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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

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Case No: 2006-CP-10-4773

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5 Star, Inc., .....Respondent,

v.

Ford Motor Company, .....Appellant.

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# RECORD ON APPEAL
Volume II of II

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THE COURT: Thank you, Mr. Greene. You may step down, and you may be excused from the courthouse.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

(The witness is excused from the witness stand.)

THE COURT: Call your next witness.

MR. GOLDSTEIN: Call Chief Norris.

C. BENJAMIN NORRIS,

being first duly sworn by the clerk, is examined and testifies as follows:

THE CLERK: Please be seated. For the record, if you'll state your name, spelling your last name.

THE WITNESS: C. Benjamin Norris, N-O-R-R-I-S.

THE COURT: Thank you.

Mr. Goldstein, you may proceed.

MR. GOLDSTEIN: Thank you. May it please the Court.

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. I don't know, do they still call you Chief, or now that you're retired ---

A. Well, some of the guys that I work for still do.

Q. Okay. I'll call you Mr. Norris then. Tell us a little bit about your background.

A. I started with the North Charleston fire department back in 1973. I started out as a tail board firefighter, worked my way up through the ranks, promoted to engineer, driver operator of the truck.

Promoted to captain, a company officer. While I was a captain, in fact, in 1977, I was given the collateral duties of -- I was designated as the fire investigator for the City of North Charleston. I started extensive training, fire investigation, fire cause determination, and arson investigation.

Like I said, this was collateral duties, along with my working shift. I worked in the fire station. At that time we worked 24 hours on and 24 hours off. Along with my 24 hours off, I was involved in fire investigation and/or training.

In July of 1985, I was promoted to assistant chief, chief investigator for the department. At that point in time, my full-time

primary responsibility was conducting fire and arson investigations and any other incidents involving explosives in the City of North Charleston. During this time, I continued my education in fire cause determination and fire investigation.

In 1989, I was certified by the International Association of Arson Investigators and the National Board of Fire Service Professional Qualifications as a certified fire investigator.

Do you want me to continue on?

Q. Keep going.

A. Here again, during my career -- I retired September 30th, 2005, just a few days after this fire. During this period of time, here again, I continued my education and training.

I was an instructor for the National Fire Academy, South Carolina Fire Academy, in fire and arson investigation, fire cause determination.

I testified in a number of several civil and mostly criminal cases during my career.

I did have the full-time responsibility for fire events, explosive incidents, in North

Charleston.

I was the initial law enforcement officer through the North Charleston Police Department. So, therefore, in my criminal cases, which was my primary function at the time, I followed my cases mostly from start to finish, the time of the fire to the time we went to court and trial and any appeals that took place after that.

After I retired September 30th, 2005, October 1, 2005 myself and two partners, we formed a business called First in Fire Analysis, LLC. I'm currently the president and senior investigator and chief financial officer and co-owner for that company. We've been in business almost three years now, and we do fire and explosive investigations all over the country.

Q. Okay. Do you belong to any professional associations?

A. Yes, sir. Quite a few. I belong to the International Association of Arson Investigators, which in that organization I am one of the firefighter fire investigator safety committee.

I am a member of the South Carolina Chapter International Association of Arson Investigators.

I am chairman of the board of directors of that organization and have been since 1986-1987.

I'm a member of the North Carolina Chapter I-double-A-I. I'm a member of the National Fire Protection Association. I'm a member of the National Fire Investigators Association. I'm a member of the International Association of Fire Chiefs.

And that's about it right there, pertaining to this subject.

Q. Okay. Have you ever testified before?

A. Yes, sir, I have.

Q. In a deposition?

A. Yes, sir. And trial.

Q. Okay. That was my next question. How about at trial?

A. Yes, sir.

Q. Have you testified for the plaintiffs?

A. Yes, sir.

Q. And defendants?

A. Yes, sir.

Q. Civil cases?

A. Yes, sir.

Q. Criminal cases?

A. Yes, sir.

Q. Have you ever been qualified as an expert before?
A. Yes, sir. Several times.
Q. In what areas?
A. Fire arson investigation and fire cause determination.
Q. Okay. Have you ever done a fire investigation based on the alleged failure of an electrical component?
A. Yes, I have.

MR. GOLDSTEIN: Okay. Your Honor, I offer Mr. Norris as an expert in the area of fire origin and cause.

THE COURT: Any objection?

MR. OTT: Your Honor, the only objection I would have is, for the record, to renew the motion in limine that we made and discussed and argued yesterday, but I don't have any questions other than to renew that objection concerning reliability. I don't have any questions of Mr. -- Chief Norris at this time.

THE COURT: All right. Mr. Chief -- Mr. Norris I will qualify as an expert in fire cause and determination.

BY MR. GOLDSTEIN:

Q. Do you have an independent recollection of this fire?
A. Yes, sir, I do.
Q. How is it you have an independent recollection of this fire?
A. Well, this happened on the Monday of my final week of employment at the City of North Charleston.
Q. Okay. So were you there as a fire chief for the City of North Charleston?
A. I was there as the chief investigator for the City of North Charleston Fire Department.
Q. Okay. So you weren't there as my expert witness?
A. No, sir, I was not.
Q. Okay. You were employed by the City of North Charleston?
A. Yes, sir.
Q. Okay. And y'all filed a fire report; is that correct?
A. That's correct, sir.
Q. And do you routinely do that?
A. Yes, sir. On every incident that occurs that the fire department responds to, there is a report done.

Q. And did you review that report for its accuracy?
A. Yes, sir, I did.
Q. And you signed off on it?
A. Yes, sir.
Q. And it's already in evidence as plaintiff's exhibit two?
A. Yes, sir.
Q. Okay. When you got there -- well, let me ask you this. When did you get the alarm, and how long did it take you to get there?
A. I was called when I was at home. I live probably five miles from that scene. I was -- I think the dispatcher called me at home, because I hadn't left my house that morning yet. I heard the call go out over the radio. I was aware there was a fire there. The dispatcher called me after one of our battalion chiefs had asked the dispatcher to contact me and ask me to respond to the scene.
Q. Did you respond?
A. Yes, sir.
Q. What'd you see when you got there?
A. I saw a garage type structure, overhead door was open. I looked inside. There was

extensive fire damage. And I saw a Ford pickup truck sitting in the middle of the building. It was extensively burned.

Q. Were you able to determine where the fire began?

A. Yes, sir. What I did then, the battalion chief that called me there, he told me the -- gave me a little briefing there, which is common. When I arrive on the scene, I get a little -- actually, a little circumstance of what's going on.

He said that when they arrived, the trucks arrived on the scene, for the most part the fire was out. It looked like the fire had been burning for some time. It was extensive damage.

He told me then it looked like to him that it started in the engine compartment of the pickup truck. He wasn't sure. He wanted me to take a second look, and that's what I did.

And I start my examination by going to the exterior, looking around the exterior of the building.

Normally, what we try to do -- most cases we can do this. Some cases we can't do this. We try to go from the mouth of the least amount of

damage to that structure and follow the path back to the most extensive damage. I did that, and it was pointing me back to the engine compartment of the Ford pickup truck.

And during this process, I looked at numerous items in this building. There's quite a few, several lawnmowers, other type of lawn equipment, mowers, gasoline engines. I looked at electrical wiring in that building itself.

I asked some questions, did the fire department force entry, and that's when I found out the -- Mr. Shelby there had arrived on the scene that morning and just opened up the door and he discovered the fire, and there'd been no prior forced entry to the -- to the building.

And at that point in time, I was trying to rule out and make sure there was no foul play had taken place, nobody had broken into the building and possibly stole anything or set the fire.

I think I asked Mr. Shelby, also, to take a quick look to see if anything appeared to be missing out of the building, and he told me there was not. Everything looked to be there, but it was damaged.

Q. Where was the most extensive damage to the

building?
A. The most extensive damage to the building was directly above the engine compartment.
Q. Well, does that reveal anything to you?
A. That gives me an indication that that's the area of origin of the fire. That's -- the most extensive structural damage was to the rafters, roof rafters, directly above the engine compartment. The most extensive damage to the engine compartment was on the driver's side of the engine compartment.
Q. Let me show you what is already in evidence as plaintiff's exhibits. Are these the photographs of the scene as you examined it that day?
A. (The witness reviews exhibits.) Yes, sir. With the exception of the photographs of the pickup truck are outside the building. When I examined the building, the pickup truck was still inside the building.
Q. Okay. And did you observe the burn patterns on the truck?
A. Yes, sir, I did.
Q. What are burn patterns?
A. Well, it's more like indications where heat

was, heat -- how the heat traveled. Extensive burn, how much damage is done with the burn, based on patterns on the vehicle itself, the metal components, heat damage, oxidation, and things of this sort.

Q. Do the burn patterns lead you to form any kind of conclusion as to where the origin of the fire was?

A. Yes, sir. I determined the origin of the fire was on the driver's side of the engine compartment directly in front of the steering wheel. That gives you a better idea of where it was, so...

Q. Okay. Did you form any kind of opinion on the scene as to what the cause of the fire was?

A. Yes, sir. I determined the most probable cause was a failure of the speed control deactivation switch that was on this vehicle prior to the fire. I did have some knowledge of fires occurring in this type situation.

Q. All right. What in your background led you to zero in on the speed control deactivation switch?

A. Well, I think the first time I heard about fires in the speed control deactivation switch

was through the news media. It had been going on for a year or so. I think probably around -- probably about a year prior to this fire, I think, when I first heard this report through the news media. Also, I'd been to a training session where an individual talked about this being a cause. And I knew that was a probability.

I also knew that the vehicle -- through interviewing Mr. Shelby, that the vehicle had not been driven since like a couple days prior to this. It was locked up. There was no forced entry. Everything indicated the fire started there.

I looked in the engine compartment. The battery was still partially intact. I saw no indication of any after-market electrical equipment or appliances had been attached to the building. I think I asked Mr. Shelby if there was any after-market equipment, had he installed any after-market electrical equipment, and he said no.

The vehicle was not running at the time of the fire. So that's -- eliminates a lot of probabilities and possibilities of fires to start.

So I kind of eliminated everything else, and knowing the possible defect of that switch and it could cause a fire similar to this, that that was the most probable cause.

Q. Have you ever investigated other speed control deactivation switch fires?

A. Yes, I have.

Q. How many?

A. Prior to this fire, I think I'd seen two.

One in particular was a police vehicle at North Charleston City Hall that had not been -- it had been parked for a week, and it burst into flames one morning, and I investigated there and determined it was a speed control deactivation switch fire. And I think I saw another one that was probably that.

Since this fire, since I went into private practice, I've seen probably eight to ten, so...

Q. Why does the speed deactivation control switch pose a fire hazard when the car is turned off?

A. The electrical power remains on that switch at all times.

Q. As a fire investigator for the City of North Charleston, was it your responsibility to

keep up with the literature on various fire cause and origins?

A. Yes, sir. Also a part of maintaining my certification as a fire investigator through I-double-A-I, continuing education as part of that recertification process.

Q. Is there a body of literature related to the Ford speed deactivation control switch?

A. Yes, sir, there is.

Q. Did you review that literature?

A. No, sir, not at the time, because it had not been published at that time. Some of the -- most of the articles and documented information on this type of fire has been published since this fire.

Q. What about the National Highway Traffic Safety Administration? Do you review that literature?

A. Yes, sir.

Q. Who operates the National -- do y'all call it NHTSA? Is that the slang term?

A. Yes, sir.

Q. Okay. Who operates that? What I mean is, is that the government or is that a private ---

A. Federal government.

Q. Okay. Federal government.
A. Department of Transportation.
Q. All right. And is that the type of material that you routinely rely upon in forming opinions on fire ---
A. Yes, sir.
Q. --- origin and cause?
A. That's one of our things that we actually...
Q. Now, let me ask you this. As the chief ranking officer on the scene -- you were the ranking officer on the scene, correct?
A. Yes, sir, I was.
Q. And you were the designated fire investigator for the City of North Charleston, correct?
A. Yes, sir.
Q. Okay. Now, as you conducted your survey of the scene and examined what was present, did you form in your mind a list of possibilities as to the origin of this fire?
A. Yes, sir.
Q. Okay. What were the list of possibilities that you had on September 26th, 2005, standing at the location?

A. Well, the first thing, it was my primary responsibilities to rule out this was an arson fire, either make a determination this was an arson fire or potential arson fire or was an accidental fire.

I had no evidence whatsoever to lead me to believe this fire was intentionally set. So once I did that, I said, okay, this is going to be an ole' accidental fire of some type.

And next thing I did was start looking at the building, looking at electrical components within the building itself to see if I found anything abnormal with any of the electrical wiring, switches, outlets, things of that nature.

Once I ruled that out, I started looking at the individual components of the building. The -- all the lawnmowers was in there. There was some office equipment, some other power equipment, electrical power equipment in the building. I looked at all that and, you know, I eliminated that as the cause of the fire, and it led me back to the truck.

And I looked at the -- inside the cab of the truck. There again, all the burn patterns led me to believe that the fire was originated

within the engine compartment.

And then I narrowed that down by looking at the burn patterns and looking at the components of the truck and narrowed it down to the driver's side of the engine compartment.

And being no -- I could find no electrical equipment that had been installed after the manufacture of the vehicle, I knew that there's a potential problem with the switch.

Q. Is the type of ruling out process that you just described, is that what you're trained to do?

A. Yes, sir, it is.

Q. Is that the universal method of analyzing a fire scene?

A. Yes, sir.

Q. When you ruled out all your possibilities, what was the only possibility left?

A. The speed control deactivation switch failure.

Q. Okay.

A. Heat source.

Q. Now, what about the fact that the speed deactivation control switch is not available in this courtroom today for you to look at? Does

that render your opinion unreliable?

A. No, sir.

Q. Why not?

A. Because that point in time my responsibility as far as investigating that fire was not to disturb that scene and dig through the debris to find or try to find the remains of that switch.

I informed Mr. Shelby that day that, you know, this was a possible problem and there had been problems in prior other vehicles similar to this and that he needed to secure the vehicle and upon -- immediately, as soon as possible, contact his insurance company and make them aware of the fact that this was a potential problem.

Q. Do you have an opinion within a reasonable degree of scientific certainty as a fire investigator as to what the origin of this fire was?

A. Yes.

Q. Do you have an opinion within a reasonable degree of scientific certainty as a fire investigator as to what the cause of the fire is?

A. Yes.

Q. What is your opinion as to the origin?

A. My opinion is the fire originated within the engine compartment in the area of the master brake cylinder on the driver's side of the vehicle around the master brake cylinder and the speed control deactivation switch.

Q. Okay. What is your opinion with regard to the cause of the fire?

A. I believe the cause of the fire was a defective speed control deactivation switch because in that area that's the only thing that will produce heat at that time.

Q. Okay. And is that because the key is out of the ignition and so there's no power?

A. Yes, sir. Everything else was off and had been turned off.

Q. Okay. And do you ---

A. On the inside of the vehicle, anyway.

Q. Is that important to you as a fire investigator?

A. Yes, sir.

Q. Other than having your deposition taken, has anybody from Ford attempted to contact you and interview you?

A. No, sir.

MR. OTT: Your Honor, objection.

BY MR. GOLDSTEIN:

Q. If somebody from Ford had ---

THE COURT: Sustained.

MR. OTT: We move to strike. He answered the question before.

THE COURT: I didn't hear him answer the question.

MR. OTT: I think he did.

THE COURT: Ms. Court Reporter, did he answer the question?

THE COURT REPORTER: Yes, Your Honor.

THE COURT: Ladies and gentlemen of the jury, I have sustained the defense attorney's objection, so please disregard the witness's response to that question.

You may proceed.

BY MR. GOLDSTEIN:

Q. The switch, deactivation control switch, what happens to it in a fire?

A. It depends on how extensive the fire is. I have seen some that was -- we were not able to recover any of the switch. I've seen some that we -- that we recovered some of the switch. And I have had one case where the fire was spotted real quickly and water was actually applied to

the vehicle before the fire department arrived on the scene, and the switch was pretty well intact.

Q. Okay. Is there any way to tell from your investigation of this scene as to how long that fire had been burning?

A. That fire had been burning for quite some time based on the amount of soot buildup inside the building. That fire had been burning for some time.

Q. Does the length of time of the fire increase or decrease the likelihood of the deactivation switch surviving the fire?

A. Yes, sir, it does.

Q. What happens? How does it?

A. The longer the fire burns, the more it's going to consume the fuel and destroy the fuel.

Q. Okay. Is it possible that the switch was completely consumed in the fire?

A. Yes, sir. In fact, this case here, the entire master brake cylinder was either consumed or melted. It was no -- no longer intact on the inside of the vehicle.

Q. What is the standard body of literature relied upon by fire investigators in determining cause and origin of a fire?

A. There is ---
Q. Origin and cause.
A. There is nothing standard.
Q. Okay. What about a switch deactivation control switch fire?
A. What's your question, now?
Q. Is there a standard body of literature that you would -- or standard reference material that you would consult?
A. The most common reference material that we use in the fire investigation field is the National Fire Protection Association Publication 921 which is a guide to fire and explosion investigation.
Q. Are you one of the committeemen in charge with that, authoring that document?
A. I wouldn't say I'm in charge. I'm on the working group, task group of that committee.

That committee is composed of about -- about 30 investigators from all different phases across the country, and then that is broken down. Those committee members normally ask people that they know are experts in the field will they serve on the working group.

That publication is actually revised every

three years. It's a continuous work in progress. There's advances in fire research and fire investigation, technology advances, and every three years we revise that.

The edition that was in effect at the time of this fire was the 2004 edition.

We just -- in April of this year the 2008 edition was released. And also on the -- you know, the revision has already started. We've already had two meetings on revising the new issue. And it's a continuous process.

Q. Is there anything in the NFPA 921 that prevents you or anyone else from having an opinion if the alleged offending part is either consumed in the fire, thrown away, discarded, or lost?

A. Not that I'm aware of.

Q. Okay. Is your opinion weakened in any way because of the fact that the speed control deactivation switch was either consumed in the fire, misplaced, lost, or destroyed?

A. No, sir, not in my opinion. Because I was able -- I feel that I eliminated the other potential sources.

MR. GOLDSTEIN: Okay. Thank you. If

you would, answer any questions that Mr. Ott may have for you.

THE COURT: Mr. Ott.

MR. OTT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. OTT:

Q. Good afternoon, Mr. Norris.

A. Good afternoon, Mr. Ott.

Q. Now, when you investigated this fire, you've already said that you were the chief, and that was your purpose being there for the North Charleston fire department, right?

A. That's correct.

Q. And your role, limited to this scene, was to make sure the fire got put out and that there was no criminal activity, correct?

A. Yes, sir.

Q. And once you made those determinations that the fire was indeed put out and that there wasn't any criminal activity, your work at the scene was done; isn't that right?

A. That's correct.

Q. And it didn't matter to the fire department, they didn't have a dog in this fight, about exactly what caused this particular vehicle

fire; is that fair to say?
A. I don't know if I would exactly put it like that. Fire service is very -- yes, we want to know what started fires, and we want to know the cause if at all possible to -- if you don't know the cause, you don't know how to prevent it.
Q. And I understand that, but it's fair to say that your investigation at that fire scene that day was fairly limited, especially to what you do now?
A. Yes, sir. But my scope and responsibility at the time, it was not my responsibility to actually dig the debris out of that vehicle once I identified the area of origin and look for any remaining parts. I thought that that was beyond my responsibility at the time, and I didn't want to be accused later of spoliation of evidence.
Q. You were wearing a different hat?
A. Yes, sir.
Q. Now you do the same thing as what Mr. Greene does, right?
A. Yes, sir.
Q. Are you being paid or compensated in any way to be here today?
A. We'll submit an invoice to Mr. Goldstein

for my time, yes, sir.

Q. All right. And how much are you going to charge Mr. Goldstein to be here today?

A. Probably $125 an hour is our minimum rate.

Q. At least you're cheaper than our previous witness, huh? Maybe you should raise your rates.

A. Maybe.

Q. Now, how would you go about investigating a fire like this today, wearing that fire investigator's hat?

A. Well, it depends on whether the vehicle was still at the scene where the fire occurred. Well, there are a lot of -- several of the fires that I've investigated have already -- the vehicles have already been towed to a salvage yard. If it's on the scene, of course, you would like -- like for that to happen, but in real life anymore it doesn't always happen.

And, basically, the same way that I investigated this fire here, you want to go look at the -- follow the burn patterns, get a good feel on them, look from the least amount of damage to the most severe amount of damage and start eliminating possible causes that's in that area.

Q. Now, wearing that fire investigator's hat, isn't it true that you would collect evidence?
A. Yes, sir.
Q. Isn't it true you would interview witnesses?
A. Yes, sir.
Q. Isn't it true that you would in great detail photograph the evidence that was there at the scene?
A. Yes, sir.
Q. Isn't it true that you would research the history of the maintenance, repair, and service on that vehicle?
A. Yes, sir. If they were available.
Q. Isn't it true that you would go find out all you could about the ownership of that vehicle before the current owner?
A. Yes, sir.
Q. Especially in a vehicle like this that was ten years old?
A. Yes, sir.
Q. Isn't it true that you would do all you could to find out what after-market equipment was or was not on that vehicle?
A. Yes, sir.

Q. And now let's compare that -- well, actually, let's go on. If you've got evidence, you'd actually test that evidence or you would order tests on that evidence, right?

A. It depends on what the evidence was. It may not require testing, or it may be something that you can run further tests on.

Q. Well, let's talk about a switch. You're aware that there are tests out there that can conclusively determine whether a switch was or was not the cause of a particular fire, right?

A. Yes, sir.

Q. Have you ordered those types of tests before?

A. Yes, sir.

Q. Now, let's compare that to your approach when you were wearing your fire chief hat that day. Did you interview any witnesses?

A. No one other than Mr. Shelby.

Q. Did you take any photographs?

A. No, sir, I did not.

Q. Did you take any notes?

A. No, sir.

Q. Did you take any measurements?

A. No, sir.

Q. Did you order any tests?
A. No, sir.
Q. Do you know what the truck's mileage was at the time of this fire?
A. I don't think so. I don't remember if I asked Mr. Shelby that or not.
Q. Do you know anything about the vehicle's maintenance, service, or repair history?
A. No, sir.
Q. Do you know ---
A. I did ask Mr. Shelby at the time if he had any -- experienced any problems with the vehicle, and he told me not that he was aware of.
Q. Do you understand he had only owned the vehicle since February 2005?
A. No, sir, I'm not aware of however long he owned the vehicle.
Q. Okay. Assuming Mr. Shelby only owned this vehicle since February 2005, do you know anything about the maintenance, repair, or service history before then?
A. No, sir, I don't know.
Q. And you didn't attempt to do that that day, right?
A. No, sir. No.

Q. And you didn't make any attempt to determine what after-market equipment was there or was not there?
A. I asked Mr. Shelby was there any after-market equipment installed, and my recollection is that he said there wasn't.
Q. He said that he had never put any on?
A. Right. Well, no. I just asked him was there any installed, and he said no. I didn't ask specifically if he ever or anybody else had put any.
Q. Now, given the mileage -- it's been established that this vehicle had over 225,000 miles. You've heard that?
A. Yes, sir.
Q. Specific to this case, right?
A. Yes, sir.
Q. Given that this vehicle had that much mileage and that it was ten years old or thereabouts, you wouldn't be surprised to learn that a lot of the equipment in the engine compartment was no longer original equipment from the manufacturer, would you?
A. It wouldn't surprise me at all. The normal wear and tear of equipment, belts, fans,

batteries, spark plug cables, that wouldn't surprise me at all. But if somebody told me they replaced the speed control deactivation switch, that would surprise me.

Q. Okay. Well, let's talk about as far as electrical components in that engine compartment. There are a lot in there, aren't there?

A. Yes, sir.

Q. Batteries?

A. Yes, sir.

Q. All right. There are a lot of wires in an engine compartment, aren't there?

A. Yes, sir, there are.

Q. There's an alternator in there. Is that electrically charged?

A. That's correct.

Q. What other electrically charged components are there in the engine compartment?

A. There are spark plug wires that's electrical. There's lights, the lighting, exterior lighting. Things of that nature.

Q. Did you do any tests on the vehicle that day?

A. Other than a visual examination, no.

Q. Did you order any tests of the vehicle that

day?
A. No, sir.
Q. Mr. Norris, isn't it true you didn't even look at the switch that day?
A. The switch was not there for me to look at it.
Q. Did you look down in the remains of the fire to see if the remains were there?
A. I saw some debris down underneath the vehicle. I did not disturb any of that debris to see if any of the parts of that switch were there.
Q. So you didn't even make the -- bother to make the effort to go down and see if those switch remains were there or not; is that right?
A. That's correct. I did not want to disturb it if it was there. And so there again, it was beyond my scope of responsibility that day.
Q. And thus you cannot tell us exactly what the condition of this switch was after this fire, can you?
A. No, sir.
Q. That's a correct statement?
A. I cannot tell you if the switch was still there or not.

Q. You don't know one way or the other?
A. No, sir.
Q. You've investigated switch fires ---
A. Yes, sir.
Q. --- where the switch remains are there?
A. Yes, sir.
Q. Even badly burned switches could still be tested, right?
A. It depends on how badly they're burned. That would be, again, depending on the damage, the amount of damage.
Q. You haven't seen this vehicle from the day of the fire, have you?
A. No, sir, I have not.
Q. Now, let's talk about NFPA. Are you a member of NFPA now?
A. Yes, sir, I am.
Q. Were you at the time?
A. Yes, sir.
Q. Did you follow NFPA in reaching any opinions you have about the origin of this fire?
A. Yes, sir, I did.
Q. And did you follow NFPA in reaching your opinions about the cause of this fire?
A. Yes, sir, I did.

MR. OTT: Court's indulgence.

Your Honor, if I may approach the witness with his deposition?

THE COURT: You may.

MR. OTT: Actually, Mr. Goldstein took his deposition.

THE COURT: This will be Court's three.

(The original deposition of Mr. Norris is unsealed by the Court.)

(Court's Exhibit No. 3, original deposition of Mr. Norris, is marked for identification.)

MR. OTT: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. OTT:

Q. Mr. Norris, I'm going to hand you a transcript of your deposition that was taken back on June 3rd of 2008. Do you remember that deposition?

A. Yes, sir.

Q. It was at Mr. Goldstein's office?

A. Yes, sir.

Q. And do you remember answering questions about your investigation and what opinions you

had drawn?
A. Yes, sir.
Q. And were you under oath that day?
A. Yes, sir.
Q. I want to make sure I understand your testimony. Are you telling me that you followed the guide of NFPA 921 in reaching your opinion about the origin of this fire?
A. Based on my scope of responsibilities that day, yes, sir, I feel I did.
Q. Okay. And the same for cause?
A. Yes, sir.
Q. Now, do you agree that you didn't interview anyone or take any measurements or take any photographs, find out about the vehicle history, order any tests, or even look at the switch?
A. Yes, sir.
Q. Wouldn't a full blown investigation under an NFPA 921 require all those things?
A. No, sir. Chapter one of 921, it says every investigation is going to be different, depending on your responsibility and the scope of your investigation.
Q. Okay. All right. Now I understand. You're saying at the time of the fire, given your

limited role as the chief, you followed NFPA 921. Is that right?

A. Yes, sir.

Q. But if you were following NFPA 921 today with your fire investigator hat on, you would do all those things we just talked about, interview witnesses and ---

A. Yes, sir. Absolutely right.

Q. And you agree you didn't do any of those things in this particular instance?

A. That's correct.

Q. So your opinion as to origin and your opinion as to cause are not based on the full blown investigation that is recommended by NFPA 921 for fire investigators, correct?

A. No, sir, but I -- I don't agree with what you're saying. I was the fire investigator, but my scope of responsibility was different then than what it is now.

Q. Let me rephrase my question. Would you agree that your cause and origin opinions are not based on the guidelines for forensic testifying experts to issue their opinions because you didn't do all those things we talked about? Right?

