mail  
25 that comprises the estimate that's reflected in this

1 Plaintiff's Exhibit 6?

2 A. Yes, I am.

3 Q. Okay. Are you able in looking at  
4 this detailed estimate, are you able to formulate an  
5 opinion as to the value or the cost as to each aspect  
6 of the restorations that are outlined in this estimate  
7 of your own opinion?

8 A. Some ballpark numbers, but without  
9 having personally inspected the car, it's difficult to  
10 do that. I see the numbers that are there, I find  
11 them to be reasonable, but further than that I really  
12 can't comment on that.

13 Q. Okay. I don't know if you're  
14 connected such that you were able to hear the  
15 testimony of Dr. Staveley O'Carroll in regard to the  
16 condition of the Mercedes when it was delivered to  
17 Fenix Automotive. Were you able to hear any of that  
18 testimony?

19 A. I did hear that, yes I did.

20 Q. Okay. As Dr. Staveley O'Carroll  
21 described the condition of the vehicle and with what  
22 you are able to understand as the condition of the  
23 vehicle from the estimate that is provided here, do  
24 you have an opinion to a reasonable degree of  
25 certainty as to the value of this particular Mercedes

1 at the time it was delivered to Fenix, in the  
2 condition that it has been testified to?

3 MR. SOBIERAJ: I'm going to object,  
4 Your Honor. The condition of the vehicle  
5 while testified by one witness, the expert  
6 is going to formulate an opinion on the  
7 condition of the vehicle based upon the  
8 opinion of the owner of the car and not any  
9 factual evidence with the actual condition  
10 the car was in.

11 THE COURT: Well, you have to give  
12 the basis for the opinion so, he may be  
13 able to give an estimate or not. He can  
14 tell us how he came up with that opinion  
15 and you're certainly entitled to  
16 cross-examine him on it. I'll allow the  
17 question. If he says he can give a value  
18 to a vehicle he hasn't seen, he can tell us  
19 how he came up with that number.

20 A. All I can do is go back through  
21 cars that we have worked on, given the same age, the  
22 same milage, we know how many miles were on it. And  
23 then what goes wrong with those cars, you know, the  
24 doctor testified that the car was in running condition  
25 except for the issue with the cylinder head which is a

1 common problem on those cars. They overheat and the  
2 cylinder heads crack, so, I knew what that repair  
3 should be. So based on the average price or value of  
4 that car at that time being right around \$55-\$60,000  
5 being in good decent running condition, subtract  
6 \$10-\$12,000 to redo the motor and, you know, talking  
7 about low \$40's in figure. I think based on vehicles  
8 that I see for sale at some of the Mercedes-Benz sites  
9 and I see what the cars sell for at all these auctions  
10 online now, I think that's a pretty solid number. You  
11 know, in the low \$40's.

12 Q. Would you put -- would you be able  
13 to put the value of the vehicle into a, in your  
14 opinion, into a specific range in the lower \$40's?

15 A. We could say, I don't know,  
16 \$42,000, somewhere around there. I know it's got to  
17 be more than \$30, upper \$30's. Somewhere in the low  
18 \$40's. Those cars are jus that valuable. They're  
19 climbing in value everyday. Even just four or five  
20 years ago those cars already had a really good number.

21 Q. As part of your estimation on the  
22 price, as part of your opinion on the price at the  
23 time it went in, does the work that needed to be done  
24 that's outlined in the estimate does that contribute  
25 to or support your opinion on the value of the vehicle

1 when it was delivered to Fenix?

2 A. Well, reading over the e-mail that  
3 describes the condition of the car, I can just quote  
4 this right here. He says, "as I stated before, the  
5 metal is in overall good condition. The leather seats  
6 are not in bad condition. Anything that could be  
7 salvaged from the interior will be. Same with the  
8 top, it's all in good condition. All the glass is in  
9 good condition." So, based on his own writings, you  
10 know, I can get an opinion of what condition the car  
11 is in, because he's the one who took it apart and he  
12 wrote it on paper what he found.

13 So, to me it's just an average  
14 120,000 mile car which, you know, 1969, it's going to  
15 have some wear and tear but I think the numbers good.

16 Q. The number being in the \$42,000  
17 range?

18 A. Yes. I think that's the number I'm  
19 happy with.

20 Q. Do you have an understanding in  
21 professional terms, what level of restoration that the  
22 plaintiff and the defendant had contemplated in their  
23 endeavor to restore the vehicle?

24 A. Whenever you approach a project  
25 like this it's important that there is good

1 communication there. But you also do not completely  
2 strip a car down to the last nut and bolt if all  
3 you're going to do is build a driver. There is no  
4 need to do that and that's what kind of surprised me  
5 when I saw the pictures and I saw the bare body shell,  
6 there was not a piece of trim left inside of it, not a  
7 piece of crumb left on the outside of it. All the  
8 glass was out of it. This was going to be a complete  
9 restoration. Every nut and bolt was removed, so it's  
10 not a --if you're going to do a driver you usually  
11 don't take the axles out, you usually don't completely  
12 strip the wiring harness out of the car. There are a  
13 lot of things you just don't do because it's not  
14 necessary and it doesn't make it better.

15 Q. Let me just redirect this question  
16 for you. Did you have an understanding that the  
17 parties did not contemplate restoring the vehicle to  
18 show quality?

19 A. I could kind of see that because  
20 some of the comments that he makes in his writing kind  
21 of point toward that, because he's talking about  
22 trying to save money here and there by not doing some  
23 things, but the problem with that is the pictures tell  
24 a different story. You know, it was completely  
25 disassembled.

1 Q. Right. Let me see if I can ask you  
2 this question, in terms of final product in a  
3 restoration project are there --what are the different  
4 levels that usually people will try to restore a  
5 vehicle to? I'll ask you that, are there different  
6 levels?

7 A. There are, there are.

8 Q. What would be the absolute top  
9 quality that somebody would restore a vehicle to? How  
10 would that be characterized?

11 A. Concourse, factory, exact  
12 restoration. Every nut and bolt is correct, every  
13 hose clamp is correct, the materials on the interior  
14 correct, the carpet, the vinal, the leather.  
15 Everything is 100 percent as it was delivered from the  
16 factory.

17 Q. And that's not the level of  
18 restoration that these parties contemplated is it?

19 A. No, not what I'm seeing. I think  
20 that it wasn't to that level.

21 Q. Okay. Is show quality a level  
22 that's slightly below concourse level?

23 A. It is. It's quite a step down,  
24 simply because one thing just to explain it real quick  
25 here. If you do a restoration on a car, the last 10

1 percent to make it perfect sometimes will consume  
2 about 90 percent of the money, because that's how  
3 expensive it gets. So, a lot of people they go 90  
4 percent restoration but then they live with those  
5 little 10 percent imperfections and that's what you  
6 call like a show car or a driver.

7 Q. Gotcha. And from reading the  
8 correspondence or your understanding of the parties  
9 agreeing with regard to level of restoration, did you  
10 have an understanding that this vehicle was not to be  
11 restored to show quality or concourse quality but to,  
12 you know, driver quality?

13 A. That's my impression.

14 Q. And can you tell us roughly what  
15 driver quality could be characterized as? What would  
16 be driver quality type of restoration?

17 A. Of course, safety wise everything  
18 works. You know, tires new, brakes new, function,  
19 everything works as designed. It may not have, you  
20 know, factory radio, it may not have the correct  
21 carpeting or seat upholstery but it's a safe reliable  
22 car that you get in and drive to any point the same  
23 way you could get in a new car and drive to any point.

24 Q. Okay, great thank you. Now, from  
25 the knowledge that you have and based on your

1 professional opinion and you knowledge of the value of  
2 these vehicles, coupled with your understanding of the  
3 condition the car was in when it went in, do you have  
4 an idea of what this particular car, this particular  
5 Mercedes here being restored, do you have an opinion  
6 as to what the value of that car would be if the  
7 restorations would have been completed as agreed?

8 A. Well, I did a little research and  
9 prepared myself for this and the numbers are pretty  
10 solid and consistent no matter which source I looked  
11 at. This car would probably be a number two  
12 condition, which is considered excellent after the  
13 extensive work that was discussed was performed, and  
14 that would put the car above \$100,000 in value  
15 currently. And that number has been there for the  
16 last probably five years, high numbers are as high as  
17 \$188,000 on some of these. The auction high in 2020  
18 for one of these cars that was rebuilt in Japan went  
19 for \$254,000.

20 So, I think that based on all those  
21 numbers realistically cars are selling I'd say between  
22 \$100-\$120,000 depending on the color combinations and  
23 the overall condition. Whereas concourse 100 percent  
24 restored cars are almost another \$50,000 on top of  
25 that.

1 Q. Is it possible for you in your  
2 estimation and your professional knowledge to put the  
3 value of this car in a particular range, specific  
4 range?

5 A. Are you talking about after the  
6 restoration.

7 Q. Correct, sorry, after the  
8 restoration?

9 A. What he's outlining what he's going  
10 to do, it's pretty thorough, I'd say \$115,000, I think  
11 it would sell for that. I think that's a value that  
12 that car could demand.

13 Q. Okay, \$150,000, thank you. Do you  
14 know similar cars in similar conditions that sell for  
15 that kind of money?

16 A. Oh, yeah. That's probably the most  
17 popular Mercedes selling right now. It's bringing the  
18 most money, they're online all the time. They're very  
19 popular on the auction market right now.

20 Q. Do I understand you to say that  
21 that opinion of the value of the car as if it would  
22 have been restored is based on your professional  
23 knowledge in the industry and on comparisons of  
24 vehicles that are selling presently?

25 A. Correct.

1           Q.       Thank you. Next, I wanted to ask  
2 if you've had an opportunity to see the car, to  
3 actually see the car as it's been since the beginning  
4 of this lawsuit?

5           A.       Yes, I have.

6           Q.       What --well, if you could just  
7 describe to the Court a little bit about what you've  
8 done to see the car and what it is that you discovered  
9 when you saw it and when -- first, let me ask this,  
10 when did you see the vehicle last?

11          A.       Um, I think about six months ago.  
12 That's the I saw it twice. The first time I was  
13 contacted by you, I think, and your client. And asked  
14 if I was familiar with the business and if I knew  
15 where the car was at. I knew of the place so I took  
16 it upon myself just to drive there and see if I can  
17 take a look at the car. I had a short conversation  
18 with the owner, with Mike and I just told him, I was  
19 called about a car that was here and was asked to take  
20 a look at it, see what condition it was in. We talked  
21 briefly and I didn't get within 20 feet of the car.  
22 But I did see the car and the parts and that's the  
23 extent of the visit.

24                   Then I made a second visit a month  
25 or so later and took some pictures for my own records.

1           Q.           During your visit were you able to  
2 formulate an opinion as to the present condition of  
3 the vehicle and it's component parts?

4           A.           Yeah, like I said, I got pretty  
5 close to it. There was tarp partially covering the  
6 body but you could see that the car was surface rusted  
7 and there was, you know, no parts were attached. It  
8 was still on what you call a rotisserie, which is a  
9 fixture that holds the body up and you can rotate it  
10 360 degrees so you can do some work on it. So, it was  
11 attached to that.

12          Q.           Okay. Were there any parts of the  
13 car as you were able to discern that were being stored  
14 outside?

15          A.           Yeah, everything was outside. The  
16 various parts, the sheet metal, the suspension piece,  
17 the engine piece, some of the interior, the metal top,  
18 the windshield glass, they were all just it was  
19 probably 10 or 15 bins, some of them with tops of them  
20 some of them without just sitting around the parking  
21 area.

22          Q.           Have you also had an opportunity to  
23 view photos, any photos, of the vehicle during the  
24 beginning process of the restoration, when, for  
25 example, the motor was being removed?

1           A.       Yes, I have seen a couple of those.

2           Q.       I want to show you some exhibits

3 now if I can figure out how to get this one off.

4 Okay, Axel?

5           A.       Yes.

6           Q.       I'll show you this photo, which was  
7 attached to an e-mail -- I represent to you was  
8 attached to a correspondence between the plaintiff and  
9 the defendant purporting to show the progress on the  
10 vehicle. Are you able to tell from this picture  
11 whether the vehicle that's depicted is the vehicle  
12 that's been restored in this lawsuit?

13           A.       Well, you know, all the 113's  
14 that's what is considered -- the 113, all of them are  
15 the same. So, it looks like this car has been soda  
16 blasted or media blasted. You can tell the silver  
17 color and so, it is a 280 SL, but I can't say, yes,  
18 that's the car.

19           Q.       Okay. I'll represent to you that  
20 we'll just assume that this is the car. If this is  
21 the car-- are you able to tell from this picture what  
22 is being-- what is depicted here?

23           A.       That's the motor out of the 280 SL.  
24 You can see the cylinder head's been removed.  
25 Everything else looks like it's still on the motor,

1 the ejection pump, power steering pump, ignition  
2 parts, hoses and stuff like that. So, it looks like  
3 somebody just removed the cylinder head from this for  
4 repair.

5 Q. Assuming that this is the motor and  
6 the transmission from our 280 SL--

7 A. Mhm.

8 Q. -- would this -- are you able to  
9 tell from this picture if the condition of the motor  
10 is consistent with what Dr. Staveley O'Carroll  
11 described as being the condition with his 280 SL when  
12 he delivered it to Fenix?

13 A. Exactly what I would expect to see  
14 based on what he said.

15 Q. All right. And I know it's  
16 difficult to tell exactly but just from your knowledge  
17 and expertise, looking at this particular engine and  
18 transmission, is it your opinion that that motor and  
19 transmission are capable of being reused, in the state  
20 that you can see it in this picture, assuming it is  
21 the vehicle that we're talking about here?

22 A. Yeah, I mean this is something we  
23 do almost weekly, you know, you just take them apart,  
24 repair the damage and put them back together. That's  
25 what they call automotive repair.

1 Q. And then, another picture here,  
2 would this picture depict a vehicle that has been  
3 totally disassembled to your knowledge?

4 A. Absolutely, I don't think you can  
5 go any further without gutting. The dashboard is  
6 welded in, all the gages are gone, the glove box  
7 insert is gone, the heating ventilation, everything is  
8 gone, steering column is gone, the shifter is gone.  
9 Yeah, this is basically what you call a body shell.

10 Q. Okay. And at this point according  
11 to your experience and knowledge, once a car is at  
12 this stage, how accurate is it-- how accurate can you  
13 be in determining what the cost for restoration of the  
14 vehicle would be once the car is disassembled to this  
15 level?

16 A. The main contributing factor to  
17 getting that number right is to discuss how you're  
18 going to put it back together now. Are you going to  
19 use factory carpet, are you going to use factory seat,  
20 leather, are you -- you know, all those things. But  
21 if you have that conversation then you can nail it  
22 down to the last dime.

23 Q. Okay.

24 A. Because it's simply just adding up  
25 all the parts and adding up all the labor because the

1 customer decided what he wants and it's your job to  
2 nail the price down.

3 Q. Did you understand -- do you have  
4 an understanding from your review of the  
5 correspondence in this case that p defendant and the  
6 plaintiff were going to endeavor to reuse as many  
7 parts as possible in the restoration process in order  
8 to limit the expenses that would be necessary to  
9 restore the vehicle?

10 A. Based on what was written, I think  
11 associated --that simplifies the process right there,  
12 because he said, okay, we're going to reuse the seat  
13 so there's not question about how much leather  
14 upholstery is going to cost. You know, it goes into  
15 you have to get into much more detail than that. But  
16 I think the correspondence does a pretty good job, I  
17 mean, an estimate is an estimate and if you're within  
18 10 percent you're probably doing it really well. And  
19 I think that this estimate, it covers all the areas  
20 but going forward it would require a lot more  
21 communication and a lot more agreement on details,  
22 which could seriously effect the price but at the same  
23 time could reduce the price.

24 Q. Gotcha. Did you see anywhere in  
25 the correspondence or the detailed estimate whether or

1 not Fenix was going to attempt to reuse any of the  
2 component parts that make up the suspension and  
3 brakes?