A. I would agree that today if I was investigating the same vehicle that I would do a lot more than I did that morning, because my scope of responsibility now would be much higher than it was back then far as determining the exact failure that took place in that vehicle.
Q. And that was just because it was beyond your scope of responsibilities at the time?
A. Yes, sir.
Q. Now, would you agree with me, Mr. Norris, that there are many, many possibilities regarding the cause of an engine fire?
A. There's a number of them. I can't give you an exact number. You said many, many.
Q. Over your career, have you investigated many, many vehicle fires?
A. Yes, sir, I have.
Q. Have you investigated vehicle fires that occurred in vehicles manufactured by GM?
A. Yes, sir, I have.
Q. By Chevy?
A. Yes, sir.
Q. By Toyota?
A. Yes, sir, I think I did.
Q. Honda?

A. I'm not sure about Hondas.
Q. And are you aware about these tests they could have done to those switch remains?
A. I'm aware of them today. I was not aware of all the tests that could be done back then.
Q. Without the vehicle because it was destroyed and the switch because it was destroyed, is there any way for me to test your opinions?
A. Probably not. Other than based on my experience and what I saw.
Q. But that's subjective to you, right?
A. Yes, sir.
Q. That wouldn't be objective, here is the test, let's see the results, and let's see how that measures up against your opinion, right?
A. That's correct.
Q. And without the ability to test your opinions, is there any way to subject your opinions to a review among your peers in the fire investigation field for accuracy?
A. If I described to my peers what I saw and the burn patterns I saw and -- yes, sir, it's very possible they could review.
Q. Okay. Would that be objective when you

give them your description of what you saw versus looking at a photograph?

A. I guess that would depend on the individual.

Q. Well, isn't that the point of scientific ---

A. And the experience of the individual.

Q. Isn't that the point of scientific testing, so that we don't have to depend upon the individual, we can depend on science and something objective?

A. Yes, sir, if that's available.

Q. I mean, you're aware of the scientific method, aren't you?

A. Yes, sir. Very much aware.

Q. So looking at it then, there's nothing for us to test your opinion, and thus there's no way for us to submit it to peer review, correct?

A. Yes, sir.

Q. And you've seen the limited number of photographs that were taken of the scene, right?

A. Yes, sir, I have.

Q. Now, a lot of those photographs actually were taken after the vehicle was moved from where it was at the time of the fire; isn't that right?

A. That's correct. I believe all the pictures of the vehicle itself are the vehicle had been removed from the building.

Q. In general, would you agree that those photographs are not sufficient evidence standing on their own to form an opinion about the origin or cause of this fire?

A. The photographs themselves -- we had the other background information. It would be hard if I just -- if somebody just handed me these photographs and said what do you think happened here. You know, I'd have to ask questions. Was this vehicle inside a building, was it in a parking lot, was it in a driveway? You know, what's going on here, other than just looking at the pictures.

Q. The photographs alone are not sufficient, correct?

A. Probably not in most cases.

Q. They certainly weren't photographed pursuant to NFPA 921 standards to allow a fire investigator to come behind somebody and make their own determinations based on those photographs, right?

A. Probably not. I won't say that the

photographs are not sufficient. They are good photographs, but I would have made a lot more photographs and ---

Q. In general ---

A. --- photographs to see.

Q. I'm sorry, Mr. Norris. In general, would you expect a fire investigator to be able to make a determination about the origin of a fire without the ability to inspect the scene, the vehicle, or the part at issue?

A. Well, that depends on whatever information is available, if there's witness statements or witnesses or somebody who could describe the scene. This here, like I say, we do a lot of vehicle fires where the vehicle's already been removed from the scene and it's towed off someplace, but then I go back and try to interview witnesses and interview the owners and obtain documents. It's -- and, you know, ask questions.

Q. Do you consider those five photographs of the scene sufficient for someone to make an origin determination?

A. No, sir, not just based on the photographs.

Q. In general, can someone make a

determination of the cause of a particular vehicle fire without the ability to inspect the scene, the vehicle, or the alleged part?

A. Some cases you could.

Q. In general?

A. In general, it's best if you probably -- in most cases you probably can't. Let's put it that way.

Q. Now, your scene inspection lasted only 30 minutes; is that right?

A. Approximately. Thirty or 45 minutes.

Q. And once you completed your 30 or 45 minutes at the scene, isn't it true you told the fire department not to do anything else with the vehicle?

A. No. I told them that when I got on the scene, to stop and not -- make everybody come out of the building, tighten the building and take a look. Actually, they had done practically everything they was going to do anyway.

Q. Did you tell them to secure the scene?

A. The scene was already secure. I told Mr. Shelby there, I spoke to him and told him what I possibly thought could have happened and that I would suggest that he secure the scene and

notify his insurance company as soon as possible.
Q. Why were you making sure that the scene was secured and the evidence wasn't disturbed?
A. To give the insurance company the opportunity to hire an investigator and do whatever else needed to be done, to make the call.
Q. And you told that specifically to Mr. Shelby to secure the scene and secure the evidence, correct?
A. Yes, sir.
Q. Now, do you understand that both the vehicle and the switch had been destroyed?
A. I found that out back at the end of May, first of June, when all this came up for my deposition.
Q. Why did you consider it important for 5 Star to preserve that evidence?
A. Because if his insurance company elected to hire an investigator, that investigator would need to see as much of that intact as possible for him to make a determination whether they needed to put anybody on notice.
Q. And somebody to be put on notice would be Ford in this case?

A. Ford Motor Company.
Q. In this situation, right?
A. Yes, sir, for this case here.
Q. And, in fact, were you surprised to learn that 5 Star had destroyed this vehicle and the switch?
A. I was more surprised to learn that his insurance company didn't hire an investigator from the beginning.
Q. Were you surprised to learn that the switch and the truck itself had been destroyed without notification to Ford in advance?
A. Yes, sir.
Q. I mean, that's exactly what you told him not to do, isn't it?
A. Now, well, far as the switch goes, I don't know whether the switch was even -- any of the remains of the switch there, talking about the -- the debris underneath the truck where the remains of the switch could have been.
Q. You don't know one way or the other?
A. No, sir. I don't know whether any remains of the switch was there or not.
Q. And now we'll never know?
A. Yes, sir.

Q. But weren't you surprised to find out that he did the exact thing that you told him not to do?

A. Yes, sir. Also, when I was told that, I did not know at that point nobody else had looked at it.

Q. Now in your role as a fire investigator, Mr. Norris, would you ever let a client dispose of such crucial evidence in a case like this without notifying the manufacturer?

A. No, sir. If it was -- if I had control of that.

Q. Why wouldn't you allow that to happen?

A. There again, we want to put the possible responsible party on notice and give them an opportunity to look at it.

Q. It's just basic fairness ---

A. Yes, sir.

Q. --- in the legal system, isn't it? Is that right?

A. Yes, sir.

Q. And will you agree that Ford has been extremely disadvantaged, even prejudiced in its defense of this case by the destruction of this evidence?

A. Yes, sir. I probably would have to agree with that.

Q. And you wouldn't expect Ford Motor Company or any vehicle manufacturer simply to rely upon your opinions without doing their own investigation, would you?

MR. GOLDSTEIN: Objection. He can't possibly have an opinion as to what someone else would do.

THE COURT: Sustained.

BY MR. OTT:

Q. Would you expect a manufacturer in a situation like this to hire their own experts?

A. Yes, sir.

Q. Would you expect those experts to do their own investigation and arrive at their own conclusions?

A. Yes, sir.

Q. And you understand that Ford did not get that opportunity to do that in this case; isn't that right?

A. That's what I understand.

MR. OTT: Those are all the questions I have for you, Mr. Norris. I appreciate your time.

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: May it please the Court. Just a couple.

REDIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Mr. Ott asked you a series of questions about basic fairness. Do you think it's fair for a manufacturer to put a defective product in the stream of commerce and not stand behind it and causes somebody injury?

MR. OTT: Objection.

THE COURT: Counsel approach.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Please proceed.

BY MR. GOLDSTEIN:

Q. Mr. Ott asked you a question about -- oh. He asked you if the five photos standing by itself would be sufficient for you to draw -- make an opinion as to what caused the fire. Do you remember that question?

A. Yes, sir.

Q. And you said not by itself?
A. Yes, sir.
Q. All right. Tell us and tell the jury what other things you would rely upon in reaching an opinion.
A. Description of the fire scene, any information I would obtain from the owner, reports, any other reports that was out there.
Q. Well, let me stop you right there. Are there reports out there that are routinely relied upon by fire investigators?
A. Yes, sir.
Q. Are there reports out there that are routinely relied upon by fire investigators in regard to Ford speed control deactivation switches?
A. Yes, sir.
Q. Are you familiar with that body of literature?
A. Yes, sir.
Q. Did you review that body of literature?
A. On this particular fire here, not until very recently.
Q. Okay. When you got to the scene, did you immediately suspect a Ford speed control

deactivation switch?

A. Not immediately. Once I ruled out any other possible causes of within the building and it led me back to the engine compartment of the pickup truck, I did.

Q. Okay. And you also said in response to a question by Mr. Ott, he asked you a series of questions about what you told Mr. Shelby to do?

A. Yes, sir.

Q. Do you remember that? You said you told him to contact his insurance company because it might want to hire an investigator?

A. Yes, sir.

Q. Do you know one way or another if Mr. Shelby did or did not do exactly what you instructed him to do on the scene?

A. I have no idea.

MR. GOLDSTEIN: Okay. That's all I have. Thank you, sir.

THE COURT: Mr. Ott.

MR. OTT: Nothing further, Your Honor.

THE COURT: May this witness step down and be excused from the courthouse?

MR. GOLDSTEIN: Yes, ma'am. He is here under subpoena, so I was going to ask you to

please release him and let him -- I'm sure he's got places to go.

THE COURT: Any objection ---

THE WITNESS: Not now.

THE COURT: Any objection, Mr. Ott?

MR. OTT: No, Your Honor.

THE COURT: All right. Sir, thank you. You may step down ---

THE WITNESS: Thank you.

THE COURT: --- and you may be excused from the courthouse.

(The witness is excused from the witness stand.)

MR. GOLDSTEIN: I only have one more, Judge.

THE COURT: Ladies and gentlemen, we're going to call the last witness. So if you want to take a stretch break, stand up in your -- right in front of your chair and take a stretch break.

Call your next witness.

MR. GOLDSTEIN: Judge, do you want me to just give them a minute so they can stretch, or do you want me to go ahead and call him?

THE COURT: No, sir. He needs to take

the stand.

MR. GOLDSTEIN: Okay. Go ahead. Call Stan Shelby.

THE COURT: Madam Forelady, do your other fellow jurors need a bathroom break? All right.

MR. SHELBY: I'll take one, too.

THE COURT: Sir, if you'll please take the witness stand.

MR. SHELBY: Sit down?

THE COURT: Yes, sir.

(Mr. Shelby goes to the witness stand.)

THE COURT: Please do not begin your deliberations. I'm going to allow you to take a bathroom break.

Madam Bailiff, if you'll let me know when all the jurors have completed their comfort breaks, then we'll get started on this witness.

Please do not begin your deliberations. Please do not discuss this case amongst yourselves. You have not heard all of the evidence in this case nor have I given you the instructions on the law. Thank you.

(Whereupon, the jury goes to the jury

room at approximately 5:20 p.m.)

THE COURT: And, Madam Bailiff, they can bring their drinks in. They can bring their drinks back in, okay?

Thank you. Be seated.

You may step down. You have not taken your oath, so you may step down. And, please, if you immediately go and come straight back, sir.

We'll be at ease.

Mr. Ott, do you have any witnesses?

MR. OTT: I was going to call somebody else for Ford, and I'm thinking -- trying to digest whether I still need that person or not. Given how long I know Mr. Shelby is going to take, I don't think we can do that person today. I don't want to bind myself. I just want to review exactly what I think has happened today regarding certain testimony vis-a-vis the Court's ruling.

THE COURT: Would that be your only potential witness, Mr. Ott?

MR. OTT: Yes, Your Honor.

THE COURT: This is your final witness?

MR. GOLDSTEIN: Yes, ma'am. And I was going to try to -- I really thought we'd have

been done a couple of hours ago. It's gone slower than I anticipated. Of course, some judge, I can't remember who it was, told me I was the worst estimator of time he ever had in his courtroom, so, you know...

(A break is taken at approximately 5:20 p.m.)

(The trial reconvenes at approximately 5:30 p.m., and the following proceedings were had:)

(Whereupon, the jury enters the courtroom at approximately 5:30 p.m.)

THE BAILIFF: The jurors are present, Your Honor.

THE COURT: Thank you. Please be seated.

Mr. Shelby, please come forward.

STANLEY SHELBY,

being first duly sworn by the clerk, is examined and testifies as follows:

THE CLERK: Please be seated. For the record, if you'll state your name, please, spelling your last name.

THE WITNESS: Stanley Shelby. Oh. Last name. S-H-E-L-B-Y.

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. All right. Stan, before I forget, you just heard Chief Norris testify?

A. Yes.

Q. You just sat through his testimony?

A. Yes.

Q. And he told you who to contact ---

A. Yes.

Q. --- about your truck? Did you do exactly what he told you to do?

A. Exactly what he told me.

Q. Did you attempt to put Ford on notice of the claim?

A. Yes, I did.

Q. How do you know that?

A. By a letter that we had ---

MR. MARSHALL: Objection.

THE WITNESS: --- wrote to ---

MR. MARSHALL: No foundation for this question, Your Honor.

THE WITNESS: Yes.

THE COURT: Sir.

THE WITNESS: Yes, ma'am.

THE COURT: I know it's different when

you're sitting on the witness stand. The counsel has made an objection. If you'll just hold a moment, I will rule on the objection.

THE WITNESS: Okay.

THE COURT: And then I will either tell you you can answer or not.

THE WITNESS: Okay.

THE COURT: Thank you.

MR. MARSHALL: This is a foundation objection that we discussed with Your Honor earlier during the deposition of Mr. Greene, I believe.

THE COURT: Counsel approach.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Sustained as to foundation. Rephrase.

MR. GOLDSTEIN: Thank you, Your Honor.

BY MR. GOLDSTEIN:

Q. All right. Let me start over. On the day of the fire, did you meet Chief Norris? Did you see him there?

A. Yes, I did.
Q. Did he tell you who to contact about the truck?
A. Yes, he did.
Q. Did you do exactly what he told you to do?
A. Yes, I did.
Q. All right. Did the person you contact come out and take photographs and do an investigation?
A. Yes, he did.
Q. Are those the photographs that have been previously entered into evidence? They're two to a page?
A. Am I allowed to reach over there?
Q. Oh, sorry. I keep forgetting that. Do you remember who took those photographs?
A. Yes, I do.
Q. That was Tom Nolan?
A. Yes, it was.
Q. Is that the person you contacted?
A. Yes, it was.
Q. Is that the person ---
A. I'm sorry. I contacted Harry Morris, and they gave me a name of who their adjustor was, and it was Tom Nolan.
Q. All right. Did he come out and do an

investigation?
A. Yes, he did.
Q. Is that what the chief told you to do?
A. Yes, sir.
Q. Okay. Do you know if you attempted to put Ford on notice of the claim?
A. Yes.
Q. Okay. And how is it that you personally know that?
A. Because I came to you, and we wrote Ford a letter letting them know what had happened.
Q. Okay.
A. Two times. I'm sorry. Twice.
MR. MARSHALL: Your Honor, we have the same objection. We move to strike that.
THE COURT: Sustained.
BY MR. GOLDSTEIN:
Q. All right.
THE COURT: I'm sorry. Overruled.
You may...
BY MR. GOLDSTEIN:
Q. Now, I just wanted to get that out of the way. Did you destroy the truck to try to prevent Ford from having a fair day in court?
A. I did not do that.

Q. And the truck sat at your place from when to when?
A. From the time of about September 26th till February 2nd.
Q. Okay. And why did you have the truck towed off your property?
A. I was put on notice by the North Charleston local people that they would give me a fine if I didn't have it towed, because it was a mess, and they have like teams of people that come out and inspect and stuff like that. So that's why I did it.
Q. Okay.
A. And it looked bad, too, so...
Q. All right. Let's go back to the beginning. You own 5 Star?
A. I do.
Q. What is 5 Star?
A. 5 Star is a lawn maintenance, landscaping, pressure washing company.
Q. Okay. Are you 5 Star?
A. I'm 5 Star.
Q. Okay. So it's a corporation, correct?
A. Yes. Yes, sir.
Q. But all the money you earn as 5 Star just

passes through to you?
A. Yes, sir.
Q. All right. How did you come up with the name 5 Star?
A. When I was younger growing up in...
Q. Need a second?
A. Please.
Q. I'll give you some easier questions, all right? What brought you to Charleston?
A. The Navy.
Q. All right. How long were you in the Navy?
A. Four years and seven months.
Q. Okay. What kind of discharge did you get from the Navy?
A. Honorable.
Q. Okay. What kind of job did you have in the Navy?
A. I was a bosun mate.
Q. Okay. And as a bosun mate, did you have some familiarity with electrical equipment and that sort of thing?
A. No.
Q. Did y'all operate the pumps and that kind of stuff?
A. We rigged pumps and motors and stuff out of

the subs and transferred them to a ship.
Q. How long have you owned 5 Star?
A. Since '97.
Q. Okay. And you already told us 5 Star does landscaping and...
A. Pressure washing. Yes.
Q. Okay. How many employees do you have?
A. About four to eight.
Q. Where is your business located?
A. 2340 Midland Park Road.
Q. Okay. That used to be Christy's Heating and Air?
A. Used to be.
Q. Is that where you and I met each other?
A. Yeah.
Q. Okay. And you own that property?
A. Yes, sir.
Q. What's located on that property?
A. I have two houses, a trailer, and two warehouses behind the two houses.
Q. All right. How many vehicles do you use in your business?
A. Two to four.
Q. What kind of equipment do you have?
A. Tractors, mowers, weed eaters, pressure

washers, edgers.
Q. Okay. Where do you store your equipment?
A. In the warehouses.
Q. Is that where the Ford truck was that is the subject of this lawsuit?
A. Yes.
Q. Okay. Did you own a 1996 Ford-250 pickup truck?
A. Yes.
Q. Who did it belong to?
A. Me.
Q. Okay. Well, let me show you the title.
A. Okay.
Q. I think it's plaintiff's exhibit five. It's already in evidence. Was it titled in 5 Star?
A. Yes, sir.
Q. Okay. And you already told us you are the 5 Star name. So it's interchangeably?
A. Yes, sir.
Q. Okay. Why did you buy it?
A. I bought a '97, and I thought it would be a good investment for me.
Q. Okay. When did you buy it?
A. I think about February '04, '05. I'm not

sure exactly. I believe it was sometime in February.

Q. Okay. Did you buy it used?

A. Yes, I did.

Q. How many miles were on it when you bought it?

A. Over 200,000.

Q. Okay. Do you know enough about automobiles to know if there were any after-market modifications to this Ford F-250 truck?

A. Just common sense, like I'll have to look at something and tell.

Q. Okay. Were there any after-market modifications?

A. Not to my knowledge. There was not.

Q. Okay. Did you make any modifications to the engine?

A. No.

Q. Did you ever use the speed control, the cruise control on it?

A. No.

Q. Why not?

A. For what I do, you don't need it.

Q. Okay. Well, tell the jury what you used it for.

A. I used it as a backup and sometimes as a primary vehicle to haul pressure washing equipment and stuff like that.
Q. How much did you pay for it?
A. $1500.
Q. Do you remember the last time it was operated before the fire?
A. It was that Saturday. We had a couple jobs to do, and I had a couple guys go out to make sure that the people we worked for were taken care of on the weekend.
Q. And do you recall when the truck was in the garage? And I don't mean the exact hour and minute.
A. Well, it should have been afternoon. They had quite a few jobs, so it should have been afternoon.
Q. Okay. Who discovered the truck on Monday morning?
A. I did.
Q. Okay. When you drove up, what time of day was it?
A. It was about 7:00 and some change.
Q. Okay. And what did you observe when you pulled in to the parking lot there?

A. Smoke coming out of the door that I was going to enter.
Q. What did you think?
A. I didn't know what to think.
Q. What did you do?
A. I put my hand to the door to see if it was hot. It wasn't, so I opened it.
Q. What did you see?
A. My truck was burnt to a crisp. There was -- the rafters were charred. There was red soot on them.
Q. Okay. Where was the -- where was most of the fire damage?
A. As soon as you go in the door, that's where the -- the engine and the front of the vehicle is. Right there, soon as you go in the door.
Q. Okay. Was the truck backed into the garage?
A. Yes, it was.
Q. So it was facing forward?
A. Yes, it was.
Q. Okay. And where was the damage to the rafters in relation to where the truck was?
A. Right above the engine.
Q. Okay. What did you do?

A. Called -- well, I had -- my guy actually called the fire department. And I might have called him and gave him the phone, I'm not sure, but we called the fire department right then.

Q. When the chief and Captain Sanders and the rest of the firemen showed up, were you upset?

A. I was upset, but then I was happy that nobody was hurt. But -- but upset? Of course I was, because it was -- it was a mess. It was -- you know, I mean, when you arrive at something like that, you don't know what to think, and...

Q. Okay. Do you routinely keep that truck locked in the garage?

A. Not that particular truck, but trucks will be locked in the garage.

Q. Okay. What else was located in the garage with the truck?

A. I had office equipment. There was a trailer that wasn't connected. There was lawn equipment, pressure washing equipment, books. I mean, there was -- there was a lot of stuff in there.

Q. All right. Now, these photographs are already in evidence, plaintiff's exhibit 11.

There's been a lot of testimony about that from Mr. Greene. That was your truck?

A. Yes.

Q. And how did you get it from out of the garage to where it's depicted in plaintiff's exhibit 11?

A. I had to have it towed.

Q. Okay. And then plaintiff's exhibit 12, is that the exterior of the garage that you've been describing?

A. Yes. This is it right here. That's the door I went in, right there.

Q. All right. And what is plaintiff's 13? That's the interior of the office that you were describing?

A. Yes, sir.

Q. And did you have a computer in there?

A. Yes, sir.

Q. Did you maintain the data on your -- concerning the operation of your business on the computer?

A. Yes, sir.

Q. All right. Plaintiff's exhibit 14, is that the -- literally, your office?

A. Yes, sir.

Q. All right. Now, do you know when these photos were taken? Is the date in the photo?
A. October 3rd, 2005, at 9:01.
Q. All right. And the date of the fire was September 26th?
A. Yes.
Q. So you had already started cleaning up by then?
A. Yes.
Q. And do the photos that are in evidence show the cleaning process?
A. Yes, sir.
Q. For example, you see the shop towels. Is that what you were using to clean?
A. Yes, sir.
Q. And some of the photos show Windex and other cleaners, like on plaintiff's exhibit 15; is that correct?
A. Yes, sir.
Q. All right. So what I'm getting to is, how does the office as it looks in plaintiff's exhibit 15 compare to the way it looked on September 26th?
A. You couldn't even see it. I mean, it was -- there was soot everywhere.

Q. When the fire department arrived, did they put out the fire?
A. They put out the char, because the fire -- there wasn't really a fire. There had been a fire. But there was red soot, and you could see all the char.
Q. Okay. Do you know how many fire department personnel were on the scene?
A. I would say at least five or six. At least.
Q. Okay.
A. There was five of them real fast.
Q. Now, the truck stayed on your property from September 26th till February, what did you say, 2nd?
A. I think it was about the 2nd.
Q. Okay. And, again, I know I already asked you this, but why did you remove it?
A. I was told that I would get fined.
Q. Okay. Is North Charleston -- is that location in North Charleston?
A. Yes, it is.
Q. And I think plaintiff's exhibit one is already in evidence. Can you just sort of take this pen and just circle your location? Can you

spot your location on that map?
A. Oh, yeah. (The witness complies.)
Q. Okay. Had you ever received visits from North Charleston code enforcement at that location?
A. Yes, sir.
Q. How would you characterize North Charleston code enforcement in that area?
A. I think all the areas there, they want to make sure everything is cleaned up. Everybody knows that.
Q. Okay. Now, when you made the call as instructed by Chief Norris, did someone actually come out and look at the truck?
A. Thomas Nolan.
Q. Okay. And that's the one who took those photographs?
A. Took the photographs of that, yes.
Q. Did you make the truck completely and freely available to him?
A. Yes. Yes.
Q. Did you attempt to hide anything from him?
A. No.
Q. Okay. As far as you knew -- or what did you know about him being there and investigating?

A. I knew that through Harry Morris that he was the guy that was going to come out.

And thank God for Mr. Norris who told me what to do and explained to me what was going on and what to do and stuff. If it hadn't been for him, I probably wouldn't have no hair right now, so...

Q. All right. Well, let's talk about the truck. Let's talk about the loss ---

A. Oh.

Q. --- your damages. You're asking for a verdict in this case?

A. Yes, I am.

Q. Are you asking for damages?

A. Yeah.

Q. All right. Well, let's talk about that. You told us you paid how much for the truck?

A. About 1500.

Q. What was the truck worth?

A. The high retail value was about 9,700. I think the low was like 8,000 and some change.

Q. All right. Well, how much are you asking this jury to award you for the truck?

A. At least $8,000.

Q. All right. Well, why would you ask the

jury for $8,000 if you only paid $1500 for the truck?

A. Because, like I said, that's what the truck was valued. And that's on the low end. That's not the high end.

I got it from a friend of mine that we drove work each other's way. And, you know, I was real instrumental in helping him get started in his business, and it's just like a favor.

And I think that, you know, I went by -- I looked at an NADA which is -- a standard price for that truck is $8,000.

Q. All right.

A. And I wouldn't be able to buy another truck I don't think for $1500, so...

Q. All right. Who did you buy the truck from?

A. Pat Evans.

Q. And he's a friend of yours?

A. Yes, he is.

Q. And y'all are in the same line of work?

A. We're in same line, but we do different -- we're in different aspects of what we do. He's more in the landscaping. I'm more in the maintenance.

Q. Did you refer work to him?

A. Oh, yes.
Q. Was that part of the consideration for the truck?
A. Oh, yes.
Q. Okay. Now, what about lost income? Was your business interrupted by the fire?
A. Yes.
Q. How were you -- why were you interrupted?
A. Because, first of all, I couldn't get to the trailer that was behind the -- the truck. And, also, I had to reorganize and reorchestrate and make calls to get my business back running.

You cannot have something of this magnitude and expect your business to be going in the same manner it was the day before. I don't care who you are.

Q. Did you have your business data on your computer?
A. Yes, I did.
Q. Did you lose all that data?
A. I lost everything.
Q. Okay. Did you have to get replacement equipment for your office?
A. Yes, I did.

MR. MARSHALL: Your Honor, we object to

leading.

THE COURT: Sustained as to leading.

BY MR. GOLDSTEIN:

Q. Were you able to use the equipment in your office?

A. No.

MR. MARSHALL: Same objection.

THE COURT: Sustained.

MR. GOLDSTEIN: Judge, I'm not sure I understand how it's leading.

BY MR. GOLDSTEIN:

Q. Was the equipment in your office damaged by the fire?

A. Yes.

Q. And as a result of that, what did you have to do?

A. Replace everything.

Q. Did you make a list of everything you had to replace?

A. To the best of my ability, I did.

Q. Okay. We'll come to that in a minute. Now, how many days was it before you could get up and running, get your business up and running?

A. I felt that it was probably about a month.

Q. Okay.

A. From where it was.
Q. Okay. Well, how many days was it from the date of the fire until you could get reasonably well going again?
A. About a week or two. About two weeks.
Q. Okay. Now, did you -- in connection with this case, did you attempt to ascertain the amount of your financial loss to your business?
A. Yes.
Q. How did you go about doing that?
A. I had a formula that was -- that I put together.
Q. What was the formula?
MR. MARSHALL: Your Honor, at this point we would object, as to the motion from yesterday.
THE COURT: Overruled. I'll allow it.
BY MR. GOLDSTEIN:
Q. What was the formula you used?
A. Oh. I took 241 working days and divided that into my ---
Q. Let me stop you right there. Why did you use 241 working days? How did you come up with that number?
A. Well, I broke it down, 365 days in a year,

minus the weekends, minus the ten holidays, minus the two-week's vacation, and that came to 241 days.