4 A. I saw some of that in here, hold on  
5 I have a copy in front of me. Yeah, it's -- in a  
6 restoration, you don't replace everything. You  
7 replace items and you recondition what you don't  
8 replace. So, there is no need to replace control arms  
9 unless they're rusted out or broken or damaged. So,  
10 what you do is you clean them, power coat them put new  
11 bushings in it and reuse it. On and on with all the  
12 components as you determine when you disassemble a  
13 car, you say this is reusable, this isn't, this needs  
14 to be replaced, and so on.

15 I would say of the structural parts  
16 and suspension pieces, everything but the interior,  
17 you can reuse 90 percent of the parts.

18 Q. Looking at the estimate that we saw  
19 that was reflected in Plaintiff's Exhibit number 6  
20 that was attached to the complaint, does it appear  
21 that in the restoration process Fenix was going to  
22 reuse the original glass of the vehicle?

23 A. Yeah, I mean he wrote specifically  
24 right here, "all the glass seems in good condition."  
25 And he recommended that -- he actually says--

1 THE COURT: I think he broke up or  
2 --I don't hear him anymore.

3 MR. WESTBROOK WILLS: Oh, I don't  
4 hear him either. Can you hear us?

5 THE WITNESS: I can now.

6 MR. WESTBROOK WILLS: Okay. It  
7 seems like there was a little break up  
8 there in the transmission, would you be  
9 able to repeat the last few sentences that  
10 you said?

11 A. We were talking about the glass and  
12 I just referred to his e-mail again where he said the  
13 glass is all in very good condition. And he said he  
14 also recommends that lot of times you reuse older  
15 glass if it's in good condition because it gives the  
16 car a certain patina maybe, or it's preferable over  
17 putting brand new glass on.

18 Q. Is that something that you also  
19 recognize in your restoration projects as being?

20 A. Yes. That's something that -- if  
21 there is nothing wrong with it you don't really have  
22 to replace it.

23 Q. Okay. With regard to the  
24 transmission and the drive train, does it appear that  
25 they -- that Fenix intended to try and reuse any of

1 those component parts in a restoration?

2 A. Just like with the other ones, you  
3 know, you go through it and make sure everything's  
4 working fine. You replace the wear-out items, you  
5 replace the bushings, the supporting links, whatever  
6 shock absorbers you can do.

7 Q. With regard to the engine and  
8 mechanical could you comment on those with the same  
9 question.

10 A. Well, in a job like this, I'd take  
11 the whole engine apart. I mean, it's been sitting for  
12 awhile with the cylinder head off of it, so it'd be a  
13 bad place to save money now to not go and do a full  
14 engine rebuild.

15 Q. Based on what you saw when you  
16 viewed the car personally, when you visited and viewed  
17 the car, did it appear to you that the component parts  
18 that were contemplated being reused were still in a  
19 state for them to be useful in the restoration of this  
20 particular vehicle?

21 A. Not much. I mean, you know,  
22 certain components of an automobile are exposed to the  
23 weather. So it doesn't really matter whether they're  
24 on the car or laying next to it. So, certain  
25 components you can reuse even if they're exposed to

1 the weather. It's not, it doesn't harm them unless  
2 they're sitting under water or just not stored  
3 correctly, sometimes things, you know, bend or are  
4 damaged because they're not stored correctly. This  
5 time the interior stuff, you can't leave that stuff  
6 outside. You shouldn't even leave it out where the  
7 sun can get to it, you know, it should be boxed and  
8 out of the weather.

9 Q. I'd like to show you now what is  
10 Plaintiff's Exhibit 12.4, and I'll ask if you  
11 recognize what is in the picture that is displayed  
12 there, if you recognize that picture, can you describe  
13 it?

14 A. Yeah, that's the hard top from the  
15 car. I can't really recognize what is in the  
16 background but that silver piece hanging behind the  
17 chain fence that's the removable hard top to the SL.

18 Q. Would you be able to tell where  
19 that picture is taken?

20 A. That's the fenced in lot at Fenix?

21 Q. It appears, from the picture, that  
22 it's raining. From this picture are we able to tell  
23 that at least the top here is exposed to the elements  
24 and the condition that they are in the photo?

25 A. Yeah, I would say that I think the

1 main issue here is that the top itself is designed to  
2 be out in the weather but where it's rusting on its  
3 corners, that's where the locking part is. And it  
4 looks like it's sitting in the water and that's not  
5 good for it. And then the leading edge in the  
6 left-side of your picture, that's an upholstered  
7 interior surface that's laying down on the ground too,  
8 so, you know, the head liner is getting wet inside.  
9 It's definitely not the way you want to store a top.

10 Q. Okay. And do you recognize that  
11 photo there as being the actual roof for this  
12 particular vehicle that is at issue in this lawsuit?

13 A. Well, it's the top that was there  
14 with the rest of the top when I saw that car.  
15 Whether, again like I said, with the body shell that  
16 could be another top they have there for paint, I  
17 don't know that. All I'm saying is it was in the same  
18 location with all those bins you see in the background  
19 and all those other parts in it for that car. That  
20 would lead me to believe that that's the hard top that  
21 went with the car.

22 MR. WESTBROOK WILLS: So, in that  
23 case, Your Honor, we would like to tender  
24 Plaintiff's Exhibit 12.4 into evidence.

25 THE COURT: It's admitted.

1 MR. WESTBROOK WILLS: Thank you,  
2 Your Honor.

3 (Whereupon, Plaintiff's Exhibit  
4 12.4 was admitted into evidence.)

5 Q. Next, I'll show you Plaintiff's  
6 Exhibit 12.1 and I'll ask if you can recognize this  
7 photograph as being a picture of the component parts  
8 of the Mercedes that is at issue in this lawsuit?

9 A. Yes. But that's, I can identify  
10 all those parts as being off a 280 SL, I mean, you got  
11 a stack of tires off that car, you got the fuel tank,  
12 the windshield which unfortunately is broken down the  
13 middle, and the chrome frame around it. Then you got  
14 the convertible top with its frame and unfortunately  
15 my picture of myself is in the way so I can't really  
16 see what's on the lower part of the photo. But these  
17 are all -- and there is a bumper -- those are all  
18 Mercedes 280 SL parts.

19 Q. If I zoom in, I think I can zoom  
20 in, would you be able to describe, I think this is  
21 pretty obvious you describe the windshield in the  
22 back, are you -- I wonder if I can draw on this thing.  
23 Oh, yeah I can, look at that. Would you be able to  
24 identify and describe--

25 A. I can't see the bottom half of that

1 picture.

2 Q. Oh. Is that get you where you can  
3 see something?

4 A. I hate to lose my feed by hitting  
5 the wrong button in this thing.

6 Q. Are you able to see the picture?

7 A. I see that whole picture but like I  
8 said my face is blocking the bottom of it.

9 Q. Oh, okay. Let me see if I can move  
10 this.

11 A. Yeah, I can see it. The thing  
12 right there in the center that's the air conditioning  
13 compressor. To the left of that that's the power  
14 steering box. That's the sector that connects to the  
15 steering column and to the right of that, that's part  
16 of the suspension assembly. You can see the  
17 disassembly on the right, right below the bumper.  
18 But, yeah, those are all --that air conditioning  
19 compressor, that's junk. The steering box might be  
20 able to be saved but the fitting on the top of it is  
21 open so water has been getting in there. I mean  
22 that's junk, that's scrap metal.

23 Q. Scrap metal.

24 A. I mean he could probably reuse the  
25 suspension cross member, but those other parts right

1       there, no.

2                   Q.       Are you able to identify in there  
3 any component part of the motor?

4                   A.       The cylinder head that was removed  
5 is on the, is to the left. Do you see the long silver  
6 valve cover? And then it's sitting on top of the  
7 head. The head is the lower piece which have the  
8 pipes coming off which go to your heater and you could  
9 see the spark plug hose right there on the side too.

10                  Q.       In your opinion and according to  
11 your expert knowledge, what is the effect of leaving  
12 this motor out exposed to the elements, in the manner  
13 that it is there?