Q. Okay. And then what did you -- what else did you use?

A. I divided that by my 2004 gross receipts.

Q. And when you say your 2004 gross receipts, you're talking about your tax returns?

A. Yes.

Q. Did you furnish those tax returns to opposing counsel?

A. Yes.

Q. And they've examined them?

A. Yes, sir.

Q. All right. So what did you do next?

A. Well, it came up to about $1200 a day times 15, and it came out to $18,000.

Q. Is that what you're claiming is your business interruption lost income?

MR. MARSHALL: Your Honor, we object to that amount and its foundation. It's broad and irrelevant based on our motion from yesterday.

THE COURT: Overruled. You made your objection.

BY MR. GOLDSTEIN:

Q. Do you know of any more fair way to do it other than the way you did it?
A. I think that's all I'm trying to do ---
MR. MARSHALL: Objection.
THE COURT: Sustained.
THE WITNESS: --- is be fair.
BY MR. GOLDSTEIN:
Q. Okay. Now, let's talk about your equipment. Did you have equipment in the garage where the fire was?
A. Yes.
Q. Was the equipment damaged or destroyed?
A. Yes.
Q. Did you make a list of the damage, of the items that you lost?
A. I made a list of everything that I could see. I mean, some stuff -- I mean, I couldn't make a list of every single thing.
Q. Well ---
A. There was soot and stuff was everywhere, so...
Q. Did you have to rent ---
A. --- I did the best I could.
Q. Did you have to rent equipment in the normal operation of your business? From time to

time did you rent equipment?
A. Of course.
Q. Okay. Who did you rent from?
A. We rent from Carolina Equipment and sometimes Charleston Rental and Sales.
Q. Okay. After the fire did you have to rent equipment?
A. Yes.
Q. Why are you attributing rental equipment after the fire to the fire?
A. Because the equipment that I had rented before the fire and my equipment, all the -- all of that was in the garage, and all of it burned up or was damaged.
Q. Okay.
A. Including not only mine.
Q. All right. Let me show you what's been marked as plaintiff's exhibit 18 which is not in evidence. Let me show you what's been marked as plaintiff's exhibit 18. Can you identify those documents?
A. Yes, I can.
Q. What are they?
A. Receipts from Carolina Equipment, me renting a pressure washer.

Q. And what are the receipts for?
A. Renting a pressure washer.
Q. Who rented the pressure washer?
A. I did.
Q. Who paid for the pressure washer?
A. I did.
Q. How is the rental of that pressure washer as reflected on those invoices related to the fire?
A. Because I had to rent equipment to keep my business going.
Q. So were you trying to keep your business going after the fire?
A. Yes.
Q. Were you also -- what were you renting? Can you look at the invoices and see what you were renting?
A. Pressure washers.
Q. Did you use the pressure washers in trying to rehabilitate your own building?
A. Yes.
Q. Okay. Who was cleaning up your building?
A. I was and a couple other guys.
Q. Okay. And when you say a couple other guys, do you mean friends or employees?

A. Employees.
Q. Did you have to pay them?
A. Yeah. Yes.
Q. They wouldn't do it for free?
A. Nah.
Q. Okay. Did you do work to your building to try to get it back to a serviceable condition?
A. I did everything I could.
Q. Okay. And the photographs that are already in evidence, do they depict the amount of cleaning you had gotten accomplished from September 26th to October 3rd on the day they were taken?
A. Yes.
Q. Okay. Now, tell us about the invoices. Have you totaled them up?
A. Yes. They are.
Q. You have totaled them up?
A. Yes.
Q. Okay. What's the total of them?
A. Let me -- hold on. Give me one second. If I'm not mistaken, it's about 3,000. $3,121.70.
Q. All right. And are you asking the jury to award you that amount of money to reimburse you for that equipment?

A. Yes, I am.
Q. All right. Now, look at the last invoice on plaintiff's exhibit 18, the very last one. Is that a rental bill?
A. No.
Q. What is it?
A. That's -- I bought a pressure washer.
Q. Okay. Well, why didn't you buy a pressure -- what day did you buy it?
A. February 23rd, 2006.
Q. All right. Well, go back to your first rental invoice. What's the date of the first rental invoice?
A. It's either a nine or a 26. I'm not -- I can't read his writing.
Q. Okay.
A. But the line for that is 9/27, so...
Q. Would that be the day of the fire?
A. Yeah. Yes.
Q. All right. Well, why didn't you just buy one that day? Why did you keep renting them?
A. Well, I had to make sure I had the money. I didn't know what was going to go on as far as what I needed to buy to, you know, get my business back going. So renting was a lot safer

than buying it.

Q. And everything in plaintiff's 18, did you incur each and every one of those expenses as a result of the fire?

A. Every one.

MR. GOLDSTEIN: Okay. Your Honor, I offer plaintiff's exhibit 18 into evidence.

MR. MARSHALL: We object. Hearsay.

THE COURT: Counsel approach. Bring 18.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

BY MR. GOLDSTEIN:

Q. Okay. Plaintiff's exhibit 19 is already in evidence. So I don't have to ask you what that is. I can tell you. That's the proposal for the repair of your building; is that correct?

A. Yes, it is.

Q. And did you pay that money?

A. Yes, I did.

Q. And, in fact, aren't the payments as you made them reflected on plaintiff's exhibit 19?

A. Yes, it is.
Q. Okay. In addition to the 5,000 -- and was it $5,000?
A. Yes, $5,000.
Q. All right. And in addition to the $5,000, did you also contribute your own labor and time in renovating your building?
A. I had to.
Q. Okay. And tell the jury how much money you're asking Ford for that.
A. For my labor?
Q. Yeah, for your labor, for your contribution.

MR. MARSHALL: Objection, your Honor. This is another objection as to relevance regarding the issue that we raised in our motion in limine. 5 Star is the plaintiff in this case, not Mr. Shelby. Any damages that are recoverable are to the corporation 5 Star, Incorporated, not Mr. Shelby.

MR. GOLDSTEIN: Judge, I'm happy to lay a foundation if it will satisfy counsel.

THE COURT: I think you need -- you need to satisfy the Court.

MR. GOLDSTEIN: Yes, ma'am.

THE COURT: I'll sustain it.

BY MR. GOLDSTEIN:

Q. How many owners and officers, directors and shareholders are there at 5 Star?

A. One.

Q. Who is that?

A. Me.

Q. Does all the income from 5 Star flow through to you?

A. Everything flows to me.

Q. Okay. So if there is a loss to 5 Star, who is impacted?

A. Anything that happens to 5 Star is me.

Q. Okay. Now, did you use your own time and effort -- well, let me ask you this. The building that was damaged in the fire, the actual real estate, who does that belong to?

A. Me.

Q. Who is "me"?

A. 5 Star.

Q. Does it ---

A. Shelby Holdings.

Q. Does it belong to Stan Shelby?

A. Yes.

Q. All right. So were you repairing your own

building?
A. Yes. I helped out.
Q. All right. And did you submit a bill for that?
A. I don't think I did.
Q. Okay. All right. That brings us down to your equipment. I think we're down to your equipment and almost at the end. Let me show you what's been marked plaintiff's exhibit 20 which is not in evidence. Can you identify that document?
A. Yes.
Q. What is it?
A. It's a list of the things that were either damaged by -- that were damaged or lost in the fire.
Q. Whose handwriting is it?
A. It's mine.
Q. How did you compile it?
A. I just tried to take the best inventory I can -- I could.
Q. Did you go through the building and -- did you go through the building and make a list of everything that you lost?
A. Yes, I did.

Q. And you did that in your own handwriting?
A. Yes. That's my handwriting.
Q. Were you the owner of all that equipment?
A. Yes.
Q. And do you have an opinion as to its value?
A. Yes, I do.
Q. Okay. Now, let's just pick one at random. What's at the top of the list? Just pick something at random.
A. Fax machine.
Q. Okay. Who's the manufacturer?
A. Sharp.
Q. Okay. Now, did you lose your Sharp fax machine in the fire?
A. Yes, I did.
Q. Have you replaced the Sharp fax machine?
A. Yes.
Q. When you replaced the Sharp fax machine, did you go to the flea market or to a yard sale, or did you go to some office supply store and get a Sharp fax machine?
A. Best Buy.
Q. Best Buy?
A. Yes.
Q. Do you know does Best Buy have a used

department in it anywhere?
A. Not to my knowledge.
Q. When you had to replace all that equipment, did you have to replace it at retail, retail prices?
A. Yes.
Q. Did you make a list of everything you lost?
A. To the best of my knowledge, I did.
Q. Is the list accurate?
A. To the best of my knowledge.
Q. Is there anything on that -- is there anything that you lost that you didn't put on the list that you're willing to just waive today, just walk away from?
A. Well, I mean, I -- you know, I had to have a dumpster to put all the stuff in, and I had to have the truck towed out of the garage. So, but none of that -- none of that was mentioned. I'm just trying -- I'm now trying to move on, get my -- you know, move on. That's all I'm trying to do.
Q. All right. And, again, I think I may have already asked you this. Did you put down anything for your own time and inconvenience?
A. No, I didn't.

Q. How much is the total of the damage that you lost? The items that you lost, what does it come to?

A. 48,100 ---

MR. MARSHALL: Your Honor, we object to the amount of damages for the reasons previously stated.

THE COURT: Sustained as to the form of the question. Rephrase.

BY MR. GOLDSTEIN:

Q. Have you replaced all the equipment that you lost?

A. Yes.

Q. Okay. Do you know how much you spent on replacing it?

MR. MARSHALL: Your Honor, I object. That's irrelevant. Objection.

THE COURT: Overruled.

THE WITNESS: You asked me if I had to replace everything?

MR. GOLDSTEIN:

Q. Yeah.

A. Some stuff I couldn't replace.

Q. Okay. You mean like personal memorabilia?

A. There was personal stuff that I had in the

shed, and I'm waiting for this case to be over with and probably get rid of it at that time.

Q. Okay. So you still have some of the burned stuff is what you're saying?

A. Just till the case is over.

Q. Okay. And just so the jury understands, you're getting a little upset; is that right?

A. Yes. Yes.

Q. Okay. You had some memorabilia in there, correct?

A. Yes, sir.

Q. And just so maybe it will help them understand, I mean, you've had kind of an interesting life, haven't you?

A. Yes, I have.

Q. Tried out for Utah Jazz?

A. Yes, I did.

Q. Read for some screenplays?

A. Yes, I have.

Q. And you had all that memorabilia in your office?

A. The Utah Jazz stuff, I did.

Q. Okay.

MR. MARSHALL: Your Honor, we renew our objection regarding the relevance of this because

Mr. Shelby, again, is not the plaintiff in this lawsuit. The plaintiff is 5 Star, Incorporated. It's the company, and it's the company's damages that are being sought in this action.

THE COURT: Sustained.

BY MR. GOLDSTEIN:

Q. Are you claiming any monetary damage for the loss of your Utah Jazz memorabilia?

A. No.

Q. You didn't put it down on the list, did you?

A. No.

Q. You just put down the office equipment?

A. Just -- the stuff that was in both buildings, the other stuff is just there. Once the case is over, then I'll just throw everything away.

Q. Okay. Has this loss been a burden to you?

A. Yes.

Q. And has it affected you mentally?

A. Yes.

MR. MARSHALL: Your Honor, we object at this point, again, for the same reason.

THE COURT: Sustained.

BY MR. GOLDSTEIN:

Q. All right. Now, the plaintiff's exhibit 18, the stuff that you rented, do those invoices reflect the actual check number that you used to pay for each one of those invoices?

A. Yeah. That's my signature.

Q. Okay. And is that the evidence of how much you had to spend on keeping your business running?

A. It is.

Q. Okay. Also, after this fire, are you aware of any efforts on your behalf to contact someone on behalf of Ford to advise them of your loss?

A. Yes.

MR. GOLDSTEIN: Your Honor, that's all the questions I have for Mr. Shelby.

I am at this time moving plaintiff's exhibits -- I would like to move plaintiff's exhibits 18, 20 -- oh, I haven't gotten to 21 yet. I'm sorry. Twenty-one.

THE WITNESS: Here it is.

BY MR. GOLDSTEIN:

Q. Oh, you've got 21?

A. Yes.

Q. Okay. Take that off of there. All right. Do you have before you what has been marked as

plaintiff's exhibit 21?
A. Yes.
Q. Can you identify it?
A. Yes.
Q. What is it?
A. Summary of damages.
Q. How did you come up with that?
A. I wrote the inventory list for the stuff that was lost, invoice for the cost of the building repair, not counting what I put in myself, the prices of the fair market value for the Ford F-250, the amount that I had to pay out of my pocket for the rental equipment, the pressure washing, and that's what we -- and my business interruption.
Q. Okay. And when you evaluated the value of the items lost, did you evaluate them, the value of them, as the owner?
A. Yes. Yeah.
Q. And the last question. I'll take one more run at it, but if you're going to get upset, forget it.
A. I'll try.
Q. The name 5 Star, can you tell us where that comes from?

A. Yes. I was one of the best basketball players in my...

Q. Okay. Never mind. I withdraw the question.

MR. GOLDSTEIN: Your Honor, at this time I would move plaintiff's exhibits 18, 18 which is the invoices, 19 ---

THE COURT: Plaintiff's 18, 20, and 21, there's an objection that I need to take up outside ---

MR. GOLDSTEIN: Right.

THE COURT: --- the presence of the jury. So I am not going to rule on that at this point.

MR. GOLDSTEIN: That's all the questions I have.

THE COURT: Thank you.

Mr. Shelby, if you'll just remain seated.

Ladies and gentlemen of the jury, due to the late hour, I'm going to let you -- we're going to call it an evening.

Please do not begin your deliberations in this case. Once again, you have not heard all the testimony or had all the evidence presented

to you nor have you received the Court's instructions on the law.

Please do not watch any news reports regarding this case. I do not anticipate that there will be anything in the media. Do not do your own investigations. Other than perhaps watching the hurricane, why don't you just take the evening off from television or the internet research for the evening.

I will see you back in the jury room at 9:15 in the morning.

And, Madam Foreperson, were the donuts acceptable?

THE FOREPERSON: Yes, they were.

THE COURT: All right.

THE FOREPERSON: Could we have Dunkin Donuts next time?

THE COURT: I will see what power Mr. Brown has as far as the brand of donuts that will be in your jury room in the morning.

Y'all have a safe and restful evening, and I'll see you back in your jury room at 9:15.

THE FOREPERSON: Thank you.

(Whereupon, the jury leaves the courtroom at approximately 6:10 p.m.)

THE COURT: Thank you. Please be seated.

Mr. Shelby, you may step down. I want to remind you, it's going to be very difficult, but you cannot discuss your testimony with your attorney over the evening hour nor with defense counsel. Do you understand my admonition?

THE WITNESS: Yes, I do.

THE COURT: And you are under oath, and when we begin back in the morning you will take the witness stand. All right?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you. You may step down.

(The witness leaves the witness stand.)

THE COURT: Mr. Goldstein, I'll be more than happy to receive a copy of the case, that case you mentioned. Have you provided a copy to Mr. Marshall?

MR. GOLDSTEIN: No, ma'am. No. This is the first time in my career anybody's ever objected to an invoice on hearsay. So I'll have to find that case. It's in my trial notebook somewhere.

THE COURT: If you will e-mail the case

citation to me.

MR. GOLDSTEIN: Yes, ma'am.

THE COURT: And copy defense counsel this evening. I will rule on the admission of 18, 20, and 21.

I still have your brief in opposition on those matters. Mr. Marshall, is there anything additional that you wish the Court to review over the evening hour?

MR. MARSHALL: No, your Honor. Just our objections, and we have a somewhat different objection for each item, and it's set forth in the motion, and we tried to explain it there.

THE COURT: Thank you, Mr. Marshall.

MR. MARSHALL: And, also, Your Honor, I've got some case citations for damages. I'm not sure if it's the same case Mr. Goldstein is referring to or not.

THE COURT: Are they different from the case citations contained in your memorandum?

MR. MARSHALL: No, Your Honor.

THE COURT: All right. I have reviewed those cases contained in your memorandum, and I will review those over the evening hour.

Anything additional, Mr. Goldstein?

MR. GOLDSTEIN: Judge, I did have some -- I did have some proposed additional jury charges which I'd like to hand up, or did I already hand them up?

THE COURT: You handed some additional jury charges this morning.

MR. GOLDSTEIN: Seven through ten.

THE COURT: Anything additional from what you handed up this morning?

MR. GOLDSTEIN: No, ma'am. It was seven through ten. I just couldn't remember if I handed them up.

THE COURT: My law clerk will be here at 8:30 in the morning. That will be an opportunity for you -- I'll have the jury charge printed off at that time, and then you both -- we will have a copy for both of you, and you may review them at that time, and we'll have a jury conference at the appropriate time.

Anything further, Mr. Goldstein?

MR. GOLDSTEIN: Well, I was just looking for that case. I thought I could...

THE COURT: Mr. Goldstein, you can e-mail the Court.

MR. GOLDSTEIN: Yes, ma'am.

Judge, may I inquire of counsel as to what the -- oh, I just found the case. I only have one copy of it, though. It's only a two-page case. Do you want me to summarize it, or do you want me to still just e-mail it to you? Whatever your preference is.

THE COURT: You can e-mail the case.

MR. GOLDSTEIN: Okay. Yes, ma'am.

Could I inquire of counsel as to scheduling for tomorrow? I'm just curious as to whether he's made a decision or when he's going to make a decision as to whether or not he'll call an additional witness.

MR. OTT: They haven't rested, so I'll let him know at the appropriate time.

MR. GOLDSTEIN: I was just asking for scheduling, Judge. If he doesn't want to tell me, that's fine.

THE COURT: All right.

MR. MARSHALL: I don't want to tell you.

MR. GOLDSTEIN: Okay. They don't want to tell me. That's fine.

THE COURT: The Court is going to -- Mr. Shelby will be on the stand. I will have the

ruling as to 18, 20, and 21. Then defense will have their opportunity to cross-examine. At that point, it's my understanding that you have no additional witnesses and will rest.

MR. GOLDSTEIN: I have no more witnesses. I will rest. I'm going to renew my effort to get into evidence documents that you've already ruled on. I will renew my efforts, and then that'll be it. That'll only take a second.

THE COURT: All right. And then the defense will present any defense that they may have, and they will rest, and then we will -- I will allow you closing arguments, both sides, and then I will instruct, and we will submit it to the jury.

MR. GOLDSTEIN: Yes, ma'am.

MR. OTT: Yes, ma'am.

THE COURT: Anything further?

MR. OTT: Is it Your Honor's practice to give a written copy of the instructions to the jurors?

THE COURT: It depends. I do it differently in each case. I don't know how many pages we have gotten to. It's likely that this -- for this particular case, because it's been so

short, I will not give written instructions unless you are both requesting me to.

MR. GOLDSTEIN: Whatever the Court's preference is. I have no preference one way or another.

MR. OTT: I guess I'd like to review them before I make that decision.

THE COURT: All right. We'll address that at the appropriate time, Mr. Ott. Anything further?

MR. OTT: Nothing, Your Honor.

THE COURT: All right. I look forward to that e-mail. Court's in recess. Again, my law clerk will be here at 8:30.

(Whereupon, at approximately 6:15 p.m., the trial is recessed to the following day, September 4, 2008, at 9:30 a.m.)

| | |
|---|---|
| State of South Carolina ) | Court of Common Pleas |
| ) | |
| County of Charleston ) | Ninth Judicial Circuit |
| 5 Star, Incorporated, ) | |
| ) | |
| Plaintiff, ) | |
| ) | |
| vs. ) | Case No. 06-CP-10-4773 |
| ) | |
| Ford Motor Corporation, ) | |
| ) | |
| Defendant. ) | |
| ) | |

VOLUME III of III

TRANSCRIPT OF RECORD

September 4, 2008

Charleston, South Carolina

B E F O R E:

The Hon. Kristi Harrington, Judge, and a Jury

A P P E A R A N C E S:

Thomas R. Goldstein, Esq.
Attorney for the Plaintiff

Curtis L. Ott, Esq.
David C. Marshall, Esq.
Attorney for the Defendant

Pages 499-672

Brenda Cooley
Circuit Court Reporter

(On Thursday, September 4, 2008, the trial resumes at approximately 9:30 a.m., and the following proceedings were had:)

STANLEY SHELBY,

previously duly sworn, resumes the witness stand and is examined and testifies further as follows:

THE COURT: Thank you. Please be seated.

With respect to plaintiff's exhibit number 18, 20, and 21, the Court is sustaining the defendant's objection to those three documents. They will not be entered into evidence at this time.

MR. GOLDSTEIN: Your Honor, for the record, plaintiff's exhibit 18 was the CESCO invoices?

THE COURT: That was the packet of CESCO invoices. That is correct.

MR. GOLDSTEIN: And Your Honor indicated or when we discussed it in chambers that the Court's ruling is not based on hearsay but rather on being an improper measure of damages and irrelevant; is that correct?

THE COURT: That is correct.

MR. GOLDSTEIN: Thank you. And then --

I don't have them in front of me. The next number is 19?

THE COURT: The next number is 20, which is the defendant's apparently -- or, excuse me -- I'm assuming it's the plaintiff's handwritten list of the -- it's entitled Replaced, Lost, or Damaged Equipment. And then 21 is a typed summary of damages.

And, again, the same, the Court's rationale is the same on those two documents, that there contains on both documents inappropriate and incorrect calculation of measure of damages.

The plaintiff was allowed very liberal detailing of the replacement costs, as well as his arrival and his calculations as to his loss of business, business interruption.

And the Court has found that those three documents, as well, do not need to come in under the incorrect assessment of damages.

Anything further?

MR. GOLDSTEIN: Your Honor, I don't want to get into the jury charge session, I understand we're going to do that later on, but I would renew my effort to introduce number 20

under the principle that an owner is allowed to testify as to the value of his property.

THE COURT: And he did. Mr. Goldstein, he did.

MR. GOLDSTEIN: Thank you, Your Honor.

THE COURT: Thank you. Anything further before we bring in the jury?

MR. GOLDSTEIN: Nothing from the plaintiff.

MR. OTT: Nothing, Your Honor.

THE COURT: All right. Please bring in the jury.

Mr. Shelby, if you'll just remain seated.

(Whereupon, the jury enters the courtroom at approximately 9:40 a.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you.

Thank you. Please be seated.

Good morning, members of the jury. How were the donuts this morning?

THE FOREPERSON: Very well, thank you.

THE COURT: And what was back there?

THE FOREPERSON: Dunkin Donuts.

THE COURT: You may thank our lovely clerk of court for your donuts this morning.

THE FOREPERSON: Thank you.

THE COURT: Are you ready to begin? Mr. Goldstein, are you ready?

MR. GOLDSTEIN: Oh. Yes, Your Honor. It's his witness.

THE COURT: All right.

MR. MARSHALL: Yes, Your Honor.

THE COURT: Mr. Ott, your witness.

MR. MARSHALL: If it please the Court, Your Honor.

CROSS-EXAMINATION

BY MR. MARSHALL:

Q. Good morning, Mr. Shelby.

A. Morning.

Q. We did hear this week about the 1996 Ford F-250 Super Duty truck. Is that right?

A. Correct.

Q. And you purchased that vehicle from your friend, Pat Evans?

A. Correct.

Q. It was almost ten years old when you purchased it?

A. Yes.

Q. And that was about February of 2005?
A. I don't know the exact date. It sounds about right, though.
Q. And the vehicle had over 227,000 miles at the time of purchase?
A. Yes, sir.
Q. The vehicle was titled to 5 Star, Incorporated; is that right?
A. Yes, sir.
Q. You purchased it as is?
A. Yes, sir.
Q. You did not contact Ford prior to your purchase, did you?
A. About that vehicle?
Q. Yes, sir.
A. No.
Q. You didn't take the vehicle to a Ford dealership prior to your purchase, did you?
A. No.
Q. You didn't have any inspections performed on the vehicle prior to your purchase, did you?
A. No.
Q. You didn't have any problems with the vehicle prior to this fire, did you?
A. No.

Q. You didn't have any problem with the cruise control or the speed control in this vehicle?
A. No.
Q. You never took the vehicle to a Ford dealership for maintenance or service of any kind after your purchase?
A. No.
Q. You don't have any personal knowledge as to the vehicle history, the maintenance records of the vehicle prior to your purchase?
A. No.
Q. You weren't the last person to drive this vehicle prior to the fire; is that right?
A. That's correct.
Q. You didn't park the vehicle in the warehouse that day?
A. No, I didn't.
Q. You don't know what time the fire actually started in this case?
A. Nobody does.
Q. And the building that the vehicle was parked in, who is the owner of that property?
A. I own all the property.
Q. Okay. Is that Shelby Enterprises or is that -- what corporation is that?

A. Shelby Holdings.
Q. Shelby Holdings?
A. Yes.
Q. That's a different corporation?
A. Yes, sir.
Q. 5 Star did not close down a hundred percent after this fire, did it?
A. A hundred percent?
Q. Yes, sir.
A. No.
Q. You still continued to make business calls?
A. Yes. My phone wasn't burnt, so...
Q. And you had another warehouse on the property that had some equipment in it; is that right?
A. Yes, but the equipment wasn't active. It wasn't the equipment that we were using for that Monday that we came in.
Q. And you had two or three other vehicles that could be used to make calls?
A. Vehicles to make calls?
Q. For your employees to go out and make lawn calls or pressure washing calls. I believe you testified yesterday that you ---
A. Well, I mean, I couldn't because -- I

couldn't -- regardless if that was the case or not, I couldn't because the equipment was burned up. The equipment that I used for pressure washing, all of those machines were burned up.

Q. And you rented pressure washers?

A. Yes. I had to go rent pressure washers.

Q. How many jobs did 5 Star lose as a result of this fire?

A. Lose?

Q. How many jobs couldn't it make, couldn't reschedule?

A. I don't have a number of the number of jobs that we lost or couldn't reschedule.

Q. So therefore you don't have any evidence as to any lost profits that 5 Star may have sustained as a result of the truck?

A. Well, I can tell you the number of days, about the number of days that things didn't -- weren't the way they were before the fire, which I already stated.

Q. I understand. But you said that the business wasn't a hundred percent closed down and that you don't have any percentage ---

A. I didn't put a percentage on ---

Q. --- on any lost profits?

A. I didn't put a percentage on how much the business was closed down. We had one crew that went out, and that was it. But for that, just for that one crew to go out, I had to rent a pressure washer.

Q. And you were renting pressure washers prior to this fire?

A. I've always rented them.

Q. No one was physically injured in this fire; is that right?

A. Thank God.

Q. And you decided to dispose of the vehicle after this fire; is that right?

A. I did not decide to dispose of the vehicle. That's where the -- I think the words are being -- are not true with that. I did not decide to dispose of the vehicle. What I decided to do was get the vehicle towed off my property. There is a difference.

What they did with the vehicle was on them. I don't know what they did with the vehicle until after I called them. When I called them, it was just to tow the vehicle off my property. That's it.

MR. MARSHALL: Your Honor, may I

approach the witness?

THE COURT: You may.

BY MR. MARSHALL:

Q. I'm going to show you what's been marked defendant's exhibit two. And this is the Plaintiff's Answers to the Defendant's Supplemental Interrogatories; is that right?

A. Yes.

Q. And the first one, the first interrogatory in this exhibit asked for the name, address, and telephone number of all individuals involved in the decision to sell and other -- and/or otherwise dispose of the vehicle at issue in these proceedings. And will you read the answer?

A. (Reading): Identify by name, address, and telephone number all individuals involved in the decision to sell and otherwise dispose of the vehicle at issue in these proceedings and describe the nature and extent of each individual's participation in the decision to sell and/or other dispose of the subject vehicle from the date incident described in plaintiff's Complaint up to and including the date on which the subject vehicle was crushed and sent to BB&J Company.

Q. So the answer to that was Stan Shelby?
A. Stan Shelby.
Q. And you did not notify Ford Motor Company of your decision to destroy this vehicle; is that right?
A. Did I notify Ford Motor Company?
Q. Yes, sir.
A. To -- to destroy the vehicle?
Q. Yes, sir.
A. I didn't know the vehicle was going to be destroyed. I knew that I was getting the vehicle off my property, but I didn't know that they were actually getting rid of the vehicle.

And as far as Ford being notified about stuff, we notified Ford back in December that we had a problem with the truck. And this was February. That's plenty of time for them to...

Q. Mr. Shelby, my question is, did you notify Ford Motor Company ---

MR. GOLDSTEIN: Your Honor, I ask -- he was in the middle of answering the question, and counsel cut him off. And I think he's -- I think the rules allow him to finish answering his question.

THE COURT: Overruled. It was not

responsive to Mr. Ott's question --
Mr. Marshall's question.
BY MR. MARSHALL:
Q. Interrogatory number four of exhibit two asked you to state whether plaintiff or anyone acting on behalf of plaintiff or at plaintiff's direction informed Defendant Ford Motor Company of the decision to crush or otherwise dispose of the subject vehicle prior to doing so. And the answer to that?
A. "No."
Q. So you did not notify Ford before you destroyed this vehicle?
A. About disposing it, no.
Q. And you had the vehicle towed and crushed on February 2nd, 2006?
A. I had it towed. I don't know when they crushed the vehicle.
Q. Let's look at interrogatory number two to this exhibit. State the date on which the decision was made to crush or otherwise dispose of the subject vehicle along with the date the vehicle was actually crushed or otherwise disposed of.
Your answer to that question was: "On or

about February 2nd, 2006." Is that right?
A. Is this from the -- the same stuff that's from my deposition? That's what this is about?
Q. Yes, sir. Remember I asked you about this same document during your deposition.
A. Am I allowed to look at my deposition?
Q. Is that a question to me?
A. Yes. You're asking me the question, so I just want to -- I mean, I'm not trying to...
Q. Let's focus on this document, exhibit two. In interrogatory number two of this document, it says the decision was made on February 2nd, 2006?
A. Yes.
Q. And you had already contacted Mr. Goldstein about this case prior to that decision. Isn't that true?
A. What was the question again?
Q. You had hired Mr. Goldstein prior to making that decision; had you not?
A. Yes, sir.
Q. And you testified yesterday that you notified your insurance company after the fire; is that right?
A. Yes, I did.
Q. And they sent Thomas Nolan to inspect the

scene; is that right?
A. That's right.
Q. Mr. Nolan is an adjustor, correct?
A. Yes.
Q. He is not an employee of Ford Motor Company?
A. He's not an employee of 5 Star, either.
Q. He's not a representative of Ford Motor Company?
A. Correct.
Q. You don't have any evidence that he notified Ford Motor Company?
A. No, I don't.
Q. Now, I believe you said yesterday and just a minute ago---
A. And I don't have no evidence that he did not, either.
Q. Pure speculation?
A. Hey, same thing you're doing.
Q. I believe you said that you and your attorney had written some letters attempting to notify Ford; is that right?
A. That is correct.
Q. And those letters were not mailed to Ford Motor Company; is that right?

A. I don't know who my attorney mailed them to. I know that when I went in there to talk to him, we did have -- we were trying to find out who was the local Ford representative about the problem with the truck. That was in December.

Now, if Ford is such a big company, which one of the guys reiterated yesterday, he did send a letter to Ford. Now, where in Ford, I don't know. I do know what the letter said. I do know that we tried to contact Ford about this matter.

Q. Do you have a copy of any letter that was addressed to Ford Motor Company?

A. I saw one yesterday.

Q. That was addressed to Ford Motor Company?

A. It looked like it was addressed to Ford Motor Company to me. It had Ford, Ford Motor Company on it. It had something on it with Ford.

MR. MARSHALL: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. MARSHALL:

Q. (Counsel tenders exhibit to the witness.)

A. Do you want me to read it?

Q. Mr. Shelby, I don't want you to read it. I just want you to tell me if that letter is

addressed to Ford Motor Company.
A. No, it's not.
Q. Is it addressed to Detroit, Michigan?
A. It's addressed to Mr. Trent Kernodle who I guess is a representative of Ford. Trent Kernodle, representative of Ford.
Q. Do you have any personal knowledge that he's a representative of Ford?
A. I don't have -- no, I don't.
Q. Is Mr. Kernodle ---
A. I have confidence in my attorney that he does.

THE COURT: Counsel approach.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

THE WITNESS: It says right there Ford Motor Company.

THE COURT: Sir.

THE WITNESS: Oh, I'm sorry. I'm sorry. I'm sorry.

THE COURT: I know you're just trying to be helpful.

THE WITNESS: Okay. I'm chilling.

THE COURT: Thank you.

THE WITNESS: I'll get some water.

THE COURT: Thank you.

(Said bench conference continues.)

(Said being bench conference being concluded, the following proceedings were had:)

BY MR. MARSHALL:

Q. Mr. Shelby, one last question. That letter was not addressed to Ford Motor Company; is that right?

A. To me, it represented Ford Motor Company.

Q. It was not addressed to Ford Motor Company?

A. No. It wasn't addressed P.O. Box or anything like that to Ford Motor Company.

Q. Did you personally contact Ford Motor Company?

A. No. That's why I had an attorney.

Q. And it's undisputed that you did not provide notice to Ford Motor Company prior to destroying this vehicle?

A. Is it undisputed that I did not contact Ford about destroying the vehicle?

Q. About your decision to destroy the vehicle.

A. About my decision to destroy the vehicle? Hm. No.

Q. That's not undisputed?

A. I think that I had nothing to do with them destroying the vehicle.
Q. You didn't ---
A. I don't destroy vehicles. I have the vehicles towed, then they do what they want to do with the vehicles.
Q. And you didn't care what happened to the vehicle after that?
A. No. No. At that point, I didn't. I didn't care.
Q. And interrogatory number four, your answer said that you did not notify Ford of your decision to destroy the vehicle?
A. Okay.
Q. The City told you to move the vehicle; is that right?
A. Yes, sir.
Q. They didn't tell you you had to destroy it?
A. I didn't destroy it.
Q. They didn't tell you you couldn't have it towed back into one of your warehouses, just like you had it towed out of your warehouse?
A. That makes no sense.
Q. The City didn't prevent you from towing that vehicle to another salvage yard for storage,

did it?

A. They didn't prevent me from towing it across the street. But if I'm going to have it towed, why would I have it on my property? It's no good to me. It's no use.

Q. And you could have called Ford and said, hey, I've got to do something with this vehicle, do you want to come look at it, do you want to come help me pay for storage? Nothing prevented you from doing that, did it?

A. Well, the towing was free, so there was no need for me to call Ford to help me pay for anything.

Q. You could have removed the vehicle -- the speed control switch that you have alleged is defective in this case prior to destroying it?

A. You said I could have removed it?

Q. You could have -- you could have had someone remove it for you, or you could have removed it yourself?

A. You're talking to the wrong person. I don't know too much about cars. I don't -- you know, Mr. Norris came up to me and gave me his theory on what happened and that -- and I don't know nothing about fires. I'm not a lawyer, an

investigator, or insurance guy. I just tried to do the right thing.

This guy told me this is what caused the fire, you need to do this, this, and this, and that's what I did.

Q. Then you destroyed the vehicle?

A. I didn't destroy the vehicle.

Q. You never had anyone inspect the vehicle while it was on your property; is that right?

A. No.

Q. That's not right, or you did not have it inspected?

A. I didn't have it inspected. Are you talking about after the fire or before?

Q. After the fire.

A. After the fire? Mr. Nolan, he did -- took a lot of pictures. Mr. Nolan took a lot of pictures.

The fireman came, and they said that he's an investigator. He investigated. I walked around with him. We walked around the property, inside and out, to see where the fire might have -- might have occurred. We came back to the property -- came back to the truck.

He said, "The fire started in the engine.

If you don't know, there's a recall on it. It might be that. You might want to try and" ---

MR. MARSHALL: Your Honor, we would ---

THE WITNESS: You asked ---

THE COURT: Sir.

THE WITNESS: --- you asked me.

THE COURT: Sir, sir.

Counsel.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Mr. Marshall, I will sustain your motion.

Ladies and gentlemen of the jury, I have sustained. Mr. Marshall at the bench conference requested that I strike the last response by Mr. Shelby as nonresponsive to the question. I ask you to disregard anything that Mr. Shelby said in relationship to that last question.

I note your objection and will allow you a full argument on the record outside of the presence of the jury at our next break.

MR. OTT: And just to renew our motion for the record, Your Honor.

THE COURT: Yes, sir, Mr. Ott.

You may continue, Mr. Marshall.

BY MR. MARSHALL:

Q. When you had the tow company come remove the vehicle from your property, you knew that they were going to crush it?

A. How would I know that? How would I know that? I don't know anything about crushing anything. I cut grass for a living.

Q. When the vehicle left your control, you never expected to see it again, did you?

A. Why would I?

Q. And the tow company that towed it wasn't preserving the vehicle for you, were they?

A. No. Once it left my property, I didn't know where it was going. I had no idea. I just knew North Charleston wouldn't give me a fine, so...

Q. After this fire, you purchased a 2004 Ford F-250; is that right?

A. Yes.

Q. And you currently own a Ford F-150?

A. No.

Q. Did you own a Ford F-150 ---
A. Yes, sir.
Q. --- at the time we took your deposition?
A. Yes, sir.
Q. Did you see Mr. Norris leave in his Ford truck yesterday?
A. Mr. who?
Q. Mr. Norris.
A. Did I see him in his Ford truck?
Q. Yes, sir.
A. No, I didn't see him in his Ford truck yesterday.

MR. MARSHALL: Thank you, Mr. Shelby.

THE WITNESS: You're welcome.

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: May it please the Court, Your Honor. Just a few.

REDIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Just answer the question yes or no. Don't say anything else.
A. I'm chilling.
Q. Okay. Mr. Marshall just asked you if you ever notified Ford Motor Company. Do you remember those line of questions just a few

minutes ago?
A. Just yes or no?
Q. Just yes or no.
A. Did I ever notify Ford Motor Company?
MR. MARSHALL: Your Honor, we're objecting to the leading.
THE WITNESS: He asked me a question.
THE COURT: Leading as to yes or no? Overruled.
BY MR. GOLDSTEIN:
Q. Did Mr. Marshall just ask you a series of questions about did you contact Ford, just a minute ago?
A. Yes.
Q. And just answer this next question yes or no. Don't say anything more. Okay?
A. I'm ready.
Q. Did Ford contact you? Did you get any written communication from Ford Motor Company?
A. No.
Q. Have you ever gotten any communication from Ford Motor Company?
A. No.
Q. He asked you a series of questions about maintaining the vehicle. Did you maintain the

vehicle?
A. Oil changes and basic maintenance.
Q. That's what I mean. Did you ---
A. Yes, sir.
Q. --- take care of it?
A. Yes.
Q. All right. And did you do that because it's used in your business?
A. Yes.
Q. All right. Now, he asked you a series of questions about other vehicles and interrupting your business. If the truck had been towed back in your garage, would that have interrupted your business?
A. Yes.
Q. Would you have been able to work?
A. I would have been able to work, but it would have been difficult. I'd have to work around the truck.
Q. Well, how about where the truck was outside?
A. Same thing.
Q. Okay. Now, do you pay your taxes?
A. Yes.
Q. Do you report your income to the United

States of America?
A. Yes.
Q. Did you report your income in 2004?
A. Yes.
Q. What was your -- well, let me ask you this. Maybe I'm ---

MR. MARSHALL: Your Honor, we have an objection to relevance.

THE COURT: Counsel approach.

(There was an off-the-record bench conference in the presence of the jury but out of the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Mr. Ott, I'm going to overrule your objection. I will note your objection for the record as to our previous argument on your motion.

BY MR. GOLDSTEIN:
Q. Do you report your income?
A. Yes.
Q. Do you know how much money you made the year before the fire? Can you remember the number, or do you need to look at something to refresh your memory?

A. 5 Star or me personally?
Q. 5 Star.
A. 5 Star? 5 Star's gross receipts of 2004, it was like 289,000, I believe.
Q. Okay. And you reported that to the government?
A. Yes.
Q. You paid taxes?
A. My accountant, yes. Through my accountant.
Q. Did you rely upon your 2004 gross receipts in calculating the amount of your loss?
A. Yes.
Q. Okay. So when Mr. Marshall was asking you about how many jobs you lost, were you able to calculate how many actual specific jobs you lost immediately following the fire, or did you attempt to derive what an average daily rate was?
A. It's a lot easier with an average daily rate, a lot easier.
Q. Is that what you did?
A. Yes.
Q. Did you look at your 2004 returns to get a starting point?
A. To get a starting point, yes.
Q. All right. Now, he also asked you about

the number of lost jobs following the fire. After the fire, were you preoccupied with the restoration of your own business?

A. Yes.

Q. Did you have to rent pressure washers for the restoration of your own business?

A. Yes.

Q. Were you working at restoring your own business?

A. Yes.

Q. Was that a lot of work?

A. Yes.

Q. All right. How long did it take you to get all that just physically straightened out?

A. Physically, probably about a week or two.

Q. Okay.

A. Yeah.

Q. The photographs that Mr. Nolan took that are already in evidence, they're dated, what, October 3rd? Isn't that what the date is?

A. Which ones are they?

Q. Doesn't it say October 3rd, 2005, on there?

A. Yes, it does.

Q. All right. And do those photographs depict some of the cleaning that you had already done?

A. Yes, it does.
Q. All right. Mr. Marshall asked you a lengthy series of questions about whether or not you attempted to contact Ford. Do you remember those questions?
A. Yes.
Q. Did he ask you to identify two letters that were addressed to someone on behalf of Ford?
A. Yes.
MR. MARSHALL: Your Honor, we object.
THE COURT: Sustained.
BY MR. GOLDSTEIN:
Q. Did you get copies of those letters in the mail?
A. Yes.
MR. MARSHALL: Your Honor, we object.
THE COURT: Sustained.
BY MR. GOLDSTEIN:
Q. Mr. Marshall asked you if anybody inspected the property after the fire. Do you recall that question?
A. Inspected the property?
Q. Yeah. The truck and the building and ---
A. After the fire?
Q. Yes.

A. The -- Chief Norris. And like I said, Tom Nolan came out and took a lot of pictures.
Q. Okay. And did they communicate with you as to what the origin and cause of the fire was?
MR. MARSHALL: Your Honor ---
THE WITNESS: Mr. Norris did.
MR. MARSHALL: --- we object to hearsay.
THE COURT: Sustained.
BY MR. GOLDSTEIN:
Q. Let me ask you this. Did you set the fire?
A. No.
Q. Did any of your lawnmowers explode or catch fire?
A. No.
Q. Did any electrical equipment in your office or garage area malfunction?
A. No.
MR. MARSHALL: Objection, Your Honor. It's speculation. He doesn't know the answer.
THE COURT: If he knows.
BY MR. GOLDSTEIN:
Q. If you know.
A. Yes, I do know.
Q. Do you have a coffee maker in your office?

A. I don't drink coffee.
Q. All right. Do you have a computer?
A. Yes, I do.
Q. All right. Was the computer melted?
A. No.
Q. Do the photographs accurately depict what the scene looked like immediately following the fire?
A. Yes, it does.

MR. GOLDSTEIN: All right. That's all the questions I have. Thank you so much.

MR. MARSHALL: Nothing from the defendant.

THE COURT: May this witness step down?

MR. GOLDSTEIN: Yes, Your Honor. I'm sorry. I keep forgetting.

THE COURT: Mr. Shelby, you may step down.

(The witness is excused from the witness stand.)

THE COURT: Mr. Goldstein, call your next witness.

MR. GOLDSTEIN: No more witnesses, Your Honor. I move to admit plaintiff's exhibits 22 and 23 into evidence based on opening the door by

Mr. Marshall. And other than that, the plaintiff rests.

THE COURT: Please bring me 23 and 24.

MR. GOLDSTEIN: I might have said -- I think it's 22 and 23.

THE COURT: 22, 23.

MR. GOLDSTEIN: All right. 23 and 24. You're right.

THE COURT: Does the plaintiff rest?

MR. GOLDSTEIN: The plaintiff -- well, I'm sure you're going to announce your ruling, but the plaintiff rests.

(The plaintiff rests.)

THE COURT: Plaintiff rests. I'll need to take 23 and 24 up outside of the presence of the jury.

Ladies and gentlemen, at this time the plaintiff has rested. That signifies to the Court that there is some matters that I must take up outside of your presence.

Please do not begin your deliberation. You have not heard all of the evidence in this case nor have you been given all of the law in this case from which you may begin your deliberations. Please do not begin discussing

this case amongst yourselves.

We will be in recess, and I'll bring you back into the courtroom in just a few moments.

(Whereupon, the jury goes to the jury room at approximately 10:10 a.m.)

THE COURT: Thank you. Be seated.

With respect to plaintiff's exhibit 23 and 24 which, Mr. Marshall and Mr. Ott, those are the two letters, the Court is not going to admit those into evidence.

I'll note your objection, Mr. Goldstein.

I'll be happy to hear from you on -- allow you to place your objection and your request for leave for a mistrial.

MR. OTT: Yes, Your Honor.

This is even more egregious. Mr. Shelby has sat through the entirety of this trial. He heard Your Honor's rulings on Tuesday about the word "recall" not being mentioned and the discussion, a lengthy one by counsels, about admonishing our clients to make sure that that doesn't happen.

The question did not even call for the

mention of a recall. The question was if he had anyone inspect the vehicle on the property. He launched in several times to responses that had nothing to do with the question asked. But it was nothing more than a blatant, blatant attempt to violate this Court's continuous order in this case. And this is egregious.

And so we again renew our previous motion for mistrial on the same grounds. We renew our motion for costs to be assessed against the plaintiff in this case.

THE COURT: Thank you.

Mr. Goldstein.

MR. GOLDSTEIN: Your Honor, I didn't see anything egregious. And to be embarrassingly honest about it, I didn't even hear it. But I don't hear so well anymore.

It was completely innocuous. It was in -- it was in response to the question. In fact, the only thing that shocked me was Mr. Shelby's answer to my question as to whether or not Ford had ever communicated with him.

The issue of recall is in this case, brought out by their expert witness. So I don't know how they can claim a basis for a mistrial.

You cured it. You told the jury to disregard it.

You know, as for them seeking to assess costs, I mean, I have no comment on that. I just -- I don't even regard that as a serious application.

It was a minor, small portion of a three-day trial. They're giving it way too much weight.

MR. OTT: I take violations of a Court of Law's orders regarding and ruling in regard to evidence to be serious. It's been violated by the plaintiff three times in this case. The last one was the most egregious.

It was not responsive. He heard everything the Court said during the course of this trial. He is the plaintiff. He's held responsible.

I am shocked that Mr. Goldstein doesn't think that this is a serious proceeding or that my motion in any way is frivolous or not intended with all seriousness that I can possibly muster.

Your Honor, and I strenuously disagree with his contention that the word "recall" has

ever been admitted into this case. We can talk about that when we get to directed verdict.

But at this point, the jury has never heard an answer to a question that was not -- to which our objection was not sustained so the witness was not allowed to answer about recall or whether it was stricken in the case of Mr. Greene and now Mr. Shelby.

THE COURT: Based upon what the Court heard in response, the Court feels that it has cured any reference to the recall, striking it and admonishing the jury to disregard the reference to recall.

It was blurted out in a series of nonresponsive chatter to a question.

The Court declines your motion to grant a mistrial in this case.

The Court does take it seriously the fact that Mr. Shelby said that. However, based upon Mr. Shelby's demeanor and testimony here in court, I do not feel that it rises to a level of an abuse or a direct violation of the Court's order.

Mr. Goldstein, anything further?

MR. GOLDSTEIN: Your Honor, the -- it

may seem unusual for the plaintiff to move for a directed verdict as to liability at the close of the plaintiff's case, but in this case the plaintiff has called all the witnesses in the case, so all the testimony is in.

The defendants have not identified any other witnesses. The Court queried them at the voir dire and the jury was voir dired on who may be possible witnesses in this case, and they identified Mr. Olson and they identified my witnesses. So I think all the witnesses are in.

I've asked Mr. Ott to tell me three or four times if he's got any more witnesses, and he won't tell me.

So the plaintiff moves at this juncture, because I believe all the testimony is in, for a directed verdict as to the issue of liability, and I also would like to make a motion to strike various portions of the Answer, and I would go through each individual answer one by one, but right now I'm just moving for a directed verdict on liability on the ground that all the evidence is in.

THE COURT: All right. Mr. Goldstein, you're a little ahead of the Court.

MR. GOLDSTEIN: I agree.

THE COURT: Have you -- you've rested, correct?

MR. GOLDSTEIN: Yes, ma'am.

THE COURT: Mr. Marshall, Mr. Ott, any motion?

MR. OTT: Your Honor, at this time I think we're required at directed verdict stage to renew motions for a mistrial. So for all of the grounds that we just talked about and in response to Mr. Shelby's testimony, we renew those now.

And I'm going to turn it over to my lawyer as far as the directed verdict motion is concerned.

MR. MARSHALL: Your Honor, with the Court's indulgence, based on my outline there are several topics that have come up in this case.

We would move for a directed verdict on plaintiff's sole cause of action in this case which is a negligence cause of action for products liability.

Under South Carolina law, the negligence products liability standard is four elements. The first element is damages. The second element, that a defective -- that the

product was in the same condition at the time of sale. The third condition is that the product was defective and unreasonably dangerous. And the fourth condition for a negligence action such as this one is that the manufacturer committed negligence in failing to adopt a safe design.

Your Honor, the directed verdict motion is based on several grounds.

First, there's been no evidence that this vehicle was in substantially the same condition as the time it left Ford's control in 1995. There has been no testimony as to the vehicle maintenance history of this vehicle, what parts had been replaced. The previous owner did not testify in this case. And so that's one of the grounds for this motion.

And for the Court's convenience, the cases that cite to these four elements include the *Bragg* case that we talked about earlier. Another one is *Wright vs. Hitachi*. Another one is *Small vs. Pioneer Logging*, I believe. There's an *Allen* case and a *Matt* (phonetic) case. And I have a copy of some of these cases if Your Honor wants me to pass them up.

The second reason we move for a

directed verdict is that the plaintiff has failed to create a genuine issue of fact regarding a defect in this vehicle.

Plaintiff's expert's testimony admitted the lack of reliability, and therefore it deemed to make them self insufficient for reasonable jurors to disagree as to whether this product was defective, and we would move for a directed verdict for lack of defect.

We would also move for a directed verdict based on the lack of evidence of Ford's conduct, specifically that Ford was negligent at the time of manufacture, in this case November of 1995.

Mr. Greene testified that he was unaware of Ford's knowledge at that time and that Ford should not have called him at that time to ask whether this design was defective or safe. He simply relied on hindsight opinions by an expert hired for litigation purposes to criticize the design of this product.

In that same regard, Your Honor, there's been no evidence of recklessness in failing -- in failing to adopt a safe design on behalf of Ford at the time 1995.

And for that reason we would renew our motion for -- that we would request a directed verdict on plaintiff's claim for punitive damages in this case, which requires clear and convincing evidence that the manufacturer exhibited a reckless, willful, wanton conduct at the time of manufacture.

And the *Jimenez* case is directly on point regarding when the conduct must be proven and what standard is clear and convincing.

And, Your Honor, we submit there has been no evidence as to Ford's knowledge, to prove negligence, let alone recklessness, and so we would move for directed verdict on both the negligence cause of action and the claim for punitive damages.

Your Honor, as Your Honor is aware -- as Your Honor is aware from the *Bragg* case, South Carolina law does not recognize a post-sale duty to warn.

Even though maybe Ford became aware of a higher rate of claims of defects in this switch, they had no duty to warn Mr. Shelby or any user. However, they issued a voluntary recall that Your Honor has not included -- has

disallowed in evidence. And the fact that South Carolina has no post-duty to warn, there is no duty to recall. And, Your Honor, that can't be evidence of negligence, Ford's failure to do so. The negligence has to be present at the time of manufacture. In this case, there is none.

Your Honor, we would next move for directed verdict based on the complete lack of evidence of an alternative feasible design.

In design defect cases, no matter the cause of action, whether it's negligence, strict liability, or breach of warranty -- and, again, in this case the plaintiff has only pled negligence -- there is a requirement that the plaintiff prove an alternative vehicle design for the product. And this is a requirement, and that -- and the law says that the alternative design cannot be conceptual in nature. It has to be real. It has to be feasible.

Mr. Greene is the only person that could have testified to that, and he testified that he could not design a switch, that he's never designed an automotive part, that he has never designed a protocol for replacing this switch. He merely offered two or three what he

called fixes with no evidence that if they were implemented this part in this vehicle would have the same utility.

And that's the requirement under South Carolina law. It's the risk-utility analysis. And for the alternative feasible design to be evidence of -- to be proper, it has to have the same utility as the product at issue. And that -- and that's not proven in this case. And, of course, there is no specific design.

Second, there is no evidence that any design would be the same -- would have the same utility in that it would allow the brakes to stop, allow it to disengage the cruise control, allow the brake lights to start. These are all issues that are required to be proven in a products liability case.

Merely saying that the amp should have been two amps instead of 15 amps is not sufficient to say that's an alternative design. There is no evidence that that could have been done and still have this vehicle work the way Ford intended in 1995. So that would be another grounds for motion for directed verdict.

The next grounds for directed verdict

is based on plaintiff's spoliation of the only physical evidence in this case.

This is something that we argued at summary judgment stage. And we have cited numerous cases, including the Fourth Circuit. I believe it's *Sylvester vs. General Motors* which specifically describes the circumstances when dismissal is appropriate based on spoliation.

And there are two prongs, whether -- there's two considerations that the Court considers. First, how prejudicial is the spoliation to the other party; and second, does it affect the judicial -- does it affect the integrity of the judicial process.

Your Honor, we would argue in this case that both prongs are satisfied. Every witness that has testified, every expert has admitted, that Ford was extremely prejudiced and substantially disadvantaged based on plaintiff's decision to destroy the vehicle without prior notice to Ford, without affording Ford the opportunity to inspect the vehicle.

Therefore, we would move under *Sylvester* and the other case law, including *Kershaw County* which specifically recognizes this

as an option. It did not decide to do it in that case, but it recognized it, and in two paragraphs it limits its holding that we feel it is not appropriate under the facts of this case. And I remember reading that, but it does the same two -- the same two considerations, the degree of prejudice and the integrity of the judicial process. Both of those are satisfied here, and we move for a directed verdict on those grounds.

The next grounds for summary judgment -- for directed verdict that we would argue, Your Honor, is based on the lack of proximate cause in this case.

There has been no testimony that the defect in fact caused this fire. There has been -- Mr. Greene merely testified that he deducted this based on the high number of other allegations of the switch.

And this was our motion in limine regarding other incidents that we were concerned about, that Mr. Goldstein was going to attempt to insert the number of other incidents that were alleged to involve the same switch to prove that this switch was defective.

And that's not proper. The mere fact

that a product malfunctions does not demonstrate negligence or -- or defectiveness of the product. That is in the *Bragg* case. That's in the *Sun Villas* case.

Likewise, South Carolina has rejected the doctrine of *res ipsa loquitur* for over a hundred years. That doctrine would allow negligence to be inferred by the fact that something happens. And that's what -- and that's all plaintiff's case is in this case. There is no evidence that this switch caused this fire. It is mere deduction, as Mr. Greene said over and over.

And, Your Honor, I would submit that reasonable jurors cannot disagree as to the conclusion to be drawn from that. Therefore, directed verdict is proper in that regard.

Another grounds for directed verdict is based on plaintiff's damages.

This goes back to what I initially started, the four elements of proof in a products liability negligence action.

The first element is damages. That's clear.

The plaintiff in this case is 5 Star,

Incorporated. That is a corporation. As Your Honor knows, a corporation is a separate legal entity. It is not the same as Mr. Shelby.

Mr. Shelby likely created that corporation to protect himself from liability so if he messed up somebody else's yard when he was cutting it, he couldn't get sued personally.

And so if Mr. Shelby wanted to recover for his personal damages in this lawsuit, he could have joined 5 Star, Incorporated, and sued for those. But he made the conscious decision not to, just as Shelby Holdings which is the owner of the property did not make a decision to sue for the loss for the damage to the building itself.

The only testimony that I have heard regarding the damages to 5 Star, Incorporated, are that -- is the truck itself, that the truck was titled to 5 Star.