14                  A.       Well, the valve cover can probably  
15 be saved. But the cylinder head, although the heads  
16 made up of aluminum, it's got ferrous metal components  
17 to it which rust as soon as they're exposed to  
18 moisture, so the valves, springs, camp shaft, all  
19 those other components, even though, you know, they've  
20 got the valve cover sitting on top of it, that's not a  
21 waterproof -- it's an attempt to protect it.

22                  Q.       Would this be, in your opinion, a  
23 part that would be reusable or that's advisable to  
24 reuse?

25                  A.       The cylinder head based on the

1 doctor's testimony was cracked anyway, so they'd have  
2 to -- you know, you can take the components off of it  
3 that you need because a new cylinder head comes bear,  
4 it means it has no components bolted to it. You'd  
5 have to reassemble it off the parts you take of this  
6 old cylinder head. So, all of those parts that you  
7 would try to take off the cylinder head are not usable  
8 anymore.

9 Q. It's your opinion that they're not  
10 usable anymore in the condition that they are outside  
11 there?

12 A. Right, you can't do that, no.

13 Q. To refer back to your testimony  
14 with regard to the picture of the motor when it first  
15 came out of the vehicle, did the motor parts appear,  
16 with the exception of the cylinder head, did the other  
17 motor parts appear to be reusable at that period of  
18 time, in the picture that you saw in the beginning of  
19 the restoration process?

20 A. Yeah, that was fine. That's -- it  
21 showed little dirt and grease from the road, normal  
22 wear and tear but you can tell it had been covered,  
23 there was no water standing in the cylinder boards,  
24 you know, there was no rust on top of the cylinder  
25 block other than ordinary surface rust that you see on

1 anything. So, I would say that the engine block and  
2 everything that was just then removed was 100 percent  
3 reusable, all the components on that. Belts and hoses  
4 and stuff.

5 Q. With regard to the estimate, do you  
6 -- I think we saw earlier, did we see that much of the  
7 suspension of the vehicle was going to be attempted to  
8 be reused.

9 A. Correct, yeah.

10 Q. And then this picture do we see a  
11 depiction of components of the suspension?

12 A. We do. If you look just off center  
13 you can see the left shock absorber, then you see the  
14 upper control arm. And right behind the AC compressor  
15 and power steering box, you'll see that the lower  
16 cross member and then on the right the corresponding  
17 components for the right side, all still bolted  
18 together. Nothings been done to that except that's  
19 been dropped out of the car. No repairs have been  
20 started on, it's all still complete with the breaks  
21 and everything on it.

22 Q. Okay. And in your opinion, in the  
23 state that they are in this photograph and as you saw  
24 them personally, are they still capable of being  
25 reused for this restoration project?

1           A.           It would take a lot of work. What  
2 probably would have been a straight forward  
3 disassemble, clean paint and rebuild, it's going to  
4 turn into a major ordeal to get all that stuff  
5 working. All the bolts are rusted and frozen on  
6 there. Just disassembling that thing right now would  
7 be a nightmare.

8                       MR. WESTBROOK WILLS: Your Honor, I  
9 believe the witness has testified that he's  
10 able to recognize the image here as being  
11 that of the vehicle components as he saw  
12 them personally, and we would therefor  
13 tender Plaintiff's Exhibit 12.1 into  
14 evidence.

15                      THE COURT: All right, admitted.

16                      MR. WESTBROOK WILLS: Thank you,  
17 Your Honor.

18                      (Whereupon, Plaintiff's Exhibit  
19 12.1 was admitted into evidence.)

20                      MR. SOBIERAJ: Brook, are you not  
21 planning on putting the other parts of your  
22 -- the photos into evidence that you  
23 submitted already.

24                      MR. WESTBROOK WILLS: Those others  
25 are parts -- the detailed estimate is

1 already in, it's part of the complaint.

2 MR. SOBIERAJ: I guess what I'm  
3 asking is, Plaintiff's Exhibit 12.1, 2, 3,  
4 4, 5, 6 and 7 are you not admitting all of  
5 those.

6 MR. WESTBROOK WILLS: Yeah, I  
7 haven't gotten to them yet though.

8 MR. SOBIERAJ: Okay.

9 THE COURT: Let's take a 10 minute  
10 break here.

11 MR. WESTBROOK WILLS: Okay, Your  
12 Honor, thank you.

13 (Whereupon, a brief recess was  
14 taken.)

15 (Whereupon, all parties were  
16 present. Proceedings resumed.)

17 THE COURT: Okay, moving on.

18 MR. WESTBROOK WILLS: Your Honor, I  
19 want to show another picture that we've  
20 got. This is Plaintiff's Exhibit 12.7.

21 Q. Mr. Reinert, are you able to  
22 recognize, this is Plaintiff's Exhibit 12.7, are you  
23 able to recognize what's pictured in 12.7?

24 A. More parts of the car, I think it's  
25 from the previous picture we basically just swung to

1 the left. So, we see the hood leaning against the  
2 building frame with the convertible top and the frame.  
3 This engine block you see to the right in the picture,  
4 that is not from the Mercedes, that looks like an old  
5 Chevolet, six cylinder. In the foreground the kind of  
6 odd looking thing sticking straight up, that's part of  
7 the rear axle, that's the control arm that holds it in  
8 place. Next to it you see the brake disk of the rear  
9 end. These are the other bins, some of them are open,  
10 some of them are closed. You see the one on the  
11 foreground that's kind of standing on end, I'm sure  
12 that that's where most of the interior and odds and  
13 ends are for this car. I saw, I think, carpet in one  
14 of them, but I can't speculate as to what else is in  
15 those bins. Mostly what we see there is the rest of  
16 the car.

17 Q. Well, what is your opinion as to  
18 whether these components are still useful at all in  
19 the restoration process?

20 A. Well, I think the hood and the  
21 sheet metal parts, which are usually out in the  
22 weather anyway, that's not going to be an issue there.  
23 They might get some damage in the corners, of course  
24 has to be reworked. They're both made out of aluminum  
25 which is soft metal, easily scratched, easily damaged.

1 The rear axle, you can see the rust on the break parts  
2 there, that's useless, that's junk. The other  
3 components are just going to require a tremendous,  
4 double, triple labor than what it would have taken  
5 initially to get them back and some sort of useable  
6 condition.

7 MR. WESTBROOK WILLS: We would  
8 tender Plaintiff's 12.7 into evidence.

9 THE COURT: Without objection.

10 Q. Next, I'll ask this is Plaintiff's  
11 Exhibit 12.5 and Mr. Reinert, I'll ask if you can  
12 identify those parts that are represented in that  
13 photograph.

14 A. Bottom right down there of course  
15 the steering wheel, that's made up of bakelite  
16 compound, similar to plastic, it doesn't like direct  
17 sunlight so that's junk. A couple of hub caps and  
18 then the intake manifold for the cylinder head is on  
19 the left there, that round hole, that's where the  
20 comstock valve is. And then to the right the fan  
21 blade and then those -- other pieces of the grill, the  
22 protection for the radiator and there is an exhaust  
23 pipe laying there too. Then again some more bins.

24 Q. In your opinion do these -- would  
25 these parts with your knowledge of vehicles and their

1 parts, would you consider that these parts have been  
2 exposed to the weather in this manner and in the  
3 manner that you witnessed yourself, would you consider  
4 that those parts have been degraded in value from  
5 their -- from the state in which the car was delivered  
6 to Fenix?

7 A. Oh, absolutely. I mean the  
8 steering wheel is useless. Of course the hubcaps and  
9 the radiator and those other pieces, not to the same  
10 degree but at the same time again some of those are  
11 delicate parts and they get damaged as being in  
12 another box with something else without padding. So  
13 the answer to your question is yes.

14 Q. Do you have an opinion as to what  
15 is the value of these parts as they sit out in the --  
16 in the condition that they have become with regard to  
17 the restoration process project. What would be the  
18 value of these component parts now, in your opinion?