Mr. Shelby testified that he paid for the rentals out of his own pocket. He testified that Shelby Holdings owned the business, owned the building. He testified that he paid for the new equipment out of his own pocket, went to Best Buy to buy replacement products. Those are not

5 Star's damages, just as Mr. Shelby's mental injuries that he may allege are not 5 Star's injuries.

The mere fact that Mr. Shelby is the sole officer, sole shareholder of 5 Star, Incorporated, is not relevant in this issue. Just because he is the president, it doesn't matter who was. He's trying to recover, through 5 Star, damages to another legal entity.

It's like saying if I were injured in this fire and Mr. Shelby is seeking to recover for my injuries. We're different people. I have to join him in his lawsuit to bring a case for my damages.

And that's what's happened in this case. And Mr. Goldstein has made repeated attempts to say 5 Star is Mr. Shelby, Shelby is 5 Star. But that's not the case for the purposes of damages, for the purpose of consideration, Your Honor.

5 Star is only entitled to recover its damages. That's the only plaintiff in this case. The only damages that 5 Star has proven is the loss of the vehicle which he said he paid $1500 for and is asking $8,000 from the jury.

Since that is the only measure of -- the only damage that 5 Star is requesting, I would again submit that the economic loss doctrine prevents recovery for the vehicle itself.

If that is the only damage that 5 Star sustained, then there can be no recovery in tort, especially since this is solely a negligence cause of action, and we would move for directed verdict on those grounds.

And for those various reasons that I think stand alone in their own, we would request...

(Mr. Marshall and Mr. Ott confer.)

MR. MARSHALL: And then we would like to incorporate by reference our pretrial motions on these same topics and our motion for summary judgment to the extent it applies to the law on these topics, Your Honor, and we would move for directed verdict on those grounds. Thank you.

THE COURT: Thank you, Mr. Marshall.

Mr. Goldstein.

MR. GOLDSTEIN: May it please the Court. I think it'd be easier for me if I just go backwards. I don't know, it seems easier to

me for some reason.

Economic loss doctrine has no applicability in this case. Economic loss doctrine applies to cases in which the loss is just for the item itself. As the Supreme Court said last week in the *Colleton Regional* case, which we discussed prior: Where there is a danger to persons or property, the economic loss doctrine is inapplicable. So that takes care of that.

As for lack of proximate cause, again, I'm going -- oh, plaintiff and corporation. If it'll satisfy counsel, I'm happy to make a motion to amend the pleadings to add Stan Shelby as a party. I don't think that -- I don't think that's necessary.

He testified that 5 Star is a Subchapter S corporation. As everybody in this room knows, Subchapter S corporations flow through the -- the responsible party in the Subchapter S is the owner. Stan Shelby testified over and over and over again that he was the owner and operator of 5 Star.

As for lack of proximate cause, I agree with counsel that South Carolina has never

adopted *res ipsa loquitur*. And I have never suggested otherwise. South Carolina does, however, have a strong, well developed body of law in both criminal and civil cases on circumstantial evidence. And I respectfully submit, Your Honor, that the circumstantial evidence in this case is extremely strong.

As for spoliation of evidence, I submit that it's not applicable in this case because the holding of the *Kershaw* case, the disposal of the truck was inadvertent. It was not intended to cause any prejudice to Ford.

But here is the real reason. Mr. Greene testified and Mr. Norris who's still here testified -- and, see, I don't take notes when I'm examining a witness, so don't hold it against me if I get this wrong, but I think Mr. Greene said three or four fires, one switch survived, and I think Mr. Norris said nine or ten fires and one or two switches survived.

So it's complete speculation as to whether or not there even was a switch that survived this fire. This fire burned from Saturday till Monday morning when it was discovered.

The witnesses testified that the switch itself is made up 80 percent combustible materials. You can look at the pictures and see that the switch is no longer present. So if it existed, if it existed, it was underneath the truck.

So this getting rid of the truck is a complete red herring issue. The focus -- the spoliation is on preservation of the switch which would have been underneath the truck in the char.

You know, if Your Honor -- and, Judge, you shared with us your proposed charges, and you've got spoliation in there, and I'm prepared to accept that loss and move on.

There is a well developed body of law in South Carolina on spoliation of evidence. Not one single case in South Carolina stands for the proposition of denying the plaintiff his day in court and the plaintiff to try his case because a component which may or may not have existed was inadvertently lost.

As for -- and, again, I'm going backwards. As for lack of testimony of alternative design, Mr. Greene testified in great detail about that. He testified that the fix

was, quote, simple.

And as I recall his testimony, he offered three alternatives. For some reason, I'm drawing a blank on the third. And, again, I'm not taking notes when I'm examining my witness, and that's why I can't review my notes. But number one was wire it into the ignition circuit, not the brake circuit. Number two was insert a two-amp -- two-amp fuse in the line that would break if the -- if it overheated. And I'm -- honestly, Judge, I just can't remember what number three was, standing here on my feet, but I recall that there was a number three.

Going back up, evidence of recklessness, willfulness, and wantonness. Violation of a standard is evidence of recklessness, willfulness, and wantonness.

Mr. Olson who testified on behalf of Ford testified that Ford does have a duty to build a safe car and also does have a duty to warn.

And that's why I was perplexed by the Court's ruling on keeping out the recall notice. Because on the one hand, counsel is complaining about there's no duty to warn, but on the other

hand, Ford undertook an effort to warn the plaintiff. But, you know, I lost that fight, and so I moved on.

But there is clearly sufficient evidence to allow the jury to consider the award of punitive damages. It doesn't mean they're going to give them, but there's enough evidence for them to consider it.

Going back up, we get to the *Bragg*, *Hitachi*, and *Pioneer Logging* cases in which Mr. Marshall asserts that there is no evidence in this record to prove defect, lack of reliability, or awareness of Ford's -- proof of Ford's awareness of the defect in the design.

Again, the recall notice is -- which Your Honor kept out over my objection, is evidence of Ford's state of mind with regard to the defect. They recognize that there's a well developed body of scientific information within Ford. And, again, Mr. Olson testified to that and that a reasonable fire investigator would consult that in arriving at a conclusion.

And Mr. Marshall is correct that the *Bragg*, *Hitachi*, and *Pioneer Logging* cases require three elements in order to recover.

And damages, I won't belabor the point because I think they're so obvious. Unless the Court has questions for me on that, I'll pass over it.

As for evidence that the truck was in the same condition as it left the manufacturer, obviously it was in the same condition.

Mr. Shelby testified in direct examination and I think maybe even in cross that he had made no modification to the truck, that he knew enough about trucks to know that it was a normally configured automobile.

As for negligence, Mr. Greene testified in great detail about the negligence and what an alternative safe design would have been.

So I think I have now -- according to my notes, I have treated all of the bases for a directed verdict, but if I've overlooked one or if I've not satisfactorily addressed one, if Your Honor will let me know, I will endeavor to do that.

THE COURT: Mr. Marshall, your response.

MR. MARSHALL: Very briefly, Your Honor.

The plaintiff already rested its case, and therefore the motion to amend the pleading wouldn't apply.

And, again, whether it's an S corporation or a C corporation, the corporation is the plaintiff in this case. It's not Mr. Shelby.

Mr. Shelby presumably gets a salary from the corporation. He presumably made the same salary throughout this fire. If he wanted to recover for any lost salary that he had, then he could have done that.

In regard to proximate cause, Mr. Goldstein is correct, there is no *res ipsa*.

And the circumstantial evidence in this case is not enough. It is merely based on the generalized testimony of Greene and Norris that there are other incidents of this, there are other allegations of this, and therefore it happened in this case. There has to be some connection between those to say it did happen in this case. Without the vehicle and the testing that was talked about, we can't determine that.

As to the spoliation, Your Honor, it is

complete speculation whether this switch would have been recoverable after this fire.

Mr. Goldstein, I think, mischaracterized the testimony that Mr. Greene and Mr. Norris said that they couldn't recover it.

Nobody looked for it. Nobody picked it up. And if that had -- and if they had not destroyed the vehicle, we would have had the opportunity to look at that evidence and formulate an adequate defense to this case, and therefore we maintain that we're entitled based on spoliation.

Regarding an alternative feasible design, I know I've already passed the *Bragg* case up to Your Honor. I'd like to read two sentences from it if I may, on the twelfth page of the opinion, and I think that this is affirming a motion for directed verdict. Yeah, this is affirming a motion for directed verdict on strict liability, which has not been pled in this case, it's a negligence case, but under both theories it says that a design defect allegation, they are required to prove an alternative feasible design.

The language in *Bragg*: Moreover, Bragg

failed to introduce evidence of a feasible design alternative. Bragg's hydraulics expert conceded the device he designed in advance as a noneffective alternative was simply for demonstration purposes and would not work.

And then it cites a Northern District of Illinois case with a parenthetical that says: Plaintiff must introduce evidence that an alternative design is feasible and cannot rely upon mere conceptual design theories.

Mr. Greene only offered mere conceptual design theories. He did not introduce evidence of a specific design that would have the same utility for the purpose Ford intended this switch to have.

So we maintain that an alternative feasible design has not been proven, that is an element, and under *Bragg* we're entitled to a directed verdict.

Mr. Goldstein talked about -- I know this can be cited. Mr. Olson, he agreed that Ford has a duty to manufacture safe vehicles. Mr. Olson, I don't know that he -- I think he admitted that. There's been no evidence that Ford breached that duty in this case, and that's

a requirement in negligence. I think glossing over the breach of that, the breach of the alleged duty, is indicative that the plaintiff didn't have any proof of it.

The same for recklessness, there's been no evidence that Ford was reckless or consciously disregarded the safety of its users, the product users, and therefore we would ask for summary judgment -- a directed verdict on the punitive recovery issue.

And my last note, I don't know what it means, but I think -- I think all I need to say, that there was no evidence presented of substantial similarity regarding the other incidents that were introduced in general terms.

Thank you, Your Honor.

THE COURT: Thank you.

The Court's standard for denying or granting a motion for a directed verdict is where the evidence yields more than one inference or the inference is in doubt, in the light most favorable to the nonmoving party, the motion for directed verdict should be denied.

There is substantial circumstantial evidence regarding the alternative design as

established by the plaintiff's expert, the plaintiff has established that he was damaged, the property was damaged, and based upon the testimony in the light most favorable to the plaintiff that the source of the fire was the location of where the switch should have been.

The Court declines to grant the motion for a directed verdict which would, in effect, dismiss the case based upon the spoliation of the evidence. I have included that in my jury charges.

I do feel that based upon the evidence as presented that the inference is that -- well, we -- there is no dispute the truck was destroyed. It's up to the jury the inference that they can draw from that.

The Court is declining -- does not feel that Mr. Shelby or 5 Star did it intentionally to obviate the prosecution or -- of this case.

Based upon all those factors and considering all the evidence in the light most favorable to the plaintiff, the Court is declining to grant your motion for directed verdicts on all of the -- all of the issues that you cited.

Anything further, Mr. Ott, Mr. Marshall, with regard to the motion for a directed verdict?

MR. OTT: I don't know if the Court specifically ruled on the issue of punitive damages.

THE COURT: Based upon the evidence that is presented, the circumstantial evidence, the Court feels that there is -- in the light most favorable to the plaintiff, there is evidence that can be inferred that there was wanton and willful and reckless behavior by placing the -- a dangerous switch.

Specifically, the Court looks at the fact that -- based upon the evidence that there was a flammable liquid that would -- could ignite.

And so based upon that, the Court feels, again in the light most favorable to the plaintiff, that there is enough evidence to present this to the jury.

MR. OTT: Your Honor, to make a proper record, it's the attorney's burden to make sure that the motion is made and each motion is ruled upon, and that's all I'm trying to do.

If I don't get the Court's order as to each of our bases -- so if the Court will just say I've carefully considered each bases and respectfully deny it, I'll feel a lot better although I will disagree.

THE COURT: Well, Mr. Ott, that is what the Court said, perhaps not in your word choice.

MR. OTT: Well, I didn't know if you needed to go through each of these elements about damages, about proximate cause, and all those things. I was just making sure the record was clear.

Thank you, Your Honor.

THE COURT: Thank you. Do you have additional witnesses, Mr. Ott, Mr. Marshall?

MR. OTT: Can we take a break at this time, Your Honor, so number one, we can run to the little linebacker's room, and number two, talk to my clients about that?

THE COURT: Well, I need to know because I'm ready to call the jury back in. So are you resting? What are we doing?

MR. OTT: Well, I need to -- as I said, need to use the facilities, but I want to talk with my client before I advise the Court.

THE COURT: You have until five till.

MR. OTT: Thank you, Your Honor.

THE COURT: We'll be at ease.

(A break is taken at approximately 10:45 a.m.)

(The trial reconvenes at approximately 11:00 a.m., and the following proceedings were had:)

THE COURT: Mr. Ott, did you have substantial time to meet with your client and Mr. Marshall to discuss...

MR. OTT: I met with them, Your Honor. We are not going to call any witnesses, given Mr. Olson's already been called as a witness in this case, and so we would rest.

THE COURT: All right. And based upon that, do you have any motions, Mr. Goldstein?

MR. GOLDSTEIN: Yes, Your Honor. Move for a directed verdict. But before I get to that, I think I can speed through this, because I don't want to be so forward as to attempt to speak for opposing counsel, but I think we can go through the Answer. I thought I had it right here on top.

And counsel may agree to dismiss some of the defenses. I don't know. I thought we could go through them real quick and just call them out and see which ones are still in play. Then I'll direct my motion to just the ones that are in play rather than going through the whole thing if that's okay with the Court.

THE COURT: All right.

MR. GOLDSTEIN: The first defense is a general denial, which I will address in my motion for directed verdict.

The second defense is a motion to dismiss for failure to state a cause of action. I assume that -- I move to strike. It's a 12(b)(6) motion. I think it's moot at this point.

THE COURT: All right.

MR. GOLDSTEIN: I don't know if counsel agrees or disagrees.

Do you want me to do them one at a time, Judge, or just go through them real quick?

THE COURT: I want to hear your entire argument, Mr. Goldstein.

MR. GOLDSTEIN: Okay. I move to strike the second defense, 12(b)(6), as being -- being

moot at this point.

The economic loss doctrine, I move to strike as not being a defense but being an argument of counsel to be argued in closing argument, but it doesn't constitute a defense.

And in additional, it's inapplicable in this case because as the evidence has shown in this case the damage had the potential to cause harm to either persons or property, and therefore the economic loss doctrine is inapplicable. So I move to strike that and a directed verdict on that.

The next one is spoliation of evidence. I won't burden the Court with any discussion on that because Your Honor has already given us the benefit of your decision via the proposed jury charges. So I will pass over that.

I move for directed verdict on the fifth defense which is premised upon the First Amendment of the United States constitution.

I move for a directed verdict on the sixth defense on preemption of federal law.

I move for a directed verdict for the seventh defense on being based on the applicable statute of limitation, and certainly there has

been no testimony that the Complaint wasn't filed within the applicable statute of limitation.

I move for a directed verdict on the eighth defense for an improper venue on the ground that such a defense has now been waived as the trial is nearly complete.

Move to directed verdict on the ninth defense for lack of subject matter because I believe that has now been waived.

Move for directed verdict on the tenth defense on the ground that the vehicles were assembled in compliance with all industry and governmental standards. As all cases cited and relied upon by the defendant, including *Bragg*, Hitachi, and *Pioneer Logging*, that is not a viable defense. A product can be defective even though it is in conformity with governmental standards.

I move for directed verdict on the eleventh defense on the same basis as the tenth defense.

I move for directed verdict on the twelfth defense in that there has been no testimony offered by the defendant that the vehicles were state of the art.

I move for a directed verdict on the thirteenth defense on the ground of exclusions or any warranties, as exclusion of warranties do not apply in a products liability case.

Move for a directed verdict on the fourteenth defense on the ground that there's been no evidence whatsoever by any witness or any document as to alleged improper use by the plaintiff.

I move for a directed verdict on the fifteenth defense on the ground of proximate cause as being a jury -- as being a jury question and not a defense. It's something to be argued, and it is incorporated by the first defense which is general denial.

I move for a directed verdict on the sixteenth defense which is a comparative negligence defense. There's been no evidence, no documents submitted, to suggest that the defendant -- that the plaintiff was in any way comparatively negligent.

Seventeenth defense, for the same reason.

Eighteenth defense, for the same reason. Privity is a defense to warranty claims,

not product liability claims.

Nineteenth defense is a setoff or credit amount. We have previously stipulated that Mr. Shelby recovered $3,000 from his insurance company, and they are entitled to a $3,000 setoff. So we're stipulating to that.

Twentieth defense, lack of standing or capacity under the South Carolina Unfair Trade Practices Act. There is no allegation of a violation of Unfair Trade Practices Act. So I'm moving for a directed verdict on that defense as being irrelevant.

The twenty-first defense, punitive damages, Your Honor has already taken up and already ruled on. So I will not burden the Court with further argument on that.

Twenty-second defense is based on Rule 11 of the South Carolina Rules of Civil Procedure. I'm not sure what that means. I guess I violated some ethical standard somewhere, but whatever it means, I haven't done it. There's no evidence that I've done it.

Twenty-third defense, tort reform statute is inapplicable to this case. Therefore, I move for a directed verdict.

Twenty-fourth defense is based on sufficient investigation to engage in adequate discovery. And that, of course, is a defense that's incorporated in the general denial.

So that brings me back to the general denial defense.

I respectfully submit, Your Honor, that all the evidence in the case by all the witnesses and all the exhibits demonstrates, looking at the evidence in the light most favorable to the defendant, that the 1996 Ford F-250 that is the subject matter of this suit was manufactured with a defective speed deactivation control switch. There's been no evidence to the contrary, and therefore I think the plaintiff is entitled to a directed verdict on that, and it should go to the jury on the issue of damages only.

Thank you, Your Honor.

MR. OTT: Your Honor, briefly.

I think we've set back American jurisprudence about 250 years if a plaintiff is allowed to destroy the most crucial pieces of evidence and then get directed verdict. I think that's all that needs to be said about that.

As to the remaining ones, Your Honor,

some of them are affirmative defenses; some of them are not. If the Court feels it necessary for us to go through each and every one of them, I will.

I don't understand exactly what Mr. Goldstein was doing with these defenses. These are defenses to be raised. A lot of them are included in Your Honor's jury charge. So in the interest of time, I'm happy to brief by them, but I don't understand what he just did.

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: Yes, ma'am.

THE COURT: I am not granting your motion for directed verdict on the general denial.

MR. GOLDSTEIN: Yes, ma'am.

THE COURT: As far as enumerating all of the defenses, we have begun our charge process, and it is clear that all of these will be addressed in the charge conference.

MR. GOLDSTEIN: And, Judge, I agree with you. And I've always thought it was a silly rule that motions for new trials cannot be made unless you stand up and make the motion for directed verdict. I think it just burdens the

Court, but that's the rules. And so to answer Mr. Ott's question, I was attempting in whatever capacity I have to comport to the rule.

THE COURT: All right. I'm going to bring in the jury.

MR. OTT: Your Honor, actually, technically, since we are now at the close of all evidence, we're required to renew our motions for directed verdict and renew our motion for mistrial. For the same reasons we just talked about and at least 15 or 20 minutes ago, we renew them. We understand the Court's ruling, but we have to do that at this time.

THE COURT: All right. And I respectfully stand by my previous rulings to all of your previous motions.

I'm going to bring in the jury, allow you to rest on the record ---

MR. OTT: Okay.

THE COURT: --- in front of the jury. Then I am going to let them go for an early lunch. We will work through lunch. When they return -- so however you need to facilitate getting lunch, you can work on that in the next few minutes. We will work through lunch to get

the charges done, and I will have the jury come back at 12:30. You'll be each given 20 minutes to close, and then the Court will instruct, and we will present it to the jury.

Any objection to scheduling in that way, Mr. Goldstein?

MR. GOLDSTEIN: None, Your Honor. But I have a question for you, Your Honor, since this is the first time I've tried a case with you. When you say 20 minutes, do you mean 15 plus 5, or do you mean -- how do you -- because I get to open and close.

THE COURT: You get an aggregate of 20.

MR. GOLDSTEIN: Okay. That's what I want to know.

THE COURT: However you choose to use it.

MR. GOLDSTEIN: Okay. That was my question. Thank you, Judge.

THE COURT: Any objection, Mr. Marshall, Mr. Ott?

MR. OTT: None, Your Honor.

THE COURT: All right. If you could please bring in the jury.

(Whereupon, the jury enters the

courtroom at approximately 11:10 a.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you. Please be seated.

Mr. Ott.

MR. OTT: Your Honor, given that Mr. Olson has already testified as part of the plaintiff's case, the defendant rests, also.

(The defendant rests.)

THE COURT: All right. Thank you.

Mr. Goldstein, anything further?

MR. GOLDSTEIN: I have no rebuttal witnesses, Your Honor.

THE COURT: All right. Thank you.

Ladies and gentlemen of the jury, you have now heard all of the evidence in this case. At this time I need to meet with the attorneys to go over my instructions to you regarding the law, and so I am going to let you -- I know it's early, but we're going to do an early lunch today so that we can work through and so that y'all don't -- aren't just sitting in your jury room.

When you come back, I need you back in your jury room at 12:30, and we will then hear

closing arguments, and I will instruct you on the law in this case.

Please, again, remember my admonishment. You have not been given the law in this case with which to begin your deliberations. Please don't discuss this case amongst yourselves or with any other person. If there should be any internet, media coverage of any sort of this case, please do not view it, listen to it, or otherwise partake. Please do not begin any deliberations or do any independent investigations. I will see you back in your jury room at 12:30. Thank you.

(Whereupon, the jury leaves the courtroom at approximately 11:15 a.m.)

THE COURT: Please be seated.

Sorry, Counsel. We have a 1:30 hearing that we're trying to schedule. I'm just checking on the hurricane. My clerk will be in the conference room to begin going over the charges, and I will be in there in just a few moments.

MR. OTT: Your Honor, there's been a lot of technical rulings in the last few years from the Court of Appeals about error preservation. My lawyer says since we

technically did not rest before we moved for directed verdict at the close of all the evidence that perhaps it would be wise for us to renew our motions now so that it actually was after we rested.

So I understand we're being hypertechnical, but sometimes you get those rulings and they say you didn't preserve it, so I think I need to just be that way.

THE COURT: All right. Mr. Ott, out of an abundance of caution, I will allow you to make that on the record.

MR. OTT: Thank you.

THE COURT: Thank you.

MR. OTT: Just to renew our motions for directed verdict and the motion -- and also our motion for mistrial.

THE COURT: All right. And the Court, again, stands by its previous ruling as to all of your previous motions.

MR. GOLDSTEIN: And I ask that you apply the same standard to the plaintiff, as well, Your Honor.

THE COURT: All right. Thank you. I will. And, again, I stand by the Court's

previous ruling in all of your previous motions, Mr. Goldstein.

Anything further before we go to the charge conference?

MR. OTT: No, Your Honor.

MR. GOLDSTEIN: Nothing from the plaintiff.

THE COURT: And, Counsel, please be in your seats and ready to go at 12:30 to present your closing arguments.

MR. OTT: Thank you, Judge.

THE COURT: Thank you. We're in recess till 12:30.

(A break is taken at approximately 11:15 a.m.)

AFTERNOON SESSION

(The trial reconvenes at approximately 1:00 p.m., and the following proceedings were had:)

THE COURT: Please bring in the jury.

(Whereupon, the jury enters the courtroom at approximately 1:00 p.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you.

And, Counsel, you may be seated.

Good afternoon, ladies and gentlemen. The parties have presented their evidence in this case, and it's now time for the attorneys to make their closing arguments.

The arguments of the attorneys are not evidence in this case. Their statements and arguments are meant to help you understand the evidence and apply the law to the evidence. You should disregard any remark, statement, or argument which is not supported by the evidence presented during the trial or the law that I will explain to you after the arguments.

Mr. Goldstein.

MR. GOLDSTEIN: Thank you, Your Honor.

If it please the Court.

CLOSING ARGUMENT

BY MR. GOLDSTEIN:

I have good news and better news. The good news is we're at the end. The better news is the judge has restricted each side to 20 minutes. So you only have to endure another 20 minutes. Because I'm the plaintiff, I get to open and close. So I get 15 minutes now and five minutes at the conclusion of Mr. Ott's remarks to you.

I know that you've paid careful attention, because we sat here and we watched you. And I also want to apologize to you. This case has gone on much longer than any of us anticipated.

This case, I think, sets a world record for objections. Nothing wrong with that. Mr. Ott is a zealous advocate for his client. He's doing the best he can for his client.

MR. OTT: Your Honor, this is improper argument.

THE COURT: Move on, Mr. Goldstein.

MR. GOLDSTEIN: I couldn't hear you, Your Honor.

THE COURT: Move on.

MR. GOLDSTEIN: Now, I was going to tell y'all something at the beginning of the case, and I decided not to do it because it -- believe it or not, we actually practice this stuff -- it sounded kind of hokey.

But if you remember during the jury qualification with Judge Young, you know, when y'all were here Monday morning and roll call and all that, and he told y'all, he said, you know, there are only about six countries in the world that allow for a jury to make a decision in this case.

And so I was going to tell y'all a story in my opening argument about my father, about how much that means to me what Judge Young said to y'all. Now, again, it sounds kind of hokey, so I decided not to do it, but now I'm going to do it in my closing argument but for a different reason.

My father was absolutely the greatest person I ever knew. That just -- I mean, and, of course, y'all all feel that way about your father, too. My father was born and raised in a very bad place at a very bad time, and so he

immigrated to this country.

And he didn't have any formal education. Remember during jury selection the judge said have you got a sixth-grade education or its equivalent? Well, that's my dad. He didn't have a sixth-grade education.

But my dad always told me, he said, you know, only in America. He said only in America can anybody hire a lawyer, come into a courtroom, stand toe to toe with the mightiest corporation in the land or with the government itself and get a fair hearing. Only in America.

And so to remind myself of that, I keep displayed in my office on my wall every day my father's naturalization papers. I look at it every single day.

And my father thought so much of this country that when he went to get sworn in, he went to Washington, D.C. to be sworn in, because it meant that much to him.

This case is the kind of case my father talked about. This case is David versus Goliath. It's Stan Shelby versus Ford Motor Company.

And the one thing that you have learned from this case is if you have a fire at your

house or if your car burns up, you might want to think about just forgetting it. It may not be worth it.

On Tuesday -- I can't remember what day we started the trial -- Ford Motor Company filed, I don't know, three or four hundred pages of documents. They have ---

MR. OTT: Your Honor, this is entirely ---

THE COURT: Sustained.

MR. OTT: --- improper.

THE COURT: Sustained.

MR. GOLDSTEIN: They have resisted this case with every possible resource.

Now, let's talk about -- let's talk about the facts and the law.

The judge, as you learned in the beginning, is the judge of the law. You are the judge -- judges of the facts. You determine what the facts are. Nobody else. Only in America and a couple other countries does that happen.

What are the facts in this case? How do you determine what the facts are? The judge is going to tell you when she instructs you. She's going to say it's believability and

credibility. You listen to people, you look at them, and you see what their demeanor is, and you decide whether you're going to believe them or not.

Any of y'all who have children know, are experts in lie detection, because anybody who has ever raised a child: I didn't do it. Well, are you sure you -- no, I didn't do it. I mean, we're all experts in that.

Who testified in this case? There they are. This is who testified. This is the evidence in this case.

Captain Sanders. What did he tell you? He responded to a fire. You've got his fire report. Take it back in the jury room, and you can look at it. It'll tell you what time he got there, what he did, and how many firefighters were there.

John Olson then testified for Ford Motor Company. We'll come back to him in a minute.

Lennie Greene then testified as an expert, paid retained expert for the plaintiff, and he told you his opinion about the switch and the Ford -- about the problems with the switch,

why it was designed improperly or why it was manufactured improperly.

Ben Norris testified. Captain Norris. He's still -- still with us. He testified as the fire investigator for the City of North Charleston.

And Stan Shelby testified. And he testified as to the loss, what he lost, how -- you know, when he discovered the fire and what was -- what he lost as a result of the fire.

Let's talk about truth detection. And let's be fair. How many of these witnesses have something to gain or something to lose in this case?

Well, let's be honest. Stan Shelby's got something to gain. He wants a verdict from y'all. He wants y'all to go back in that room and sign a verdict and compensate him for his loss. He wants something from you.

What does John Olson want? John Olson, interesting guy, great witness. He seemed a little embarrassed when I was questioning him about his salary and so forth. It wasn't intended to embarrass him. I was kind of surprised what his salary was. I think he

probably deserves more.

He's a good, loyal, conscientious employee of Ford Motor Company. He's doing exactly what a loyal, competent, conscientious employee would do. Come down here to Charleston, get on the stand, and take up for his company. Who wouldn't?

Leonard Greene. You can say, well, he's a little suspect. He's a paid expert. Goldstein's paying him. He told you how much he charges and that he gets paid for his testimony.

So who are the two witnesses who have no dog in this fight? Captain Sanders, Ben Norris. So let's start there. Let's start with the witnesses who have no dog in the fight.

Captain Sanders. You've got his fire reports. All I need to say about that.

Chief Norris. What did he tell you? If Chief Norris didn't make you feel better about the level of fire protection in the City of North Charleston, then nothing will. Because he, I submit to you, is a highly trained, competent, thoughtful, conscientious fire chief. And when he responded to this fire on September 26th, he wasn't there as a witness for the plaintiff. He

wasn't there as a witness for the defendant. He was just there doing his job.

What did he tell you? He told you that he investigated the physical evidence out at the scene to determine the origin and cause of the fire. That's what he testified.

I said, how do you do that? He says you go, you survey the scene, and you rule out.

The scientific method, talk about Hegel, I mean, that is the scientific method. Hypothesis, gather the data, refine the hypothesis. Classic Hegelian stuff, classic scientific method.

What did he tell you? He said, I went around, I could see there was no break in, I could see that the fire didn't originate with a defective electronic something, no computer, coffee maker, TV, light fixture, none of that.

He told you that based on his training, his expertise, his impeccable credentials that cannot be questioned by anyone, that the origin of the fire was in the engine compartment of Mr. Shelby's Ford 250 truck. That's where the fire originated.

I asked him, did you zero in on any

particular component? And he said yes. I said, what was it? Speed deactivation control switch. So why did you zero in on that? Because I know about it, seen it before.

And he testified -- and remember, when I'm asking witnesses questions I'm not writing down notes, so I may get something wrong. When y'all go back in the jury room -- do you want to know why there's twelve people on a jury? Because twelve people can remember better than one person. So if I get the number wrong, don't hold it against Mr. Shelby, because my memory is imperfect.

But I think Mr. Norris said nine to ten fires he had seen, a couple before this case and the rest after. I said, how many of those did you recover the actual speed deactivation control switch? He said one or two.

Lennie Greene said he'd seen three or four fires. I said, how many of the times did you get the switch? He says one. I said, why is that? Because the switch is consumed in the fire.

Look at these photos. Mr. Greene testified on plaintiff's exhibit 11 that you can

see the hose right there where the speed deactivation control switch was located. Guess what? It ain't there. And neither is the master cylinder. Why? Because brake fluid is highly flammable. This fire burned Saturday, Sunday, till Monday morning. It burned a long time.

What is Ford's defense to all this? And this is why I say it probably ain't worth it. If you have a fire loss, you might think about it and it just ain't worth it.

Ford's defense is: We don't know what caused the fire, we don't know what it is, we don't have an opinion, but you destroyed the evidence.

Now, if you find that Stan Shelby destroyed the evidence, your verdict shouldn't take five minutes. Y'all should be in and out of there in five minutes with a verdict for the defendant if you think Stan Shelby destroyed the evidence to deprive Ford of its right to inspect.

I respectfully submit to you that all of the evidence in this case is that the speed control deactivation switch was consumed in the fire. What a shock.

Mr. Shelby -- well, let's go back to Mr. Olson then. Mr. Olson testified for Ford, came on the stand as an expert in fire -- and they qualified him as an expert, remember that? They qualified -- over my objection. I talked about it. Judge, I don't think he's an expert. Yes, overruled, he's an expert. So over my objection, he became an expert.

And I said, what would an expert such as yourself do in examining such a fire?

He said, well, one of the things I would do is I would examine the literature that we have in house. That's what he said.

And after going through everything that he had done, I asked him what his opinion was as to the origin and cause of the fire, and he said unknown.

Ford's defense is: We didn't do it, we don't know what happened, we have no explanation for this case, but it's not our fault.

Lennie Greene testified, and his credentials are pretty impeccable. He's an electrical engineer. He knows something about electric. The judge qualified him as an expert.

And she's going to tell you when she

charges you, you know, when it comes to experts you can believe some of what they say, all of what they say, none of what they say. It's entirely, entirely up to you.

Leonard Greene says that that switch was bad from the get-go. It was bad in its design. He said it was designed -- and Mr. Olson said to you it was designed to Ford specification. It was designed to carry two amperes of electricity. It's wired into the brake circuit.

Y'all know about brake circuits. You don't have to have your key in the car. You've all sat in your car at night, put your foot on the brake and looked in the rearview mirror and seen the brake lights illuminate. It's very common.

He said there were three easy ways to prevent this from happening. He said they could have put a fuse in that would break if it overheated. Didn't do that. Could have wired it to the ignition circuit instead of the brake circuit so it's not energized until you turn the key, or you could make the membrane more robust and -- because of its close proximity to highly

inflammable -- highly inflammable brake fluid. Ford chose not to do any of these things.

And now that Stan Shelby's truck was destroyed, business was temporarily shut down, building damaged, and office equipment damaged or destroyed, Ford said, well, we don't know what caused it, but it's not our fault.

Whose fault is it?

The judge will charge that you can infer a fact -- talk about scientific method -- from circumstantial evidence just as you can from direct evidence.

And I submit to you that almost everything you do is based on circumstantial evidence. You've never seen gravity, but you believe in it. You don't know if the sun is going to rise tomorrow, but you believe it will. You've never seen an electron, but you believe in those. You've never seen yourself be infected with a rhinovirus, but you know when you've got a cold.

Almost everything we do is as a result of common sense inference. That's what a jury is, common sense. You can get experts to debate almost anything.

So -- I've only got about three minutes left.

So the judge will charge you the law, and what she'll tell you is that the plaintiff has to prove to you to your satisfaction by a preponderance of the evidence, which means the scales are even, if they shift slightly in our favor we win. If they stay the same or shift to the defendant, they win.

We've got to prove to you that the switch was defective at the time of the sale. We know it was, because it wasn't changed. I mean, nobody goes down to Sears and buys a speed control deactivation switch. It was in the same condition as when built, Mr. Shelby testified to that, and that it was the proximate cause of the fire. Well, you know it was the proximate cause of the fire because Chief Norris and Lennie Greene testified that it was, and there's no evidence in this record to the contrary.

So what is your function? Your function as a jury is to take this evidence that's before you that came from the witness stand, go back in the jury room and talk about it, and it is your duty to speak as the

conscience of the community. That's what you are, the conscience of the community. You have to evaluate this case as if any hypothetical person were damaged by a fire and what is that person entitled to.

Here's what Mr. Shelby testified he was damaged. He testified to this.

And remember, as I told you at the beginning, you can give more, you can give less, you can give zero. It's entirely your discretion. All I'm allowed to do is suggest formulas for you. Take them, modify them, reject them, accept them, whatever you want to do.

He testified that he made a list of all the office equipment destroyed in the fire. It came to $14,041. He testified that he spent $5,000 in the building repair, not including his own time.

He testified that he thought the truck was worth $8,000. And an owner is allowed to testify to value. Even though he only paid $1500 for it, but he paid $1500 for it because he was doing -- sending a buddy of his some additional work which was part of the compensation. So maybe you think 8,000 is too much. Maybe you

think it should be the 1500 he actually paid. It's entirely within your discretion.

He testified that he had to rent equipment to replace what was destroyed, and a part of this was used in the actual cleaning of his own business.

And when you go back in the jury room, you'll see the date on these photos. The fire was September 26th, in the fire report, and you can see by October 3rd he was making pretty good headway on getting it cleaned up. So he was doing that work.

Then he told you he lost $18,000 in lost profits. He told you how he arrived at that. He took his 2004 gross income, there are 365 days in a year, and he backed out all the weekends, he backed out ten paid holidays, he backed out two weeks' vacation, and he came up with 241 working days, divided it, it came to $1,199.17 which he rounded off.

Maybe you think that figure is too high. Maybe you say, yeah, but, Goldstein, he would have had to pay taxes on that and so we're going to deduct for taxes. That's your discretion. You may think that figure is too

low. You can award more than that if you think it's warranted. It's entirely up to you.

The last thing the judge is going to charge you is that if you think it's appropriate, if you apply all these factors -- she's going to charge you, and I'm out of time. I don't have time to tell you that.

If you find that Ford met these factors and if they acted in a reckless -- in a reckless manner, that is, they put a truck out there with a switch they knew was bad, that they knew wouldn't carry 15 amps, they knew it was next to the master cylinder, then you can, if you find it's appropriate, award punitive damages. We respectfully submit that this is a case that is ripe for your consideration. Whether you choose to award them or not is entirely your discretion.

I think I'm about two minutes over my 15 minutes, so I'm going to sit down now. It's Mr. Ott's turn, and then I get a chance to have five minutes in reply.

Thank you.

THE COURT: Counsel approach.

(There was an off-the-record bench conference in the presence of the jury but out of

the hearing of the jury.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Mr. Ott.

MR. OTT: Thank you, Your Honor. May it please the Court, Your Honor.

CLOSING ARGUMENT

BY MR. OTT:

Good afternoon. We appreciate y'all being here, we appreciate your attentiveness throughout this case, and now is the time that you've heard all the evidence that's going to be submitted. You've heard all the testimony from the witnesses. You've seen all the documents, and you'll get to hold them in your hands now when you get back to your jury room. But now is my turn to tell you why Ford is entitled to your verdict, because this is the only true and fair verdict that possibly could be reached under the facts of this case.

I started off saying to y'all yesterday that we were here for one reason defending this case and that was because the plaintiff destroyed the most crucial evidence in this case, both the truck and the switch, without giving notice to

Ford Motor Company before it did so. That's why we are here. And the evidence, indeed, has been shown to be exactly that.

It is undisputed that whenever this fire was discovered on September 26th, 2005 -- and bear in mind, we don't know when it started. We will talk about that later.

Mr. Shelby hired an attorney and that after he hired an attorney -- he obviously did so, because he was contemplating a lawsuit against Ford. And he was contemplating a lawsuit against Ford based on what Mr. Norris told him, that it was possible he had a problem with his Ford vehicle. And Mr. Norris told him that on the day of the fire.

So he knew that that was coming. That's when the duty arose for them to preserve the most crucial pieces of evidence in this case.

And, in fact, it's undisputed that they destroyed the vehicle on February 2nd, 2006. And, indeed, the lawsuit that they contemplated from the very beginning came ten months later in December 2006.

Folks, once a lawsuit begins, there are strict rules on how parties can communicate with

each other. Mr. Goldstein throughout this case has said to Mr. Olson while he was on the stand, why didn't you give Mr. Shelby a call and talk to him? And he asked Mr. Shelby when he was on the stand, did anyone from Ford Motor Company give you a call and ask you about these things?

Well, the answer is, is we're absolutely prohibited from doing that. There are ethical rules in place that when parties are represented by attorneys it is absolutely unethical for me, for Ford, or anyone on Ford's behalf to contact Mr. Shelby directly because he's represented by an attorney.

There are rules, folks. Some people might not want to play by them in this courtroom, but there are rules. And that is the reason why those questions were improper, and that's the reason why there was no such communication.

The other reason is, is Ford wasn't aware of this fire. Once the lawsuit began, the proper course of communication is through the formal litigation process, through the court, where people are under oath and people are bound to follow the rules.

So we sent initial questions, these

interrogatories to the plaintiffs, saying tell us what's going on, what's this case about, tell us what vehicle's involved, tell us who is the owner of it, tell us the mileage, and where is the vehicle located.

The answer in 4(d) in exhibit one is: The vehicle is currently crushed at a steel mill. This is dated April 26, 2007.

What do you mean it's crushed at a steel mill? How did that happen? That led to the second set of questions, interrogatories, supplemental interrogatories that 5 Star answered on October 15, 2007.

We asked specific questions: Who made this decision? The answer: Mr. Shelby. When was this decision made? February 2nd, 2006. Who destroyed it? BBJ Metal Company.

And most importantly: State whether the plaintiff or anyone acting on the plaintiff or the plaintiff's direction informed Ford Motor Company of the decision to crush or otherwise dispose of the subject vehicle prior to such crushing or other disposition. The answer was a simple one word answer: No.

That's under oath. That's what they

said.

Now, what have the witnesses said? How much time have they spent during this trial trying to avoid the implication of their simple one word response under oath that we indeed did not notify you of our decision to destroy this vehicle before it happened? How much time was spent?

Mr. Greene came in here. You remember $250 an hour Mr. Greene who forgot to read his prior deposition testimony? He had to keep going back to it to remember. Now, you were under oath here, and you said the exact opposite, so can we try to get back to what the truth is, Mr. Greene?

And it had to be somewhat embarrassing for Mr. Greene. As you'll recall, back in December of 2007, that's when Mr. Greene was first hired. At that point, the vehicle had been destroyed for 21 months. At that point, the lawsuit had been pending for an entire year.

And Mr. Greene, remember his real big full blown NFPA fire investigation that consisted of talking to Mr. Goldstein and nothing else? No witnesses, no measurements, no inspection of the scene, no inspection of the vehicle, because he

didn't even know the vehicle had been crushed despite the fact it happened 21 months before, and apparently Mr. Goldstein forgot to tell him about that important fact, no research into prior ownership, no research into after-market history, no research into repair history, nothing.

And what did he do? He prepared a report, and he says in his report: The switch remains can be examined post-fire to confirm failure.

It's got to be pretty embarrassing to learn that at the time he offered this report the car -- the truck and the parts had been destroyed two years earlier.

He goes on to say: As this is a potentially destructive test, the manufacturer should be on notice, put on notice to inspect the vehicle prior to such removal and testing.

Likewise, Mr. Norris testified. Mr. Norris told them that very day to preserve the evidence, to secure the evidence. And he was indeed and admitted to be surprised to learn that 5 Star did the exact opposite.

And then Mr. Shelby. Mr. Shelby spent much of his time this morning trying to backtrack

from the admissions under oath that he had made previously.

He wants to say that the North Charleston police department forced me to destroy the vehicle.

No, they didn't. It had been there for four and a half months. What they said was, you need to get it out of this area.

He could have notified Ford. He could have said, hey, I'm going to remove this vehicle by X-date, you need to take a look at it.

They could have at least pulled out the switch that they claim was defective and preserved that. It's this big.

They didn't do anything. They didn't do any of that at all.

So why did they spend so much time trying to avoid those facts, trying to go back on their under oath responses to exhibits one and two? Why? Because it's fatal to their case. It is absolutely fatal to their case under the law that the judge is going to instruct you after we finish the arguments.

Let's talk about Mr. Greene again. He gave his opinion about how he arrived at the

origin of the fire when he testified in response to Mr. Goldstein's questions.

Then I get up there and I go, whoa, whoa, time out. Let's go back to your deposition. Is it your testimony to a reasonable degree of engineering certainty that you cannot give the origin of this fire? Yes.

180 degrees opposite of what he told Mr. Goldstein under oath. Is that a believable witness? No.

What else about Mr. Greene? He eventually had to admit that he did not follow the proper investigative procedures, NFPA 921, the standard, excuse me, the guide in the fire investigation industry. He didn't follow any of those standards or guides.

He had to admit finally that if you cannot inspect the scene, the vehicle, or the parts, you cannot arrive at an opinion based on science as to the origin of the fire or the cause of the fire.

He had to admit that it is a matter of basic fairness that all parties are entitled to inspect the evidence and that the party who has the evidence must preserve it. "Basic fairness,"

to use his words.

I said, well, was Ford disadvantaged? Were they prejudiced? Well, I'll admit that they were disadvantaged. Will you admit that they were prejudiced? No, I don't think I'm going to admit that.

Let's go back to the videotape, as they say: And would you agree with me, Mr. Greene, that Ford Motor Company is extremely prejudiced in the defense of this case without the ability to inspect the parts that are allegedly defective or the vehicle that's allegedly defective? Answer: Yes.

Again, is he to be believed? No.

Likewise, Mr. Norris. If I heard this right, Mr. Goldstein said he had no dog in this fight. But Mr. Norris talked about his two hats, one hat that he wore as the chief when he got there that morning and did all of 30 and maybe 45 minutes' worth of investigation, where he admitted he didn't follow the full NFPA fire investigation standards for someone who is going to come in and do a forensic expert analysis. He just did it for what he was doing that day, to make sure that was there no criminal activity and

to make sure that the vehicle was put out.

That's not the hat he wore when he sat on that witness stand. He wore a hat that had $125 an hour price tag on it. He was in the same position as Mr. Greene.

And it is disingenuous, at best, for Mr. Goldstein to call him neutral, because Mr. Norris admitted that you cannot come to an opinion as to the cause or the origin of this fire if you cannot inspect the scene, the vehicle, or the part.

He also admitted that it's a matter of basic fairness to preserve the evidence. He even went further and admitted he would not expect Ford Motor Company to take his word for it, that he would inspect -- he would expect them to hire their own experts or bring someone like Mr. Olson down to do their own investigation.

Now, why is that important? It's twofold. It's the opportunity to inspect and evaluate the opinions which they finally admitted, both Mr. Greene and Mr. Norris, were entirely subjective, entirely it's true because I say so, not based on any science, because no one, not Mr. Norris and not Mr. Greene, has ever seen

this switch much less had it tested pursuant to tests that would conclusively tell us what we need to know in this case, whether that switch caused this fire or not.

Mr. Norris also told us he has inspected a lot of different fires, GM, Chevy, Toyota, all of the -- and they can all occur because of different reasons.

And that's the second prong, not only to evaluate what they claim; but also to arrive at our own conclusions based on evidence.

And they want to say, well, it's just the switch. No. It's the truck. Because the switch wasn't the only piece of equipment that got burned in that engine compartment and may not still be there. Lots of other electrical components are in there that are in bad shape, and we don't know what happened to them. The switch isn't the most flammable piece of component part in an engine compartment.

I also talked briefly yesterday about the burden of proof in bringing a lawsuit and that it's on the government in a criminal case and it's on the plaintiff in a civil case. That's just the way our Founding Fathers set up

our system.

And, you know, if you look at the way a trial runs its course, there are a lot of things in a trial that are set up seemingly to benefit the plaintiff, the one who's bringing the lawsuit.

5 Star gets to sit closer to the jury. That's by a rule. 5 Star gets to give the first words to the jury in opening statements. Their lawyer gets to speak first. They get to go first, as do all plaintiffs, in putting up all their evidence. They can even call my witnesses, as they did in this case. They get to put up everything they want to do, and only then at the end after they are finished does the defendant get to put up its evidence.

Even if we had not bothered to put up any and Mr. Olson had not already testified, the plaintiff again would be able to do what's called rebuttal and reopen their case and come in and present yet additional evidence.

Even with closing arguments, the plaintiff gets to go first, and I'm going right now, and when I finish Mr. Goldstein is going to stand up and say everything Mr. Ott told you is

ridiculous and don't believe a word he says, and he gets to come up and have the first and the last word.

They've done a lot of psychological studies about the way people remember things. If I give you a list of numbers, objects, what have you, people tend to remember things that they hear first and things they remember last, but the things in the middle where I stand right now get a little fuzzy.

It doesn't seem fair. All those things are set up to benefit the plaintiff, the one bringing the lawsuit, but you know what makes this the most fair legal system in the entire world? It's that they have the burden of proving their case against Ford, and Ford doesn't have to prove anything against you.

We could have remained still and not said a word through this entire lawsuit. And if they have not met their burden of proving each of the elements that the judge is about to charge you on, then they would not be entitled to a verdict because it would not be a true and fair verdict under the law.

So let's look closely now at what Judge

Harrington is going to charge you regarding South Carolina law in bringing a products liability case against a manufacturer.

They have to prove the things I talked to you about in opening statement. They've got to prove that 5 Star was damaged by the truck; that the truck and specifically the -- their theory is that the design of the switch caused this fire; that the switch was defective and in an unreasonably dangerous condition; that the switch was in essentially the same condition at the time of the fire as it was when it left Ford's hands ten years and 227,000 miles ago; and lastly, they have to prove that somehow Ford was negligent at the time in November 1995 when Ford manufactured this truck.

Did they meet this burden, these required elements under South Carolina law? The simple answer is no.

You'll recall that not a single person who has testified in this case has seen the allegedly defective part, not a single person, not even Chief Norris.

No person has been able to identify this switch as a switch that was even

manufactured by Ford. Not a single person has come in and positively identified this switch as a switch that Ford Motor Company originally put into this vehicle ten years earlier and 227,000 miles before.

You heard Mr. Greene and Mr. Norris talk about that's a long time for a vehicle and there are a lot of electrical components that you would expect to be exchanged or be repaired in the normal course, and they could not offer any evidence at all about the history of this vehicle.

His buddy, Mr. Pat Evans who sold him the truck, did he come to testify to tell you about what happened during the time that he was the one who owned this vehicle? No.

And so how can a true and fair verdict be based on pure speculation about who exactly manufactured the part at issue?

Now, because of the way our law in South Carolina is, we try all the case at once. And what that means is there's two issues in general in a case like this. You've got to find out if somebody is responsible, if the defendant's responsible, and then you've got to

find out if the plaintiff has proven their damages. You don't have to talk about damages if you don't find that Ford was responsible.

And so while I just spent a good part of my time talking about why Ford is not responsible, I have to address their claim of damages in case you decide to consider those issues.

The vehicle, they want $8,000 for a vehicle they purchased for $1500 seven months earlier. That's so ridiculous, I'm not going to talk anything more about it.

Almost equally ridiculous is their claim that they are entitled to punitive damages to punish Ford in this case where they cannot even identify whether this was our part or not.

They talk about the repair costs to the building, and then we find out 5 Star doesn't own the building. It was Shelby Enterprises.

Because bear in mind, folks, this case is not Mr. Stan Shelby against Ford Motor Company. They're trying to portray that, I think. This is 5 Star, Incorporated, against Ford Motor Company. That's a difference. It's a difference under the law because corporations are

distinct entities, different and separate from individuals, as Her Honor will instruct you.

They talk about rental for different equipment. We learned that he had been renting all along.

And they talk about business interruption, but that's not the proper measure of damages for the loss of business, if there was any, regarding lost business. The proper measure is lost profit.

When he described how he arrived at this $18,000 figure, he described in his own words the gross income. Well, gross income isn't the measure of recovery. It's net profit. From gross income you have to subtract all those expenses that you had, your employees, your rental cost, your gasoline, all those things.

They have not put up to you, we submit, one viable piece of evidence to show what their damages are in this case.

Another thing the judge is going to instruct you about is the spoliation charge.

Remember Mr. Greene actually was the one who came up with the word "spoliation" when he was talking. I said, what's that? He said

it's the careless destruction of evidence.

Well, what the charge is, it has to do with their failure to preserve the evidence, because the duty arose at the time they knew they were going to bring this lawsuit. The duty arose at that time to preserve this evidence.

What the judge is going to instruct you is that because they destroyed that evidence, because they did not preserve it, whether it was willful or not, you are entitled to infer that the evidence destroyed would be adverse to their case.

Well, what does that mean? That means that your inference based on their destruction of the evidence is that the truck and the switch would be adverse to their case.

It means the truck was not the origin of the fire, that we would have been able to prove something else was the origin of this fire if they gave us a chance to, and that the switch did not cause the fire.

Those are the inferences, those are the consequences when you fail to preserve the evidence. As I said, it doesn't matter whether he intentionally did it or not.

Mr. Goldstein asked him, did you destroy this evidence, dispose of this evidence to hamper Ford in its defense of this case? And Mr. Shelby said he did not.

Well, you know, I don't know if he did or not. We can't go back there and recreate that situation. It's impossible to do. But I do know two things: At the time he disposed of the evidence he had hired an attorney, and at the time he disposed of the evidence he knew that he was bringing a lawsuit against Ford Motor Company.

The final thing I want to say to y'all -- and when I say final, I actually mean final -- is that imagine if the roles had been reversed. Imagine if they actually did preserve this evidence, and they sent it to Ford Motor Company. And they sent it to us, and Ford Motor Company lost the evidence, lost it.

If 5 Star came and said where is the evidence we sent you to inspect, to do the tests you wanted to do to find out what the cause and origin of this fire could be? Ford would have to say, we goofed, we lost the evidence.

Can you imagine how high Mr. Goldstein

would be jumping up and down in this lawsuit against us if we had done that and what he would be saying and what he would be asking for?

And you know what? He'd be right. Under that scenario, he'd be exactly right. They would be entitled to a verdict. They'd be entitled to a verdict because the only fair verdict in that case because Ford had destroyed the evidence would be a verdict in favor of the plaintiff.

But that same sense of fairness which makes it the fairness under that role reversal that I just gave you is the same sense of fairness that's at issue in this case. It's the same sense of fairness that mandates and requires a verdict. The only true, fair verdict would be for Ford Motor Company in this case.

Thank you very much.

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: May it please the Court.

FINAL CLOSING ARGUMENT

BY MR. GOLDSTEIN:

A lawsuit in this case was filed on December the 5th, 2006, which was over a year

after the loss and this fire. So any suggestion to you that Ford couldn't talk to Mr. Shelby during that time is just -- is just ridiculous.

Now, let's be real clear. Stan Shelby did not destroy any truck, did not destroy any switch. The fire did. The fire destroyed the switch. There is no switch. There may have been a charred remain somewhere underneath the truck, and it's possible that we could have found it, but there is no evidence that that switch to suggest -- in fact, all the evidence is the opposite, that it didn't.

Under Mr. Greene and Mr. Norris's testimony, Chief Norris's testimony about -- I think he said he found one or two, and Lennie said he found one out of ten. That's two switches out of ten to twelve that they found, which means eight or nine disappeared in the fire. You know, fires have a tendency to destroy things.

Now, he also said to you, Mr. Ott said to you, that Chief Norris told Stan Shelby to preserve this evidence.

That's not what he said. And don't take my word for it. There's a court reporter

right there, and y'all can come back anytime you want and she can almost instantly call up anybody's testimony and read it back to you. It's amazing what they can do. If you've got any doubts about it, ask her to do that. She'll be happy to oblige you.

What Chief Norris testified was he told him to contact his insurance company. What Mr. Shelby testified is he did exactly what Chief Norris told him to do, and then they sent out an investigator who took these photos. So he did exactly as he was instructed.

Ford's defense in this case is that it's somebody else's fault, that somebody else caused this fire. Who? Who? What other cause is there?

He said there's lots of electrical components in an automobile. There absolutely are. There's dozens of electrical components in an automobile. How many operate with the key off? Not many.

You can't turn the air conditioner on. You can't roll down the windows. You can't turn on the radio, although I have seen a car where a radio would come on with the key off. I've seen

one that would do that. None of mine do it, but I have seen one that did that. The headlights will come on. The brake lights will come on. And, you know, I can't really think of anything else.

There is only one thing that is completely energized that is defective, and that is the speed control deactivation switch which all the experts, including Ford's expert, testified there's a wide body of literature on.

Mr. Shelby testified he did try to contact Ford and that he was unsuccessful. That was his testimony. When I offered some exhibits to bear that out, defense counsel objected. The objection was sustained. But he testified.

Two more points. He says that Stan Shelby and Shelby Enterprises and 5 Star, Inc., are separate and distinct. I can assure you they're not. They are all sitting right there. He testified he's the sole shareholder, the sole director, the sole officer, and the owner. I don't know how -- how more clear he could have been on that.

He also says -- and this will be my last point. He also says, you know, Ford could

have chosen to not do anything. Ford could have chosen to just stay silent and not put up any evidence. That's what they did.

They attacked everybody associated with this claim. They attacked Chief Norris. They attacked Lennie Greene. They attacked Stan Shelby. And just a moment ago, standing before you, they even fired a few salvos my way.

He said to you in closing argument that it was disingenuous for me to suggest that Chief Norris was not biased. Disingenuous is a fancy word for lying, by the way.

He also told you that unlike some people in this courtroom he plays by the rules. Well, you know who that was directed at. It was directed at me, that I don't play by the rules.