19 A. I'd say, it's very difficult to  
20 answer that question simply because there's so many  
21 components. What you've done, you've taken a complete  
22 automobile and completely taken the last screw that  
23 held everything together apart and you've got parts  
24 all over the parking lot now. As to some, do they  
25 have a value? Yeah, they have some value, but nothing

1 that you can really put -- if I was to go to a  
2 junkyard and buy this stuff, you'd probably pay \$1,500  
3 for most of it. But you can't use it as is, I mean,  
4 the steering wheel, why would you buy that? It's not  
5 worth anything. The hubcap, okay, it can be cleaned  
6 up, the fan it can be cleaned up. Everything can be  
7 cleaned up to an extent, but there's no they've lost  
8 their value let's put it that way.

9 MR. WESTBROOK WILLS: I would like  
10 to tender Exhibit 12.5 into evidence.

11 MR. SOBIERAJ: Without objection.

12 THE COURT: Admitted.

13 (Whereupon, Plaintiff's Exhibit  
14 12.5 was admitted into evidence.)

15 Q. In your professional opinion, with  
16 your knowledge of the industry, is it normal for a --  
17 is it normal practice for a restoration business to  
18 leave component parts of a vehicle that is being  
19 restored, out exposed to the weather in this manner?

20 A. Absolutely not.

21 Q. Is it in your experience, do you  
22 believe that it's fair to say that someone who a  
23 professional who left the component parts of a vehicle  
24 that is being restored out exposed to the weather in  
25 this manner, would you believe that they could have an

1 expectation that no damage would occur to those parts  
2 that are left out?

3 A. Again, absolutely not.

4 Q. In your professional opinion, based  
5 on your knowledge of the industry and experience,  
6 would you consider leaving component parts of a  
7 vehicle that's being restored out exposed to the  
8 elements in the manner that you witnessed and you see  
9 in the pictures, would you consider that to be a  
10 reckless disregard of the property of the owner of the  
11 vehicle?

12 A. Clearly, it would be.

13 Q. Is it your opinion that as a result  
14 of leaving the parts and components of this vehicle  
15 exposed to the elements, that they have degraded in  
16 value to the point where the restoration would be more  
17 expensive than originally forecasted?

18 A. That would be my opinion.

19 Q. If I could direct your -- direct  
20 you back to the exhibit that we saw before I believe  
21 it was Plaintiff's Exhibit 6, was the estimate, the  
22 detailed estimate with the costs for each particular  
23 stage or each particular aspect of the restoration  
24 listed, I believe before -- I'll ask you, did you  
25 believe that that was a reasonable estimate for the

1 restoration at that time, based on what you saw  
2 described in the estimate?

3 A. It's close, I would say. Based on  
4 our experience and the -- what's written here, like I  
5 said, deduct 10 percent, 15 percent on top of that,  
6 but that at the time seemed like a good number.

7 Q. And that number was around \$60,000?

8 A. Yeah, \$60,070. If you think about  
9 that, that's a lot of money. People throw numbers  
10 around like they don't mean anything but if you think  
11 about how many people have \$60,000 laying around that  
12 they can just--

13 MR. SOBIERAJ: Objection, Your

14 Honor.

15 THE COURT: Sustained.

16 Q. Based on what you know about the  
17 components that have been exposed to the elements in  
18 this particular vehicle and their condition presently,  
19 do you have an opinion as to what the cost of the  
20 restoration would be to complete now?

21 A. I would go with \$120,000. I think  
22 it's officially doubled the scope of the work.

23 Q. Okay. In your opinion is there any  
24 way that a professional in your industry under like  
25 circumstances, would not have known that leaving the

1 vehicle components outdoors exposed to the elements in  
2 the manner that we have seen them and you witnessed,  
3 was going to ruin those parts?

4 A. Of course they did.

5 Q. Mr. Reinert, do you have an opinion  
6 as to -- you've given us, and thank you for your  
7 opinion, you've given us what you believe, what you  
8 estimate the value or what you deem the value of the  
9 vehicle would have been had the restoration been  
10 completed as agreed. And you also gave us the value  
11 of the vehicle as you have estimated the value to be  
12 at the time that the plaintiff delivered the vehicle  
13 to Fenix.

14 Do you have an opinion as to what  
15 the value of the vehicle is, today as we sit here, in  
16 the condition that it's in and the state of  
17 disassembly, the value of the vehicle that you  
18 witnessed the condition of it, do you have an opinion  
19 as to what the value of the total is actually?

20 A. Currently given by what's left of a  
21 car like that, about \$2,500. And this car sat outside  
22 now, I think, going on year six in the weather--

23 MR. SOBIERAJ: Objection, Your  
24 Honor. He said the car has sat outside. I  
25 don't believe the entire car was sitting

1 outside.

2 A. Well, based on what I saw the  
3 condition of the car, I think that that car has a  
4 scrap value basically \$2,500, and then --and people  
5 will buy that and do the restoration, but they know  
6 they're going to stick \$120,000 into a restoration,  
7 so.

8 Q. In your opinion and your knowledge  
9 of the industry, is it common that someone who  
10 restores a vehicle in the manner that is at issue  
11 here, is it common that a professional restoration  
12 operation would pay a deposit for work on the vehicle  
13 in advance of doing the work?

14 A. It is, if both parties agree.

15 Q. Okay. Is there a certain way that  
16 in your industry with which the money that is  
17 deposited must be handled by the company that's doing  
18 the restoration?

19 A. There is really no industry  
20 standard. They are trade organizations that encourage  
21 very active bookkeeping, almost like escrow account  
22 type thing. And we do a combination of probably all  
23 of the above depending on the scope of the work but  
24 there's really no rules out there. It's up to the  
25 individual shop and individual client to make that

1 arrangement.

2 Q. So, hypothetically if a contract  
3 contained a provision that said the provision of  
4 \$20,000 would be fully refundable upon demand, then  
5 you would expect that upon demand the \$20,000 deposit  
6 would be returned, in this hypothetical?

7 A. Yes.

8 Q. Have you had an occasion to look at  
9 any figures that represent the cost of transporting  
10 the vehicle in pieces rather than as an entire car,  
11 this particular vehicle?

12 A. Well, it'd be expensive for a  
13 number of reasons. Car is not rollable, you know,  
14 it's on a frame that doesn't belong with the car so  
15 the car would have to be removed from the frame. I  
16 don't know if we could even get to do that. I think  
17 it would have to be a combination between Fenix and a  
18 contractor, then just picking through all the stuff  
19 trying to figure out a bunch of labor hours, you  
20 probably have a guy out there eight or ten hours  
21 sorting through all that stuff and trying to figure  
22 out--

23 MR. SOBIERAJ: Objection, Your  
24 Honor. I'm not sure what he's testifying  
25 to. He was asked a question about

1 transporting and now he's talking about  
2 picking apart pieces.

3 THE COURT: He's saying why it  
4 would cost so much to transport it, because  
5 it's in a bunch of pieces.

6 MR. SOBIERAJ: Your Honor, I  
7 object. He hasn't been qualified as an  
8 expert on the transportation of car parts.

9 THE COURT: Overruled. Go ahead,  
10 you can answer.

11 A. You'd have to hire somebody who can  
12 pay provide a vehicle that could follow the car  
13 without wheel on it and then somebody to come in and  
14 load all the stuff up. It's something we don't do,  
15 you'd have to hire somebody to --even a moving company  
16 maybe, I don't know, but it's not going to be cheap?

17 Q. Finally, with regard to your expert  
18 witness testimony and your evaluation of the documents  
19 and the efforts that you've put forth towards this  
20 providing your opinion, have you charged a fee for  
21 your service as expert witness?

22 A. I have.

23 Q. How much as your fee been for those  
24 expert witness services?

25 A. \$1,000.

1 Q. And that is a fee that is  
2 chargeable to Dr. Staveley O'Carroll?

3 A. Right.

4 MR. WESTBROOK WILLS: Thank you.  
5 Your Honor, I believe that's all I have.  
6 Mr. Reinert, if you'll be so kind as to  
7 answer the questions that my opposing  
8 counsel has on cross-examination. Thank  
9 you.