That's why I said to you in my very beginning remarks if you have a fire loss like this you might ought to think about just letting it go. Because what Ford is going to do is going to blame you, it's your fault, you did everything wrong, you destroyed the evidence even though it was consumed in a fire.

Take this evidence back in the jury room, look at it, evaluate it, and return a

verdict that you think is true and just.

The amount of damages I put up for you, as I told you from the very beginning, the Court allows me to make suggestions to you. You can give more; you can give less. I told y'all that. I didn't hide it from you. If you think $8,000 is too much for the car, give less. If you think it's not enough, give more. The same all the way down the list.

As I told you in my opening statements -- this will be the last thing I say, you'll be glad to know -- the verdict form that the judge is going to hand you means the truth. That's what it means. Verdict means the truth. And that's what we're asking you to do, to evaluate this evidence, reach a conclusion as to what caused this fire and who is responsible.

Thank you.

THE COURT: Ladies and gentlemen of the jury, you've heard the closing arguments of counsel. There are some matters before I instruct you on the law that I must take up outside of your presence. During that time, we will be gathering the exhibits which will go back with you in the jury room. Again, you have not

been instructed on the law, so please do not begin your deliberations. Please do not discuss this case.

(Whereupon, the jury goes to the jury room at approximately 1:50 p.m.)

THE COURT: You may be seated.

Those of you here for 403s, I will sign your sheets now. You have completed your requirements for this trial.

Mr. Goldstein, if you will please gather the exhibits that are on the rail and publish so that we have -- if you'll give those to my bailiff -- so that we know what numbers were published to the jury.

Mr. Goldstein, you on the record need to tell me -- I need the sheets from my 403s, whoever can bring me those. Thank you.

No, no. Those need to go back to the attorney. I need him on the record to state the ones that he published to the jury.

MR. GOLDSTEIN: Oh, I'm sorry. I misunderstood what you were saying.

The only ones I published to the jury were plaintiff's exhibit eleven and nine. I made reference to plaintiff's exhibit two, but I

didn't touch it.

THE COURT: Mr. Goldstein, perhaps you didn't understand me. I need the documents -- you had them laid on -- in front of the jury, right here ---

MR. GOLDSTEIN: Okay. I'll call them out. What was on the rail ---

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: Oh.

THE COURT: Please do not interrupt me so that I do not have to repeat myself again. You had in front of the jury on the bar several documents. I need for the record to know which documents were on the jury bar during your closing.

MR. GOLDSTEIN: Are you ready, Judge?

THE COURT: I don't need to be ready. You need to read it into the record so the record is clear.

MR. GOLDSTEIN: Thank you. Plaintiff's exhibit 6, plaintiff's exhibit 7, plaintiff's exhibit 8, plaintiff's exhibit 9, plaintiff's exhibit 10, plaintiff's exhibit 11, plaintiff's exhibit 12, plaintiff's exhibit 13, plaintiff's exhibit 14, plaintiff's exhibit 15, plaintiff's

exhibit 16, plaintiff's exhibit 5, plaintiff's exhibit 1, plaintiff's exhibit 2, plaintiff's exhibit 19, and plaintiff's exhibit 25.

THE COURT: Thank you, Mr. Goldstein.

MR. GOLDSTEIN: Do you want me to leave them here or ---

THE COURT: If you'll put them back there, and then y'all need to go over it and make sure that there is no objection as to what goes back for the jury and do that now.

And I know that counsel did not have time to eat your sandwich, and you'll have ten minutes to eat.

(A break is taken at approximately 1:55 p.m.)

(The trial reconvenes at approximately 2:30 p.m., and the following proceedings were had:)

(Court's Exhibit No. 4, note from the jury, is marked for identification.)

THE COURT: Thank you. Be seated.

Counsel, you have gone through all of the exhibits and have agreed on what is to go back? Mr. Goldstein?

MR. GOLDSTEIN: Yes, Your Honor. We

had a conference. I thought I had moved plaintiff's exhibit 22. I thought it had been admitted into evidence. A review of the record reveals that is not the case. I showed plaintiff's exhibit 22 to opposing counsel, and they have no objection to it being entered at this time. So I therefore offer plaintiff's exhibit 22 at this time.

THE COURT: Any objection, Mr. Ott?

MR. OTT: None, Your Honor.

THE COURT: All right. Plaintiff's 22.

(Plaintiff's Exhibit No. 22, previously marked for identification, is received in evidence.)

THE COURT: And with that addition into the exhibits, has everybody agreed that the stack in front of the court reporter is the stack that will be going back with the jury?

MR. GOLDSTEIN: Yes, Your Honor.

THE COURT: Mr. Ott and Mr. Marshall?

MR. OTT: Yes, Your Honor.

THE COURT: And, Counsel, we have had extensive charge conferences interspersed throughout our breaks today. Both sides have presented proposed jury charges to supplement the

Court's charges, and I'll be happy to hear from you to preserve the record before I instruct the jury, as to any requests that were denied, any objections to the Court's charge.

Mr. Goldstein.

MR. GOLDSTEIN: Thank you, Your Honor.

On behalf of the plaintiff, Your Honor, Judge, you took out strict liability on the ground that it was not pled.

Plaintiff's position was under Rule 8, the general rules of pleading, that strict liability was sufficiently pled and testified to, and the elements of strict liability were testified to without objection by counsel, and therefore should have been included.

The plaintiff also requested a jury charge that an owner may testify as to value, which Your Honor declined to charge.

And the last, I think, was under *Nichol vs. Blackmon*. I asked Your Honor -- it's plaintiff's request to charge number nine which was that an automobile manufacturer has a duty to manufacture an automobile that reasonably protects its users from foreseeable risk of harm, which I contended was an issue in the case

through the testimony of Mr. Olson and Mr. Greene, and Your Honor declined to charge that.

And I believe that covers it.

THE COURT: Hold on one second. The last objection that you had, Mr. Goldstein?

MR. GOLDSTEIN: Yes, ma'am. That was plaintiff's request to charge number nine. And maybe I misspoke, Judge. Maybe it's in there.

MR. OTT: If I recall our discussion, Your Honor, it's in there but generically with the word "product" rather than using the word "automobile."

MR. GOLDSTEIN: I stand corrected then. I apologize.

THE COURT: Thank you, Mr. Goldstein. All right. You have had ample opportunity, and other than the things that you've just stated on the record, you are satisfied with the Court's proposed charges?

MR. GOLDSTEIN: Yes, Your Honor.

And your clerk did a heroic job, may I say on the record, of putting together this charge and getting it to us in a timely way and expediting the charging conference, and I thank

him.

THE COURT: Thank you, Mr. Goldstein.

On the record, Mr. Marshall?

MR. MARSHALL: Your Honor, just for purposes of the record, I'd like to first submit an exhibit that Your Honor can make a Court exhibit of, of our proposed requests to charge, just for the record.

Of those, Your Honor, I would like to make specific note upon the record that we asked that certain language in numbers 21, 22, 23, and 24 be included, and Your Honor adopted some of that language and decided to not allow either a sentence or two sentences from certain of those requests to charge.

Additionally, to the extent that Your Honor has declined our request to charge numbers 46 through 60 regarding punitive damages, we would like to note our objection, as well as the other charges contained in this document. If I may pass it up?

THE COURT: You may. That would be Court's number five.

(Court's Exhibit No. 5, defendant's request to charge, is marked for identification.)

THE COURT: And just for the record, you had submitted that via e-mail to my clerk, and he -- based upon our charge conference, that the Court included your request to charge verbatim number 49, 51, 52, 48, and 46.

MR. MARSHALL: Thank you, Your Honor.

THE COURT: And the same question to you, Mr. Ott -- Mr. Marshall, based upon your review, with the exceptions that you've noted on the record, are you satisfied with the Court's proposed instructions?

MR. MARSHALL: Pursuant to our objection, yes, Your Honor.

THE COURT: All right. Thank you.

One additional matter, Court's exhibit number four: Juror 49, Melody has a doctor's appointment at 4:30 p.m. today and would like to call and make other arrangements if we stay longer today. Signed Juanita Mitchell, juror number 126, who is the foreperson.

I am inclined -- my instructions will be approximately 30 minutes. We are having exhibits -- I'm inclined to not address this in any other way unless you want me to give -- allow her the time after to make a phone call.

Mr. Goldstein?

MR. GOLDSTEIN: Your Honor, your proposal for handling it is satisfactory with the plaintiff.

MR. OTT: That's fine.

THE COURT: Thank you. Let's bring in the jury.

MR. GOLDSTEIN: Judge, may we approach the bench?

THE COURT: You may.

(There was an off-the-record bench conference.)

(Said bench conference being concluded, the following proceedings were had:)

(Whereupon, the jury enters the courtroom at approximately 2:35 p.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you.

Please be seated.

Madam Forelady, you evidently have completed your first task as foreperson, and I have received your note. And if need be -- the Court is going to instruct, the instructions will take approximately 30 minutes, and at that time

then the evidence will go back with you.

And juror number 49, if -- will that be sufficient time?

(Said juror nods head up and down.)

THE COURT: Just let the bailiff know, though, if you need additional assistance.

THE FOREPERSON: Okay. Thank you.

THE COURT: All right. And just so you wonder what -- your note has been marked as Court's number four, and so it will become part of the record. So thank you, Madam Forelady, for taking your task very seriously.

Ladies and gentlemen, it has been a pleasure having you in my courtroom this week. And I like to think -- you know, we all watch "Law and Order" and that sort of -- read novels, and that's where we get our legal experience or our legal exposure, and I like to think what we -- what y'all are doing in the last 30 minutes is what happens during commercial breaks in "Law and Order." So now you know what happens during the -- during the scene. So I want to thank you for your service to Charleston County.

I remind you, though, that during this trial you and I have certain duties to perform.

As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the evidence before you. If there was any evidence or testimony ordered stricken from the record during this trial, you must disregard that testimony.

You are to consider only the testimony which has been presented by the witness from the witness stand, any exhibits which have been made part of the record, and any stipulations of counsel.

I have the additional duty to charge you the law that applies to this case. It is your duty as jurors to accept and apply the law as I now state it to you.

If you think you have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you, you must forget your own idea and accept the law as I state it to you now.

In every case tried in this court before a jury, the jury becomes the sole and

exclusive judge of the facts. A trial judge cannot comment on or make any statement about the facts in this case.

Since you are the sole judges of the facts, do not think by anything that I may have said or done during the trial that I have any opinion at all about the facts of this case. The law does not allow me to have an opinion about the facts.

Statements, objections, and arguments of counsel are not evidence in this case. When, however, the attorneys on both sides do stipulate or agree as to the existence of a fact, the jury must accept it unless otherwise instructed.

I also want to let you know that objections and during the course of the trial, that is an attorney's job, just as you have a job to do in the courtroom and I have a job to do in the courtroom. Please, as I stated before, we have very zealous representation, and please do not consider by any objections or arguments of counsel that -- or hold it against them in any way.

Unless you are otherwise instructed, the evidence in this case only consists of the

sworn testimony of witnesses regardless of who may have called them and all exhibits received into evidence regardless of who may have produced them and all facts which have been admitted or stipulated, all facts and events which may have been judicially noted, if any, and you must accept any evidence to which an objection was sustained by the Court and any evidence -- excuse me. Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court, you must disregard in its entirety.

You may recall that I on several occasions in response to an objection indicated to you that you could not, or you needed to remove from your memory if possible, that you are not to consider the evidence that was presented by the testimony. And that is the law, and you must do so.

The burden of proof is on the plaintiff. In this case, the burden of proof is by the preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which, as a whole, shows that the fact sought to

be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When the case begins, this scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the defendant, then the plaintiff has failed to meet the burden of proof and would not be entitled to recover in this case. If, on the other hand, the scales tip even slightly in favor of the plaintiff, the plaintiff will have met the burden of proof, and you should return a verdict for the plaintiff.

The preponderance of evidence is not determined by the number of witnesses. Instead, it must be determined by the greater weight of all the evidence.

There are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a

chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but it asserts or describes something -- describes something else from which you may either reasonably infer the truth of that fact or at least reasonably infer an increase in the probability that the fact is true.

For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to that fact with reasonable certainty. The facts and circumstances -- do you need some water?

(The bailiff provides water to a juror.)

THE COURT: The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact cannot be based on speculation, surmise, or conjecture.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

When evidence is lost or destroyed by a party, you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party.

Necessarily, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convinces you it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether the witness

has an interest in the result of the trial, whether the plaintiff -- excuse me -- whether the witness is prejudiced towards either the plaintiff or the defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify, and you may consider the way the witness acts on the witness stand.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses.

A witness who by education, experience has become an expert in some art, science, or profession may give an opinion as to the subject the witness claims to be an expert in and may also give the reason for that opinion.

You should consider any expert opinion given by a witness and like any other evidence give it the weight you think it deserves.

If you decide that an expert witness's opinion is not based on sufficient education and experience or if you decide that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence,

you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses. Simply because the witness is an expert and you -- does not mean you have to accept the expert's opinion even though it is uncontradicted.

In our courts, no distinction is made between corporations and individuals. A corporation is a person in the eyes of the law. A corporation is entitled to the same fair and impartial consideration and to justice by the same legal standards as an individual.

The plaintiff claims that the defendant's product insured the plaintiff -- injured the plaintiff and that the defendant should be required to compensate the plaintiff for these injuries.

The defendant would be responsible for the plaintiff's injuries if the product was in a defective, unreasonably dangerous condition at the time it left the defendant's possession and it was used the way it was intended to be used.

The plaintiff claims that the defendant was negligent in the design of the Ford truck

which injured the plaintiff. The focus under a negligence theory is on the conduct of the defendant, and responsibility is determined according to fault.

In order to recover for negligence, the plaintiff must prove by a preponderance of the evidence or greater weight the following:

First, the defendant who was in the business of selling the product designed, manufactured and sold the product which at the time of the sale was in a defective condition that was unreasonably dangerous to the user.

In deciding whether a product is unreasonably dangerous and defective, you should consider what dangers would be reasonably anticipated by the typical user of a product of this kind.

Then you should decide whether the particular product involved in this case had a tendency for causing damage beyond those dangers which an ordinary user with common knowledge of the product's characteristics would anticipate.

You should also consider whether the dangers associated with the use of the product outweigh the usefulness of the product, the cost

involved for added safety, the likelihood for potential seriousness of the injury, and the obviousness of the danger.

The defendant is not responsible for any and all accidents that occur from the use of the product. All that a defendant is required to do is make a product which is free from defective and unreasonably dangerous condition.

A product is not defective simply because an accident or malfunction occurred when someone was using the product. A product need not be accident proof.

The defendant is not an insurer of the absolute safety of its product. It is enough that the product is reasonably safe. The fact that a product can be made more safe, alone, does not make the product unreasonably dangerous.

In order to establish product liability under South Carolina law, the plaintiff must introduce evidence that a safer alternative design of the product was feasible. It cannot rely upon mere conceptual design theories.

In cases alleging design defects, the plaintiff must prove the manufacturer failed to adopt a reasonable safe design for the product,

thereby rendering the product defective and unreasonably dangerous. Unlike manufacturing defects, design defects render all products with the same design defective.

In a design defect case, state of the art and industry standards are relevant to show both the reasonableness of the design and whether the product was dangerous beyond the expectations of the normal consumer.

While any product can be made more safe, the fact that it is not does not automatically make the product unreasonably dangerous; rather, in the final analysis, numerous factors must be considered, including the usefulness and desirability of the product, the cost involved for added safety, the likelihood to show seriousness of injury, and the obviousness of the danger.

The plaintiff must prove that the product was expected to and did reach the ultimate user without a substantial change in the condition in which the defendant sold it. The plaintiff must also prove that the plaintiff's injuries were proximately caused by -- caused by the defective product.

In addition, to recover under a negligence theory, the plaintiff -- excuse me -- the plaintiff must prove the defendant was negligent.

To prove negligence, the plaintiff must also prove by a preponderance or greater weight of the evidence that the defendant failed to exercise due care in some respect.

You must first determine whether the defendant owed the plaintiff a duty of care. The defendant will owe the plaintiff a duty of care when the defendant knows of the risk of harm. This burden may be met by showing that the defendant was aware of the danger and failed to take steps to correct it.

A manufacturer is held to the skills of an expert in the field and is charged with an expert's knowledge of the materials and processes used in the industry. A manufacturer has a duty to stay aware of current standards and scientific knowledge.

Although evidence of the -- excuse me. Although evidence of the industry standard may be considered as evidence of the standard of care, an industry cannot set its own reasonable

standards.

It is for you to determine whether the standard of care was proper, considering what a reasonable person would have done in similar circumstances.

A manufacturer may have a duty to install a safety device if you find that reasonable care in making the product safe or foreseeable risk requires that a safety device be installed.

A manufacturer owes a duty to conduct adequate tests on and inspections of its product to discover latent defects which are not -- or defects which are not visible or apparent on a reasonable inspection of the product.

If a manufacturer had reason to know that the product was likely to be dangerously defective, the manufacturer has a duty to exercise reasonable care in inspecting and testing the product before selling it if a reasonable inspection or test would have disclosed the defect.

In deciding whether the defendant had the duty to test the product, you should consider the defendant's ability to conduct the test at

the time the product was sold.

Next, the plaintiff must prove by a preponderance or greater weight of the evidence that the defendant breached that duty by negligent act or omission.

Negligence means that the person did not use the same amount of care that a person of ordinary reason and prudence would use in the same or similar circumstances. In other words, a negligent person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done.

In deciding whether the defendant beached the duty of care, you should consider whether the defendant has followed the normal and customary practices and procedures in the industry, as well as the defendant's expertise and ability to see and appreciate the problem and its cause.

If the defendant failed to exercise reasonable care in fulfilling any of the defendant's duties, the defendant would be responsible for injuries to any person the defendant should expect will use its product or

be endangered by its use if the defendant knew or had reason to know that the product was or was likely to be dangerous for the use which it was designed, manufactured, or sold, the defendant had no reason to believe that the user or person endangered by the product's use would realize the potential danger, and the defendant failed to exercise reasonable care to inform the user of the product's dangerous condition or the facts which make it likely to be dangerous.

A manufacturer has no duty to notify previous purchasers of its products about later developed safety devices or to retrofit its products when the products were nondefective under standards existing at the time of the manufacture or sale of the product.

South Carolina law holds that product manufacturers have no duty to design or manufacture a product that will not eventually wear out.

Recklessness is a knowing failure to exercise reasonable care under all of the surrounding circumstances. An act is reckless if it is committed in a manner and under circumstances which a person of ordinary reason

and prudence would know would invade the rights of the injured person.

Finally, the plaintiff must prove by a preponderance or greater weight of the evidence that the damages were proximately caused by the defendant's breach of duty.

Proximate cause is something which produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

To prove that the defendant's negligence proximately caused the plaintiff's injury, the plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the defendant's negligence.

The plaintiff must prove that some injury from the defendant's negligence was foreseeable, but it does not have to prove that the particular injury that occurred was

foreseeable. However, the defendant cannot be held responsible for something which could not be expected to happen.

Proximate cause does not mean the only cause. The defendant's act could be a proximate cause of the plaintiff's injury if it was at least one of the direct concurring causes of the injury.

The plaintiff -- excuse me. The defendant has answered the plaintiff's Complaint with a general denial. That means that the defendant denied each and every claim that would make the defendant responsible for the plaintiff's injury. Because of this general denial, the plaintiff has the burden of proving each and every element of the cause of action.

If you decide that the plaintiff is entitled to a verdict, your next step would be to decide how much money the defendant should be required to pay.

As a general rule, the measure of damages for injury to personal property is the difference between the market value of the property immediately before and its value immediately after the injury. If a market does

not exist for such property, the rule does not apply, and the cost of repairs or the replacement value of the property is used. Any sentimental value attributed by the plaintiff must be excluded.

Actual damages are to compensate the plaintiff for the plaintiff's injuries or loss and to put the plaintiff as near as possible in the same position that the plaintiff was -- was in before the incident occurred. In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's negligence.

The amount of damages to a motor vehicle is the difference between the value of the vehicle immediately before the incident and the value of the vehicle immediately following the incident.

If repairing the vehicle would have put it in as good a condition as before the accident or incident, then the measure of damages would be the cost of repair for any amount by which the value of the vehicle was decreased due to its involvement in the incident. This is called depreciation. If the vehicle cannot be repaired,

the measure of damages would be the value of the vehicle immediately before the incident minus any salvage value.

The plaintiff is seeking lost profits. The crucial requirement for lost profits determination is that they be established with reasonable certainty for recovery -- excuse me -- that they be established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative.

The proof must pass the realm of conjecture, speculation, or opinion not founded on fact and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of loss to be logically and rationally drawn.

When the plaintiff is injured or damaged by the wrongful acts of another person, it is the duty of the plaintiff to reasonably try to avoid and lessen the damages.

Those damages which may be avoided by the use of reasonable efforts, care, and prudence by the plaintiff cannot -- excuse me. Those damages which may be avoided by the use of reasonable efforts, care, and prudence by the

plaintiff cannot be the proximate result of the defendant's wrongful act. Therefore, the plaintiff cannot recover for damages which reasonably might have been avoided.

The efforts required by the plaintiff must be determined by the rules of common sense and fair dealing and what a person of ordinary reason -- reason and prudence would do under the same circumstances. The plaintiff is not required to use unreasonable efforts or great expense to avoid and lessen the damages.

The defendant has the burden of proving the failure to lessen damages on the part of the plaintiff by the preponderance or greater weight of the evidence.

The plaintiff claims that the defendant acted with recklessness, willfulness, and wantonness, and that therefore the plaintiff is entitled to punitive damages from the defendant.

Recklessness means a conscious failure to use reasonable care. A person who is negligent acts carelessly. However, a person who acts recklessly, willfully, and wantonly is not only careless but is also aware that he or she is being careless.

If you award actual damages, you may also consider an award of punitive damages. Punitive damages are intended to punish the defendant for extraordinary and outrageous misconduct and to prevent the defendant and others from committing similar acts in the future.

Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence. The evidence must establish the defendant's acts were reckless, willful, and wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.

If you find that the defendant's conduct was willful, wanton, and -- or reckless, you may award the plaintiff punitive damages.

To support an award of punitive damages, the plaintiff must prove by clear and convincing evidence that the conduct complained included a consciousness of wrongdoing at the time of the conduct.

Clear and convincing is more than just a preponderance of the evidence or greater weight

of the evidence which only requires proof which persuades you that a party's claim is more likely true than not true. On the other hand, clear and convincing proof is not as high a standard as the burden of proof in criminal cases which is proof beyond a reasonable doubt.

Clear and convincing proof leaves no substantial doubt in your mind. It means the evidence is not ambiguous, doubtful, equivocal, or contradictory.

Convincing means persuading by proof or argument, causing one to believe in the truth the party's asserted.

Clear and convincing proof establishes in your mind not only that the fact is probable but that it is highly probable.

You may not award punitive damages merely because you have found by the preponderance of the evidence that the product was defective or that the defendant was negligent or even grossly negligent.

An innocent mistake or error of judgment does not constitute the type of misconduct that will support an award of punitive damages.

Accordingly, you may not award punitive damages if there -- if there's a bona fide controversy about whether the product is defective; rather, you may award punitive damages only if you find by clear and convincing evidence that reasonable people could not in good faith disagree about whether the product was defective.

There is no right to punitive damages. Accordingly, you need not award punitive damages even if you find that the standard for imposing punitive damages has been satisfied.

You may not award punitive damages merely because the defendant considered cost in designing the product, a responsible manufacturer must consider the cost in designing products that are affordable to the anticipated user of its products, nor may you award punitive damages simply because the defendant balanced the risk of harm against other factors that affect the utility, usefulness, practicality, or desirability of the product to users and consumers.

Similarly, the fact that an industry has adopted designs or practices consistent with the defendant's generally shows that there is an

arguably legitimate basis for those designs and practices. Thus, punitive damages are generally not appropriate when the defendant has complied with industry custom, purpose -- or practice.

Ladies and gentlemen of the jury, and especially Madam Foreperson, there are three possible verdicts which you may find in this case.

This is the verdict form. It will go back in the jury room with you. It simply gives the State of South Carolina, County of Charleston, the case name, the docket number.

There are three possible verdicts. Please remember there is no significance in the order in which I state these possible verdicts. Simply one must be stated first, and one must go on the paper first.

Question number one: We the jury find for the defendant against the plaintiff, yes, no, you would check one or the other;

Or number two: We the jury find for the plaintiff against the defendant in the amount of blank actual damages. If you find for the plaintiff against the defendant in the amount of actual damages, you are to write that dollar

figure in that blank;

Or number three: We the jury find for the plaintiff against the defendant in the amount of blank actual damages and blank punitive damages. Once again, if you find for the plaintiff against the defendant and an amount of actual damages and punitive damages, you are to write, Madam Foreperson, in the blanks the actual dollar amount.

There is to be only one verdict, the one or two or three.

The decision must be unanimous. All twelve of you must agree on the verdict.

Your verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration not in evidence in this case.

Madam Foreperson, when your jury -- when the jury has agreed on a verdict, you will then sign your name, and knock on the door, inform the bailiff, and at that time I will receive you back into the courtroom.

I ask now that you return to your jury room. Do not begin deliberations until you are told to by the clerk or the bailiff. I will be gathering the evidence with -- and the verdict

form that will go back with you.

After your service, when the trial is ended, when you come back, I will give you some further instructions.

And so please do not begin your deliberations until you have the verdict form and all of the evidence in the jury room with you. Thank you.

(Whereupon, the jury goes to the jury room at approximately 3:05 p.m.)

THE COURT: Please be seated.

And just for the record, you've agreed to the exhibits and to the verdict form going back. Any objections to those exhibits and the verdict form going back at this time?

From the plaintiff?

MR. GOLDSTEIN: Nothing from the plaintiff.

MR. OTT: Your Honor, the only thing, as I listened to Your Honor's instruction about question number one.

THE COURT: Yes, sir.

MR. OTT: Why does it make sense to have we find for the -- why is there a blank for "no"? We find for the defendant against

plaintiff. It would either be yes, then it's over. Why would you have a "no" if you've got "or two or three"?

THE COURT: We will print that off based upon the way the Court ordered it, that I believe that that makes more sense. Any...

MR. GOLDSTEIN: No objection to either form, Your Honor. Whatever suits you and opposing counsel is fine with me.

THE COURT: Thank you.

MR. OTT: And, Your Honor, and I don't know if this was oversight or not, but there was -- a couple of things that were brought to my attention that I thought were missed.

First of all, I don't remember a charge telling them that the product must be in substantially the same condition at the time of the accident as it was when it left the manufacturer's hands.

And number two, Your Honor, Your Honor skipped a paragraph on page ten of the charge, saying in determining whether a product is defective or unreasonably dangerous, the product must be measured against standards existing at the time of sale or against reasonable customer

expectations held at the time of the sale.

I don't know if that was purposeful ---

THE COURT: It was read in another -- in another paragraph somewhere.

MR. OTT: Okay.

And, Your Honor, I don't know if it was or not, but it was also skipped on page 11 of the second paragraph at the bottom where it says "as exist at the time of manufacture." That also was skipped.

So both of those charges have to do with the time in which the jury is measuring this product. So I think they're both important charges.

THE COURT: Mr. Goldstein.

MR. GOLDSTEIN: Yes, your Honor. I believe it was covered. I'm just looking for it.

THE COURT: Page 14.

MR. GOLDSTEIN: That's the page I was looking at.

THE COURT: Oh, sorry. My page number is not the same as yours.

The plaintiff claims that the defendant was negligent in designing the Ford truck which injured the plaintiff.

The focus under a negligence theory is on the conduct of the defendant, and the responsibility is determined according to fault.

In order to recover for negligence, the plaintiff must prove by a preponderance or greater weight of the evidence the following:

First, that the defendant who is in the business of selling the product designed, manufactured and sold the product which at the time of sale was in a defective condition that was unreasonably dangerous to the user.

MR. OTT: Right. At the time of sale. The product has to be in essentially the same condition at the time of the fire as it was at the time of the sale.

That's one of the four elements, basic elements in the most standard negligence charge in a product liability action that we incorporated in number 11, that there are four -- well, there's three elements that are the same in all product liability cases. The fourth in a negligence is you have to establish breach of the duty of care.