10 THE COURT: Cross.

11 MR. SOBIERAJ: Thank you, Your  
12 Honor.

13 CROSS-EXAMINATION BY MR. SOBIERAJ

14 Q. Good afternoon, Mr. Reinert. You  
15 gave an opinion as to the value of the vehicle based  
16 upon the testimony of Dr. Staveley O'Carroll, based  
17 upon the condition of the vehicle when it was  
18 delivered to Fenix Automotive.

19 If I told you that that car came in  
20 and it was not drivable, that the engine-- the head  
21 was sitting in the trunk, that the vehicle was filled  
22 with rats nests, metal shavings, dry rotted hoses,  
23 rusted out or rust in the trunk, rust in the engine  
24 compartment, broken headlights, dents in the car. If  
25 I told you that the vehicle was in that condition when

1 it arrived to Fenix Automotive, would your opinion as  
2 to the value change?

3 A. I don't think so, because some of  
4 those things or mostly of what you described is not  
5 unusual for a car that age. I mean the rats nests of  
6 course is something that -- surface rust is normal and  
7 certain wear and tear overall over the years is normal  
8 and it doesn't really detract from the value of a car  
9 of that -- of a classic car like that.

10 Q. So, your testimony is the that the  
11 value that you testified the vehicle was worth  
12 approximately \$42,000 I believe is what you testified  
13 to. You're saying that based upon what I just  
14 described to you, the vehicle would not be worth any  
15 less than what was described by Dr. Staveley  
16 O'Carroll?

17 A. I would -- what I'm saying is the  
18 car itself that motel the '69 280 SL it doesn't matter  
19 whether it's that car or a different car, that  
20 particular model has a value.

21 Q. I understand that. But what I'm  
22 trying to find out is would there be a difference  
23 between the two?

24 A. Yeah, he sees the positive in it  
25 and he described a negative, but it's still the same

1 car, it still has the same value. That's what I'm  
2 testifying.

3 Q. So, your testimony is that even if  
4 the condition was even substantially worse than what  
5 he described, there would be no change in the  
6 estimated value that you would place on it?

7 A. No, that's just the way that market  
8 is, that's the way those cars are. They have a value  
9 and that's -- that's what I'm testifying. I think  
10 that's a good number, I don't think it would change.

11 Q. If that car came in with all those  
12 problems and let's say parts that had to be replaced,  
13 the engine had to be rebuilt, all those things had to  
14 be restored, you're saying that -- and it wasn't  
15 driving, it wasn't in drivable condition, wasn't even  
16 safe to drive because it didn't have headlights and  
17 everything was, you know, in disrepair, you're stating  
18 that that vehicle would not have any difference in  
19 value than how Dr. Staveley O'Carroll described it and  
20 what you said it was worth approximately \$42,000? Yes  
21 or no.

22 MR. WESTBROOK WILLS: Objection to  
23 the extent that the testimony has not been,  
24 nor the evidence by the plaintiff that that  
25 was the condition of the car. So, if this

1 is a hypothetical.

2 MR. SOBIERAJ: He's an expert. He  
3 can give an opinion as to hypothetical,  
4 which is exactly what you had asked earlier  
5 when asking about the parts.

6 THE COURT: Well, I would say there  
7 is no evidence that it was filled with rats  
8 nests or anything like that. Because the  
9 only evidence that is in the record, which  
10 was a detailed estimate of what it would  
11 cost by the defendant, doesn't say anything  
12 about all of these things. So, there's  
13 really no basis for this question in the  
14 first place. I'm giving you a bit of  
15 leniency on the way you've --I've allowed  
16 you to phrase the question, and I know  
17 you're trying to say well your client wants  
18 to say that this is the condition was now,  
19 but there is not evidence in the record  
20 that it was ever in that condition. So,  
21 you know, he's answered to the best that he  
22 needs to, in my opinion, because you're  
23 really --there is no evidence in the record  
24 that that car was in the condition that  
25 you're trying to ask, would that change

1                   your opinion about.

2                   MR. SOBIERAJ: Understood, Your  
3 Honor. I'll retract the question.

4                   Q.           Mr. Reinert, when you came to your  
5 opinion you were provided pictures that Mr. Wells  
6 took, along with of course your testimony that you  
7 visited the vehicle. Is that correct?

8                   A.           That is correct. And the statement  
9 that Mike Fitzgerald, the Exhibit 5, I think.

10                  Q.           The e-mails, yes. But what I mean  
11 is as to the actual -- well, we'll go by that as well.  
12 The condition of the vehicle, you formulate your  
13 opinion based upon those pictures, your personal visit  
14 to the shop and the e-mails that you reviewed?

15                  A.           Right.

16                  Q.           Are you aware that the plaintiff  
17 had other pictures available of the vehicle, other  
18 than the ones that he showed you?

19                  A.           No, I'm not.

20                  Q.           Are you aware that there are other  
21 e-mails between Mr. Fitzgerald and Dr. Staveley  
22 O'Carroll regarding the work that was performed on the  
23 car and the condition of the vehicle?

24                  A.           I did see some, but I can't  
25 remember now how many. I know there was more than

1 three or four, but I don't think there was more than  
2 six or eight.

3 Q. Okay. You stated that the value of  
4 the car if it had been returned to driver quality, I  
5 believe you stated your estimate was between \$100 to  
6 \$120,000, and about \$115,000 is what you concluded  
7 that had it been restored to the driver quality that's  
8 what you would place the value on. Is that correct?

9 A. That's what the drivers are selling  
10 for now consistently, and that's based on my research  
11 like I said before on auction results, on  
12 Classicdriver.com.

13 Q. So, if I told you that a search of  
14 the website online would reveal cars in excellent  
15 shape at least driver quality as you stated, that  
16 ranged anywhere between \$40,000 and \$120,000, would  
17 that be a mistake?

18 A. I think --

19 MR. WESTBROOK WILLS: I object to  
20 that question.

21 THE COURT: Sustained.

22 Q. Is it correct to say that if you  
23 did a search for the same model Mercedes-Benz, same  
24 year, model and condition, that you would find a  
25 variety of prices for driver quality, that would range

1 anywhere between \$40,000 and \$120,000?

2 A. I don't know what that number would  
3 be.

4 MR. WESTBROOK WILLS: Objection.

5 THE COURT: Sustained.

6 MR. SOBIERAJ: Your Honor, he said  
7 that he searched certain auction sites on  
8 the internet, I would think that my  
9 question would be fair to ask given that  
10 he's actually testified to that same type  
11 of search.

12 THE COURT: Well, he gave you that  
13 he searched on the internet. You want to  
14 put in -- are you trying to get in evidence  
15 that there are particular websites?

16 MR. SOBIERAJ: No, Your Honor. I  
17 just was asking that is it correct to say  
18 that if he searched the website, that he  
19 might find numerous sites that give varying  
20 values in his range.

21 THE WITNESS: Can I comment on  
22 that?

23 THE COURT: Who is asking?

24 THE WITNESS: Axel.

25 THE COURT: Okay, yeah, go ahead.

1 THE WITNESS: Again, like I said  
2 earlier. This is a very specific model of  
3 a car. There weren't that many produced.  
4 The people that own them they watch the  
5 market--

6 MR. SOBIERAJ: All right, now I'm  
7 going to object, Your Honor, because it's  
8 nonresponsive. It was a simply yes or no  
9 question.

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT: He could --

12 MR. SOBIERAJ: I just asked if he  
13 went online if a search would reveal a  
14 variety of prices. Now he's talking about  
15 what people want. I just asked a  
16 question--

17 THE COURT: Well, that's how you'd  
18 come up with a value of prices of a used  
19 car, is what people want.

20 MR. SOBIERAJ: Right, I understand  
21 that. But I didn't ask him what people  
22 want. I just asked him if you went online  
23 would the internet reveal auctions for cars  
24 ranging within that value. And now he's  
25 testifying as to what people want.

1           A.       I can give you the high and the low  
2 value that I found.

3                   THE COURT: You can answer that?

4           A.       Low, \$47,200, average retail  
5 \$81,400, auction high \$254,600. So, to answer your  
6 question, yes, there are lower ones out there.

7           Q.       Thank you. As to the value of the  
8 parts, you reviewed the images that the plaintiff  
9 showed you. You couldn't see all the parts in those  
10 bins, correct?

11          A.       No.

12          Q.       So, you don't have an exact idea of  
13 all the different parts that were in those bins?

14          A.       No.

15          Q.       Or their condition?

16          A.       I saw some.

17          Q.       You saw some, but anything that was  
18 in a bin and covered, you wouldn't know what part was  
19 in there or the condition it was in?

20          A.       Right.

21          Q.       Is it fair to say that if those  
22 parts that were out there exposed to the weather, if  
23 those parts were in a condition that were not either  
24 restorable or were in a poor condition, that those  
25 parts, the value of those parts would not have been

1 effected by being kept out there to begin with?

2 MR. WESTBROOK WILLS: Objection.

3 That's a roundabout way of testifying that  
4 the parts out there were not in the  
5 condition that Mr. Reinert has testified  
6 that he saw them in.

7 MR. SOBIERAJ: He doesn't know what  
8 the condition the parts were prior to -- he  
9 only knows as to what the condition of the  
10 parts were when he actually saw them. So,  
11 I'm just asking if the parts -- I don't  
12 know what the parts were. I'm asking his  
13 opinion if the parts were in a worse  
14 condition before they were stored outside,  
15 would it have reduced the value of that.

16 THE COURT: Well, that's a  
17 hypothetical without a basis for it. There  
18 is not evidence to base your hypothetical  
19 question on. So, I will sustain the  
20 objection.

21 Q. You testified that the value of the  
22 car in it's current condition would be value of  
23 \$2,500, but would not the work that was performed on  
24 the vehicle, such as the car putting on the  
25 rotisserie, and the removal of the parts and

1 cataloging of parts, would not those things have to be  
2 done for any restoration?

3 A. They would.

4 Q. So is there not a value to that,  
5 that that work has already been performed?

6 A. Well, I don't think you could --  
7 you're putting on a rotisserie, I don't think there's  
8 really any value in that. The cataloging, I wasn't  
9 aware that anything was cataloged.

10 Q. But the removing of the parts, the  
11 time, the labor, is all of those things -- all of the  
12 work that was performed if this had been taken to  
13 another company, say yours, to restore the vehicle,  
14 that work would have been required?

15 MR. WESTBROOK WILLS: Objection.

16 THE COURT: What is the basis if  
17 your objection.

18 MR. WESTBROOK WILLS: That counsel  
19 is in fact presenting a defense to the  
20 claims.

21 MR. SOBIERAJ: No, I'm actually  
22 just presenting a question regarding a  
23 value of the labor performed. I'm asking  
24 his opinion--

25 THE COURT: You can answer the

1 question, if you can.

2 A. At this point, somebody said I want  
3 you to restore this car or finish, you know, whatever,  
4 get this car back together, there would be no credit  
5 for the work that's performed. In other words what's  
6 been done probably made the job twice as expensive as  
7 it would have been, because now you've got a big mess  
8 is what you've got, and that's not worth anything.

9 Q. So, the removal of the parts that  
10 you would have to remove in a restoration, the  
11 sandblasting, all of those things because that's part  
12 -- if I'm not mistaken, the invoices that he submitted  
13 as part of his complaint, and I believe you probably  
14 reviewed those as well, and it was also in some of the  
15 e-mails was some of the work that he had done, you're  
16 saying none of that has any value?

17 A. Simply because it's chaos. Nobody  
18 knows where anything is at, that's the most important  
19 part of a restoration, is being organized, and that's  
20 not happened here. It would double the amount of  
21 work, honestly, to sort through everything and find  
22 everything. All the little nuts and bolts and screws  
23 that you need to put on these parts, nobody knows  
24 where they are. They're probably in the bin  
25 somewhere, but that has no value. The only that's of

1 value right there is the VIN number.

2 Q. Mr. Reinert, have you heard of  
3 Fenix Automotive before today?

4 A. Yes, when I went to see them.

5 Q. So, you had no knowledge of Fenix  
6 Automotive was operating prior to being contacted by  
7 Dr. Staveley O'Carroll's attorney?

8 A. Correct.

9 Q. Do you know Mike Fitzgerald?

10 A. Not till I met him that day.

11 Q. Okay.

12 MR. SOBIERAJ: No further  
13 questions, Your Honor.

14 THE COURT: Any redirect?

15 MR. WESTBROOK WILLS: Just to the  
16 extent, Your Honor --

17 REDIRECT BY MR. WESTBROOK WILLS:

18 Q. Mr. Reinert, you testified that the  
19 value of the vehicle going in, so there is no  
20 confusion, based on your experience and your  
21 comparison that the value of the vehicle when it was  
22 delivered to Fenix was between \$42 and \$45,000, is  
23 that correct?

24 A. That's a good number, yes, sir.

25 Q. And that's based on your knowledge

1 of the market, your comps and what your expert opinion  
2 is with regard to this particular vehicle, correct?

3 A. That's correct.

4 MR. WESTBROOK WILLIS: Okay, thank  
5 you.

6 MR. SOBIERAJ: Can I  
7 recross-examine, Your Honor?

8 THE COURT: Go ahead.

9 RECROSS-EXAMINATION BY MR. SOBIERAJ:

10 Q. Just one question. Based on your  
11 opinion as asked by counsel, you did not actually see  
12 the vehicle when it arrived at Fenix Automotive. So,  
13 you only have the testimony of Dr. Staveley O'Carroll  
14 to determine the actual condition of the vehicle, when  
15 it arrived at Fenix Automotive, is that correct?

16 A. That's not correct, because I also  
17 have Mike Fitzgerald's Exhibit 5.

18 Q. I apologize, you have the e-mail.  
19 So, the e-mails and the testimony of Dr. Staveley  
20 O'Carroll, but you did not actually see the vehicle,  
21 neither pictures or in person, what the condition was  
22 when it actually arrived at Fenix Automotive?

23 A. That is correct.

24 MR. SOBIERAJ: Thank you.

25 THE COURT: Okay. Takes care of

1                   that witness.

2                   (Whereupon, further hearing  
3                   proceedings took place.  
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C E R T I F I C A T I O N

Certified to be a true and accurate  
transcript of the aforesaid proceeding.

Natalie A. Williams

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# ANNEX

## C

# The South Carolina Court of Appeals

Kevin Staveley-O'Carroll, Appellant,

v.

Fenix Automotive, LLC, Respondent.

Appellate Case No. 2021-001351

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## ORDER

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Respondent has filed a motion to dismiss and remand to the circuit court for consideration of Respondent's Rule 59(e), SCRCP, motion. Respondent's motion is hereby granted and this appeal is dismissed without prejudice. *See Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of . . . Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions. A second filing fee will not be collected from a party who previously appealed.").



---

FOR THE COURT

Columbia, South Carolina

**FILED**  
**Jan 28 2022**

---

cc:

Warren W. Wills, III, Esquire

Damien Andreas Sobieraj, Esquire

**From:** Warren Wills wwills@wwillslaw.com  
**Subject:** Staveley-O'Carroll v Fenix Automotive, LLC (2019-CP-10-05392): Nov. 10, 2022 Correspondence to Judge Young  
**Date:** November 16, 2022 at 1:08 PM  
**To:** RYounglc@sccourts.org  
**Cc:** damien.cooperriverlegalservices.com damien@cooperriverlegalservices.com



Mr. Mazurek:


I represent the Plaintiff in the above-referenced case. I mailed Judge Young a correspondence last week (dated November 10, 2022) regarding the case, and concurrently copied opposing counsel Mr. Sobieraj with the correspondence by mail. The correspondence had a lot of attachments and was rather large, so I only sent it to the Court and Mr. Sobieraj by U.S. Mail, and did not e-mail it. I wanted to let the Court know that Mr. Sobieraj had some concerns with the content of the correspondence, and may wish to have the opportunity to respond. Thank you, Mr. Mazurek.

Brook Wills

W. Westbrook Wills III  
The Law Office of W. Westbrook Wills III  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
Fax (866) 922-8596

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**From:** damien.cooperriverlegalservices.com damien@cooperriverlegalservices.com   
**Subject:** RE: Staveley-O'Carroll v Fenix Automotive, LLC (2019-CP-10-05392): Nov. 10, 2022 Correspondence to Judge Young  
**Date:** November 17, 2022 at 5:24 PM  
**To:** RYounglc@sccourts.org  
**Cc:** Warren Wills wwills@wwillslaw.com



Mr. Mazurek,

Please find attached to this email my letter addressed to Judge Young in response to that submitted by Mr. Wills.

Kind regards,

Damien A. Sobieraj, Esquire  
Cooper River Legal Services, LLC  
Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt Pleasant, SC 29465  
Office: (843) 881-2244  
Mobile: (843) 408-6555  
Facsimile: (843) 849-0209  
Email: damien@cooperriverlegalservices.com

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-----Original Message-----

From: Warren Wills <wwills@wwillslaw.com>  
Sent: Wednesday, November 16, 2022 1:08 PM  
To: RYounglc@sccourts.org  
Cc: damien.cooperriverlegalservices.com <damien@cooperriverlegalservices.com>  
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Brook Wills

W. Westbrook Wills III  
The Law Office of W. Westbrook Wills III P.O. Box 822 Folly Beach, SC 29439 Tel. (843) 805-6300 Fax (866) 922-8596

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CRLS Letter to  
Judge -17.pdf



COOPER  
RIVER  
LEGAL  
SERVICES, LLC

1002 Anna Knapp Blvd, Ste 204, Mt. Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt. Pleasant, SC 29465  
Telephone: (843) 881-2244  
Facsimile: (843) 849-0209

Damien A. Sobieraj, Esquire  
damien@cooperriverlegalservices.com

November 17, 2022

**VIA EMAIL ONLY TO:**

Honorable Roger M. Young, Jr.  
Circuit Court Judge  
Charleston County Judicial Center  
100 Broad Street, Suite 368  
Charleston, South Carolina 29401  
ryoungsc@sccourts.org

RE: Kevin Staveley-O'Carroll v. FeNix Automotive, LLC  
Case No. 2019CP10-05392

Dear Judge Young:

I represent the Defendant in the above-referenced matter, and we object to Plaintiff's letter dated November 10, 2022, addressed to you and regarding the "Order of Judgment for Damages and Plaintiff and Defendant's Motions to Alter or Amend."

**Procedural History**

On August 25, 2021, the Court held a damages hearing attended by Plaintiff, Defendant, their respective counsels, and Plaintiff's expert witness, after which this Court ordered the parties to submit their proposed Order for Damages to the Court.

Plaintiff's counsel submitted his proposed Order for Damages to both the Court and Defendant's counsel via email on September 10, 2021, then revised and resubmitted his proposed order to both again via email on September 17, 2021.

Defendant's counsel submitted his proposed Order for Damages to the Court via email on September 17, 2021.

The Court entered its Order for Damages on October 7, 2021.

Defendant filed its Motion to Alter or Amend Judgment with the Court on October 14, 2021, requesting the Court correct the calculation of damages by \$7,500.00 in the Order for Damages due to Defendant counsel's drafting error.

Plaintiff filed its Motion to Alter, Amend, and Reconsider with the Court on October 15, 2021, requesting the Court to reconsider the amount of damages awarded including its denial of punitive damages and to hold a hearing on Plaintiff's motion.

On November 1, 2021, the Court denied Plaintiff's Motion to Alter, Amend, and Reconsider, per its Order Denying Motion to Alter or Amend Judgment Pursuant to Rule 59(e) filed November 2, 2021.

Plaintiff filed a Notice of Appeal on November 17, 2021, with the Court of Appeals.

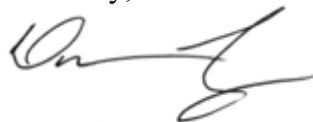
Defendant filed a Motion to Dismiss on December 7, 2021, with the Court of Appeals because the Court had not yet decided Defendant's Motion to Alter or Amend Judgment.

The Court of Appeals granted Defendant's Motion to Dismiss remanding the case back to this Court for consideration of Defendant's Motion to Alter or Amend Judgment.

### **Objection**

The only remaining matter before the Court is Defendant's Motion to Alter or Amend Judgment. The Court has already denied Plaintiff's Motion to Alter, Amend, and Reconsider by its Order by its Order Denying Motion to Alter or Amend Judgment Pursuant to Rule 59(e) filed November 2, 2021. Except to the extent that Plaintiff is requesting this Court to rule on Defendant's outstanding motion, Plaintiff's letter and the information contained therein are untimely because well more than ten (10) days have passed since Plaintiff received written notice of the entry of the judgment in this case. Consequently, Plaintiff's letter constitutes an improper attempt to present the Court with another motion to reconsider. For these reasons, Defendant requests that the Court disregard Plaintiff's letter and the information contained therein except to the extent that Plaintiff requests the Court rule on Defendant's outstanding Motion to Alter or Amend Judgment, and Defendant joins with Plaintiff in such request to the Court.

Sincerely,



Damien A. Sobieraj, Esquire

Cc: W. Westbrook Wills III, Attorney for Plaintiff, via email to [wwills@wwillslaw.com](mailto:wwills@wwillslaw.com)

**From:** Young, Roger Law Clerk (Max J. Mazurek) ryounglc@sccourts.org  
**Subject:** RE: Staveley-O'Carroll v Fenix Automotive, LLC (2019-CP-10-05392): Nov. 10, 2022 Correspondence to Judge Young  
**Date:** November 18, 2022 at 10:31 AM  
**To:** damien cooperriverlegalservices.com damien@cooperriverlegalservices.com  
**Cc:** Warren Wills wwills@wwillslaw.com



Mr. Wills and Mr. Sobieraj,

We have Mr. Wills's letter and attached exhibits, and Mr. Sobieraj letter in response. These documents will be provided to Judge Young upon his return to the office.

Thank you,

Max J. Mazurek  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: RYounglc@sccourts.org

-----Original Message-----

From: damien cooperriverlegalservices.com <damien@cooperriverlegalservices.com>  
Sent: Thursday, November 17, 2022 5:24 PM  
To: Young, Roger Law Clerk (Max J. Mazurek) <ryounglc@sccourts.org>  
Cc: Warren Wills <wwills@wwillslaw.com>  
Subject: RE: Staveley-O'Carroll v Fenix Automotive, LLC (2019-CP-10-05392): Nov. 10, 2022 Correspondence to Judge Young

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Mr. Mazurek,

Please find attached to this email my letter addressed to Judge Young in response to that submitted by Mr. Wills.

Kind regards,

Damien A. Sobieraj, Esquire  
Cooper River Legal Services, LLC  
Physical: 1002 Anna Knapp Blvd, Ste 204, Mt Pleasant, SC 29464  
Mail: P.O. Box 2439, Mt Pleasant, SC 29465  
Office: (843) 881-2244  
Mobile: (843) 408-6555  
Facsimile: (843) 849-0209  
Email: damien@cooperriverlegalservices.com

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Sent: Wednesday, November 16, 2022 1:08 PM  
To: RYounglc@sccourts.org  
Cc: damien cooperriverlegalservices.com <damien@cooperriverlegalservices.com>  
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Mr. Mazurek:

I represent the Plaintiff in the above-referenced case. I mailed Judge Young a correspondence last week (dated November 10, 2022)

I represent the Plaintiff in the above referenced case. I mailed Judge Young a correspondence last week (dated November 10, 2022) regarding the case, and concurrently copied opposing counsel Mr. Sobieraj with the correspondence by mail. The correspondence had a lot of attachments and was rather large, so I only sent it to the Court and Mr. Sobieraj by U.S. Mail, and did not e-mail it. I wanted to let the Court know that Mr. Sobieraj had some concerns with the content of the correspondence, and may wish to have the opportunity to respond. Thank you, Mr. Mazurek.

Brook Wills

W. Westbrook Wills III

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