But one, two, and three are injury by the product. The injury occurred because the

product's in a defective, unreasonably dangerous condition to the user.

And number three, the product at the time of the accident was in essentially the same condition as when it left the hands of the defendant.

That's an essential element cited in *Allen vs. Long*, *Adam vs. Cox*, *Wright vs. Hitachi*, and on and on and on, and even I think it's incorporated in the strict liability statute.

THE COURT: But you -- just so -- just so I'm clear, just because this was not on the record, we had strict liability in, in a very lengthy strict liability charge that you requested that the Court remove.

MR. OTT: Right. What I'm saying is, whether you proceed under negligence, strict liability, or breach of warranty, those three elements that I just read are identical. So you have to prove those three in a negligence.

The additional element you must prove in a negligence is by proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design. That's the fourth element of the negligence.

But the first three that I just read that include the same condition element are all the standard three for products liability cases regardless of the theory.

THE COURT: Okay.

MR. OTT: Your Honor, I can hand up the cases, but...

THE COURT: I'm not disputing that that's not -- what I'm disputing is the fact whether or not I read it.

MR. OTT: Okay.

THE COURT: I'm not disputing that that's not the law.

MR. OTT: Thank you, Judge.

THE COURT: All right. Now, again: The plaintiff must prove that the product was expected to and did reach the ultimate user without a substantial change in the condition in which the defendant sold it. The plaintiff must also prove that the plaintiff's injuries were proximately caused by the defective product.

MR. MARSHALL: Do you have a page number?

THE COURT: Our pages are no longer the same.

MR. MARSHALL: All right. Can you give me a heading that that's under?

THE CLERK: It's right before duty, the page before duty. Page nine?

MR. GOLDSTEIN: It's page ten on ours.

THE COURT: Thank you, Mr. Goldstein.

MR. OTT: I think that's -- that's different, Your Honor. That says a substantial change in the condition in which the defendant sold it when the ultimate -- ultimate user reached it. But that's not it. It's at the time of the accident. I mean, the ultimate user could have been the initial purchaser.

THE COURT: Your response, Mr. Goldstein?

MR. GOLDSTEIN: Judge, we've been over this so many times. It's been exhaustively covered. It's completely covered in your charge. They've gotten everything they wanted just about, and it just -- it's covered. It's in there. It's a complete and thorough charge.

I mean, anybody can nitpick a charge. I mean, I could sit here and complain about all kinds of things, but you don't do that. You look at the charge in its totality.

THE COURT: All right. And what's your additional, for the record, Mr. Ott, Mr. Marshall?

(Mr. Ott and Mr. Marshall confer.)

MR. OTT: It originally was in there, and it was removed when ---

THE COURT: What was originally in there, sir?

MR. OTT: That element that I asked about, about essentially the same condition. It was in there when strict liability was, and we thought that was going to stay in the negligence charge, but it's just worded, I think, differently, because I thought we were putting in number 11, defendant's number 11.

But then the other one was the time at which we measure the product, and I don't know that that was charged. I know Your Honor said that you thought it was in there, but I still haven't seen it, and I don't remember hearing it.

THE COURT: As I indicated to both parties in chambers, in attempting to include in my charges both plaintiff's request and defendant's request, they were duplicitous, perhaps, in the fact that the Court has

renumbered its instruction.

The Court does recall reading, and based upon my review and my clerk's review as to what was and was not excised or included from the initial charge conference, the Court feels that the instructions as provided to the jury were sufficient and included all of the requests that we agreed upon.

The Court has noted your objections prior to the Court's instructions, and I will note the same objections.

Is there anything further for the record to protect your record?

MR. OTT: No. Just the exceptions that we noted before the charge and those two additional ones we just discussed, that's it, Your Honor. Thank you.

THE COURT: Thank you. Anything further?

MR. GOLDSTEIN: Nothing from the plaintiff, Your Honor. Thank you.

THE COURT: I am printing off the verdict form that has -- I am printing off the verdict form pursuant to your request for corrections. With that correction, is there

anything further before I send the exhibits and the verdict form to the jury?

MR. GOLDSTEIN: Nothing from the plaintiff. Thank you, Your Honor.

THE COURT: Thank you.

MR. OTT: Nothing, Your Honor.

THE COURT: Thank you.

And we already have a note. All right.

This will be marked as Court's exhibit six: Juror 49 says rest room number two near the back of the room is out of toilet paper and may we have some.

Could you please take care of that.

A juror would like to know if we could have a pad and pencils to write during deliberations.

The Court is inclined to allow them pen and paper during the deliberations.

Any objections to that, Mr. Goldstein?

MR. GOLDSTEIN: None from the plaintiff, Your Honor. Thank you.

THE COURT: Mr. Ott?

MR. OTT: No, Your Honor.

THE COURT: All right. And the smokers would like to know if they could have a smoke

break before deliberations.

I'm inclined to allow also juror number 49 to use the telephone to make alternative arrangements, as well as have pen and paper in the jury room and allow them to smoke.

We will mark that as Court's exhibit number six.

The bailiff will take all of -- those are procedural matters, so the Court is not going to write a note.

Any objection to that, Mr. Goldstein?

MR. GOLDSTEIN: None whatsoever, Your Honor.

THE COURT: Any objection?

MR. OTT: No, your Honor.

THE COURT: All right. We'll be at ease until we get a verdict or another note.

(Court's Exhibit No. 6, note from the jury, is marked for identification.)

(Whereupon, the jury begins deliberation at approximately 3:20 p.m.)

(The trial reconvenes at approximately 4:10 p.m., and the following proceedings were had:)

THE COURT: Thank you. Be seated.

Counsel, we have a note. The jurors would like to know if we could have a copy of the law that the judge read to us. This will be marked Court's exhibit number seven.

Mr. Goldstein?

MR. GOLDSTEIN: No objection at all.

THE COURT: Mr. Ott?

MR. OTT: No. Obviously subject to our previous objections.

THE COURT: No objection?

MR. OTT: No objection to providing it to them, no.

THE COURT: All right. I am going to have my clerk remove all the footnotes and just send back exactly the charge as related to the law, take out all the extraneous -- the objections and all that.

MR. OTT: I'm sorry. They want the?

THE COURT: They want a copy of the law.

MR. OTT: Okay. So, in what you gave us, we're going from the -- you're interpreting that as just the substantive law?

THE COURT: Yes. I am removing all the case law, the footnotes.

MR. GOLDSTEIN: I'm sorry, Judge. I didn't hear what you said. You said you're deleting all the footnotes?

THE COURT: Yes, sir.

MR. GOLDSTEIN: Okay.

THE COURT: Anything further?

MR. OTT: Now, are you giving them the entirety, just less the footnotes, or are you just giving them starting on page X, negligence means this? That's what my -- that's what my question is.

THE COURT: I'm taking out all the fluff, meaning any thank you or you need to knock on the door, those types of charges.

MR. OTT: But preponderance of the evidence, for instance, is going back?

THE COURT: That would be the law. I am going to include that.

MR. OTT: Okay.

THE COURT: Yes, Mr. Ott.

MR. OTT: All right.

THE COURT: Anything further?

MR. GOLDSTEIN: I don't think you want to bring them back and read it to them again, so...

THE COURT: They didn't ask me to read it to them. They want a copy of it.

MR. GOLDSTEIN: That's much more economical.

THE COURT: Thank you. All right. We'll be at ease.

(Court's Exhibit No. 7, note from the jury, is marked for identification.)

(Court's Exhibit No. 8, Court's instruction to the jury, No. 1 - 40, is marked for identification.)

(The trial is in recess at approximately 4:15 p.m.)

(The trial reconvenes at approximately 6:50 p.m., and the following proceedings were had:)

THE COURT: We have a verdict.

Go ahead and bring in the jury.

MR. MARSHALL: Your Honor.

THE COURT: Yes.

MR. MARSHALL: If I may, I just wanted to see if we can make an exhibit, a Court's exhibit of what was submitted to the jury, the instructions that Your Honor read.

THE COURT: Yes, sir.

MR. MARSHALL: Can we make that an exhibit?

THE COURT: It already is.

MR. MARSHALL: All right. Thank you.

(Whereupon, the jury enters the courtroom at approximately 6:50 p.m.)

THE BAILIFF: The jurors are present, Your Honor.

THE COURT: Thank you.

Thank you. Please be seated.

Madam Foreperson, I understand you have a verdict.

THE FOREPERSON: Yes, we do, Your Honor.

THE COURT: If you will please hand the verdict form, Madam Clerk.

(The clerk complies.)

THE CLERK: The State of South Carolina, County of Charleston, 5 Star Inc., plaintiffs, vs. Ford Motor Company, defendant, in the Court of Common Pleas, docket number 2006-CP-10-4773, verdict: We the jury find for the plaintiff against the defendant in the amount of $41,000 actual damages. Signed foreperson, Juanita Mitchell.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OR COMMON PLEAS
2006-CP-10-4773

5 STAR, INC.

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

TRANSCRIPT OF RECORD

SEPTEMBER 24, 2008
Charleston, South Carolina

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

A P P E A R A N C E S:

Mr. Thomas R. Goldstein, Esquire
Representing the Plaintiff

Mr. Curtis L. Ott, Esquire
Mr. David C. Marshall
Representing the Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

THE COURT: Counsel, we are here. I am assuming that it was timely filed.

MR. OTT: Okay. That's the last thing I have to say as far as that motion is concerned.

THE COURT: Mr. Marshall, anything you wish to add?

MR. MARSHALL: No, Your Honor.

THE COURT: Counsel, both the plaintiff and the defendant have presented the Court very well drafted and thoroughly researched motions, as well as the plaintiff's return. We sat through numerous days of trial in which both of you again thoroughly researched the issues presented to the Court substantial cases for the Court to read in which to craft not only the jury charges but as well as to determine what should and should not be admissible.

We had substantial pretrial motions in which the Court ruled, and at that point gave the rationale for what would and would not be admissible at that time.

We also, during the charge conference, went over all of the issues that you raised at that time on behalf of the defendant, and the record is clear as to what was and what was not allowed in and the rationale for that at that time.

Based upon what was presented to the jury, my observations of the jury's attentiveness throughout the trial, as well as the fact that they requested the jury instructions, made notes on the instructions -- which is a copy of the court's record as well, I believe those are now in evidence -- it is clear that the evidence presented to the jury that the jury thoroughly considered the evidence presented by both the plaintiff and the defendant, considered the testimony, the credibility, and thoroughly reviewed all of the exhibits sent back, the jury deliberated for several hours, sent several questions to the Court which we all addressed in the appropriate manner.

Based upon all of the factors the Court feels that the jury properly and thoroughly reviewed the evidence as presented and so at this time the Court is declining your request for a new trial and your request for judgment notwithstanding the verdict. I will note your exceptions.

MR. OTT: Your Honor, thank you. I just note for the record, I understand the Court's ruling that you've reviewed our motion memo and our argument to this point is not covered anything having to do with your motion for new trial given Your Honor's ruling

STATE OF SOUTH CAROLINA )
)
COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS
06-CP-10-4773

5 STAR, INC.,

PLAINTIFFS.

vs.

FORD MOTOR COMPANY.

DEFENDANT.

ORIGINAL

TRANSCRIPT OF RECORD

NOVEMBER 20, 2008
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE.

A P P E A R A N C E S:

THOMAS R. GOLDSTEIN, ESQ.,
Attorney for the Plaintiff.

CURTIS L. OTT, ESQ.,
Attorney for the Defendant.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

JURISDICTION EXCEPT AS TO MATTERS UNAFFECTED BY THE APPEAL.

UH -- THEY APPEALED THE CASE; UM, IT'S IN THE COURT OF APPEALS. THEY FILED A 59(e) MOTION TO YOUR ORDER DENYING -- SET -- MOTION FOR A NEW TRIAL, WHICH -- I GUESS IT'S SORT OF A NEW ONE ON ME.

UM -- I -- I MEAN, RESPECTFULLY, YOUR HONOR, I THINK ONCE THEY FILED A NOTICE OF APPEAL, I THINK THEY -- I THINK THEY ENDED THIS COURT'S JURISDICTION. THAT -- THAT'S JUST MY UNDERSTANDING.

**THE COURT:** BECAUSE THERE HAS BEEN A NOTICE OF AN ATTEMPT TO APPEAL, I -- THE COURT DOES FEEL THAT I DO NOT HAVE JURISDICTION WITH WHICH TO MAKE A MORE DEFINITE AND CERTAIN RULING, UH, CLARIFYING.

BASED UPON MY RECOLLECTION OF MY RULING ON YOUR MOTION TO RECONSIDER -- THAT WAS TIMELY FILED -- THE COURT STANDS WITH THE ARTICULATION OF THE STANDARD FOR THE J-N-O-V. I'LL NOTE YOUR EX- -- EXCEPTION, MR. OTT.

**MR. OTT:** I JUST WANT TO MAKE SURE AGAIN -- FOR APPELLATE PURPOSES -- THIS IS THE FIRST RULE 59 RECONSIDERATION MOTION. IT IS NOT A SUCCESSIVE RULE 59 MOTION.

THE FIRST ONE, AGAIN, UH, A J-N-O-V MOTION AND A NEW TRIAL UNDER 59(a).

WE ARE -- THIS IS THE FIRST TIME THAT WE'VE COME BEFORE THE COURT, AND IT WILL BE THE LAST TIME WE COME BEFORE THE

YOU. THAT I TOLD YOU I WASN'T GOING TO BRING ANOTHER CASE AND I DID IT, SO I'M A LIAR.

AND SO, I CAME INTO COURT AND I SAID NO, JUDGE, I'M NOT A LIAR. I'M NOT ASSERTING ANOTHER CLAIM; I DO NOT HAVE ANOTHER CLAIM. HOWEVER, I NEED TO TAKE A PROTECTIVE POSTURE TO PROTECT MYSELF IN THE EVENT HE PREVAILS ON APPEAL. NOTHING MORE; WE'RE PAST THAT. IT'S UNRELATED TO THE APPEAL, AS YOUR HONOR JUST SAID.

NUMBER TWO, THE STIPULATION ON THE OFFSET, THAT'S NOT EVEN AN ISSUE. I DON'T EVEN KNOW WHY WE'RE TALKING ABOUT IT. UM -- I TOLD THEM ON DAY ONE THEY WERE ENTITLED TO A THREE THOUSAND DOLLAR OFFSET. WHEN THE CASE WAS OVER, I RECORDED THE THREE THOUSAND DOLLAR OFFSET. I SENT IT TO THE CLERK'S OFFICE, THEY FILED IT. I SENT IT TO DAVID MARSHALL. IT'S OVER.

THE THIRD ISSUE IS A SUCCESSIVE MOTION. THEY'VE ALREADY APPEALED THE CASE; YOU'VE LOST JURISDICTION OF IT.

IT'S EXACTLY LIKE YOUR HONOR JUST STATED. IT'S REAL SIMPLE. IT -- I DON'T KNOW WHY IT IS GETTING OFF THE TRACK, BUT, I MEAN, THAT'S JUST IT.

**THE COURT:** THE COURT HAS RULED AS TO NUMBER ONE AND NUMBER TWO ON THE GROUNDS OF YOUR MOTION THAT WAS FILED OCTOBER 9TH 2008.

BASED UPON MY READING, I DO NOT HAVE JURISDICTION AT THIS POINT TO RECONSIDER. MY RULING STANDS ON THE POST-TRIAL

MOTIONS.

THANK YOU. MR. GOLDSTEIN, IF YOU'LL HAVE THE ORDER---

**MR. GOLDSTEIN:** YES, MA'AM.

**THE COURT:** ---REGARDING THE -- THE DISMISSAL OF THE 2008 FILING?

**MR. GOLDSTEIN:** YES -- YES, MA'AM.

**THE COURT:** AND WILL YOU BE ABLE TO COMPLETE THAT BY THE END OF BUSINESS THIS WEEK?

**MR. GOLDSTEIN:** YES, MA'AM.

**THE COURT:** ALL RIGHT. I WILL BE IN CHAMBERS IN BERKELEY NEXT WEEK, AND, UH, WILL MAKE EVERY EFFORT TO HAVE THAT MOTION FILED BY -- BEFORE THE THANKSGIVING HOLIDAYS.

**MR. GOLDSTEIN:** YES, MA'AM.

**THE COURT:** THANK YOU. ANYTHING FURTHER, MR. OTT?

**MR. OTT:** NO, YOUR HONOR; THANK YOU.

**THE COURT:** THANK YOU. ANYTHING FURTHER, MR. GOLDSTEIN?

**MR. GOLDSTEIN:** NOTHING, YOUR HONOR.

**THE COURT:** THANK YOU.

(WHEREUPON, HEARING ENDED AT 10:33 A.M.)

*******END OF REQUESTED TRANSCRIPT*******

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. #06-CV-10-4773
DATE: 9-3-08 B

**James P. Vondale, Director**
Automotive Safety Office
Environmental & Safety Engineering

**Fairlane Plaza South**
330 Town Center Drive
Dearborn, MI 48126-2738 USA

July 27, 2006

Daniel C. Smith
Associate Administrator for Safety Assurance
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Mr. Smith:

Subject: Supplement to Ford Recall No. 05S28

Summary

- Ford Action – Ford is supplementing an earlier voluntary safety recall to also include certain model year 1994-2002 F-250 through F-550 Super Duty trucks, 2000-2002 Excursions, 1994-1996 Econolines, 1996-2002 E-450 vans equipped with gasoline or natural gas engines, and 1998 Explorers and Mountaineers. A speed control system interaction can occur that may cause the speed control deactivation switch to overheat and lead to an under hood fire. In rare cases, brake fluid may leak through the speed control deactivation switch into the speed control system electrical components, potentially corroding them. This corrosion in the electrical components can lead to increasing resistance and higher electrical current flow through the system. Together, these conditions could lead to overheating and, possibly, a fire at the switch. This system interaction is the result of several contributing factors including the specific orientation of the switch on the brake master cylinder and repeated high vacuum events that may occur at the switch due to typical brake system operation in the vehicles included in this action. Over time, these vacuum events may cause some speed control deactivation switches to be susceptible to brake fluid leaks and corrosion, which may result in the switch overheating.

- Number of Vehicles Involved - Ford estimates that there are approximately 1.2 million additional affected vehicles currently registered in the U.S.

- Affect on Vehicle Operation - The speed control deactivation switch may, under certain conditions, overheat, smoke, or burn.

- Service Procedure - Owners will be instructed to return their vehicles to dealers for installation of a fused wiring harness.

Attached is the detailed information required by the applicable portions of 49 CFR Part 573 - Defect and Non-Compliance Report.

Sincerely,

James P. Vondale
Attachment

ATTACHMENT

49 CFR Part 573 - DEFECT INFORMATION REPORT
Supplement to Ford Recall No. 05S28 – Certain 1994-2002 F-250 through F-550 Super Duty trucks, 2000-2002 Excursions, 1994-1996 Econolines and 1996-2002 E-450 vehicles equipped with speed control and gasoline or natural gas engines and 1998 Explorer and Mountaineer vehicles equipped with speed control - Speed Control System

Pursuant to Part 573 of Title 49 of the Code of Federal Regulations, Defect and Noncompliance Reports, Ford Motor Company submits the following information concerning a safety recall action that it is voluntarily initiating.

573.6 (c) (2) - Potentially Affected Vehicles
Vehicles potentially affected are certain model year 1994-2002 F-250 through F-550 Super Duty trucks, 2000-2002 Excursions, 1994-1996 Econolines, and 1996-2002 E-450 vehicles equipped with speed control and gasoline or natural gas engines and 1998 Explorer and Mountaineer vehicles equipped with speed control. Build dates are not being provided because of the number of models and assembly plants that built the vehicles included in this action. All vehicles within an identified model year are included in the action; therefore, vehicles built from Job #1 through Job last for a given model and model year are included.

Because these vehicles are not produced in VIN order, information as to the applicability of this action to specific vehicles can best be obtained by either calling Ford's toll-free line (1-800-392-3673) or by contacting a local Ford or Lincoln-Mercury dealer who can obtain specific information regarding the vehicles from the Ford On-line Automotive Service Information System (OASIS) database.

573.6 (c) (3) - Estimated Population of Vehicles Potentially Affected
Ford estimates that there are approximately 1.2 million vehicles currently registered in the United States and Federalized Territories.

573.6 (c) (4) - Estimated Percentage of Affected Vehicles with the Defect Condition
Unknown.

573.6 (c) (5) - Description of the Defect
The speed control deactivation switch may, under certain rare conditions, overheat, smoke, or burn. As of April 2006, Ford has identified approximately 250 incidents that appear to allege a fire or smoke incident related to the speed control deactivation switch on the affected vehicles, with approximately 60 of those related only to smoking of the switch. No allegations of serious injuries or fatalities have been identified.

573.6 (c) (6) - Chronology of Events
In September 2004, Ford began investigating reports of underhood fires in the affected vehicles equipped with speed control as a result of allegations of fires related to a speed control deactivation switch. Investigation of underhood fires is complex because fires can occur for a variety of reasons, including improper vehicle modification (such as aftermarket accessories), arson, prior accident damage, lack of maintenance, or a faulty repair. Often, evidence as to the cause and origin of the fire is lost as a result of damage from the fire, or efforts to extinguish it. In December 2004, NHTSA opened an investigation into fires allegedly involving the speed control deactivation switch on 1999-2001 F-150 and Expedition vehicles resulting in recall 05S28. Some of the vehicles included in this action were "peer" vehicles in the investigation of the F-150 and

Expedition vehicles. Based upon information gathered on the "peer" vehicles during that investigation, Ford and NHTSA began an analysis of the "peer" vehicles with apparent speed control deactivation switch related fires.

As a result of this extensive investigation Ford and NHTSA recently found that a notable vacuum can occur in typical braking conditions within the hydraulic portion of the brake system on the affected vehicles. The level of vacuum that occurs, over time, can contribute to damage to internal components in some of the switches and may eventually cause a switch to leak. This leakage can result in corrosion in the switch, and in rare cases, the corrosion in the switch can lead to increased resistance and higher electrical current flow through the system. The result of this combination of events could lead to switch overheating, and, very infrequently, possibly a fire at the switch. During this investigation, switch manufacturing variability and the orientation of the switch were also identified as factors, in combination with the vacuum, as contributing to the elevated rates. The 1998 model year Explorer and Mountaineer are included in this action because they exhibit an obvious elevated rate of related fires as compared to other models. Based upon the performance it is clear that there are unique factors that are affecting its performance.

573.6 (c) (8) - Service Program
Owners will be instructed to return their vehicles to dealers for installation of a fused wiring harness.

There will be no charge to owners for this service. Mailing of owner notification letters will begin during the week of August 7, 2006.

573.6 (c) (9) -Press statement and Dealer/Owner Letters
Ford plans to make a statement to the media concerning the subject matter of this action. A copy of the notification letters to dealers and owners from Ford will be forwarded to the agency when available.

573.6 (c) (11) -Recall Number
Ford has assigned recall number 05S28 to this action.

573.13 (c) (2) - Ending Date for Reimbursement
Ford's general reimbursement plan for the cost of remedies paid for by vehicle owners prior to a safety recall was provided to the agency on February 28, 2005. The ending date for reimbursement eligibility for remedies paid for by vehicle owners per Ford's general reimbursement plan is September 5, 2006.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| 5 Star, Inc., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | **FORD MOTOR COMPANY'S** |
| vs. | ) | **REQUEST FOR JURY CHARGES** |
| | ) | |
| Ford Motor Company, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

Defendant Ford Motor Company ("Ford") requests that the following instructions be submitted to the jury. Ford also reserves the right to withdraw or submit other jury instructions as evidence in the case warrants.

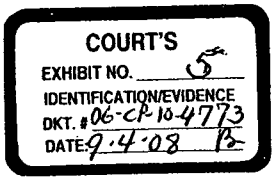
TURNER, PADGET, GRAHAM & LANEY, P.A.

September 1, 2008

By: _____

Curtis L. Ott
David C. Marshall
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

**ATTORNEYS FOR DEFENDANT FORD MOTOR COMPANY**



## DEFENDANT FORD'S REQUEST TO CHARGE NO. 1

Now that you have heard the evidence and the argument, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Counsels for the parties have properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel, and the law as stated by the Court in these instructions, you are to be governed by the Court's instructions.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather yours.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

You must perform your duties as jurors without bias or prejudice or sympathy as to either party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed. §71.01.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 2

This case should be considered and decided by you as an action between parties of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as a private individual. All parties, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §71.04.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 3

Statements, objections, and arguments of counsel are not evidence in the case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, the jury must, unless otherwise instructed, accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which have been admitted or stipulated; and all facts and events which may have been judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §71.08.

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 4**

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence which does produce such belief in your minds.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §72.13.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 5

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of its claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §72.01.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 6

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression, "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §72-02.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 7

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of the case. One is direct evidence - such as the testimony of an eyewitness. The other is indirect or circumstantial evidence - the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §72.03.

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 8**

Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

Merely because an expert has expressed an opinion, however, does not mean that your must accept that opinion. You should consider each expert opinion received in evidence in this case, and given it such weight as you may think it deserves. As with other witnesses, it is up to you to decide whether to rely on an expert's opinion. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are either not sound or if you feel that they are outweighed by other evidence, you may disregard the opinion in part or in its entirely.

When an expert witness has been or will be paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias particularly where court testimony is given by the expert.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §72.08; U. S. Eleventh Circuit District Judge's Association, Pattern Jury Instructions, Civil Cases, 1990 Ed., No. 5.2.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 9

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, including their current or former employment, the relationship with other witnesses and the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

After making your own judgment as to the credibility or each witness, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may accept or reject the testimony of any witness, in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a single witness or a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

3 Devitt, Blackmar & Wolff, Federal Jury Practice and Instructions, 4th Ed., §73.01.

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 10**

A witness may be impeached or his testimony discredited by showing bias or interest arising from the relationship between the witness and a party to the case, the witness's employment, any pecuniary or other interest the witness may have, or any other fact or circumstance which may affect the credibility of the opposing witness's testimony.

*United States v. Abel*, 469 U.S. 45, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984); 3 Federal Evidence, 2d Ed. §307.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 11

In a products liability negligence action such as this, the Plaintiff must establish three elements: (1) he was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant. Further, liability for negligence requires, in addition to the above, proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design.

In order for Plaintiff to prevail in this case, you must find by a preponderance of the evidence that all four of these elements have been proven, as Plaintiff seeks recovery solely under a negligence theory of recovery in this case. If you find that Plaintiff failed to satisfy any one or more of these elements, you must find in favor of the Defendant.

*Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 505 S.E.2d 354 (Ct. App. 1998); *Madden v. Cox*, 284 S.C. 574, 328 S.E.2d 108 (Ct. App. 1985); *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 215-18, 609 S.E.2d 565, 568-70 (Ct. App. 2005); *Small*, 329 S.C. at 462-63, 494 S.E.2d at 842; *Bragg*, 319 S.C. at 539, 462 S.E.2d at 326; *see also* S.C. Code Ann. § 15-73-10 (Supp. 2006).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 12

An essential element in a negligence cause of action is the existence of a legal duty of care owed by the defendant to the plaintiff. Without such a duty, there can be no actionable negligence. To prevail in a negligence action, a plaintiff must demonstrate: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach.

Negligence means that a person, in this case a corporation, did not exercise reasonable care. Negligence means that a person did not exercise the same amount of care that a person of ordinary reason and prudence, a person of ordinary sense and ability, would have exercised in the same circumstances. The word "careless" means the same thing.

A negligent person has done something that a reasonable person would not have done, if faced with the same situation; or, he has failed to do something that a reasonable person would have done. To determine whether a particular act is negligent, you should compare that act with the manner in which a person of ordinary sense and ability would have acted in a similar circumstance.

With regard to negligence, a manufacturer of a product is held to the level of an expert in the field, and is under a duty to conduct reasonable tests and inspections of its products. When a manufacturer is aware of a hazard of danger, it must take reasonable steps to eliminate that hazard or prevent the danger. An automobile manufacturer must design a vehicle that will be reasonably safe to its occupants in the event of an incident.

*Platt v. CSX Transportation, Inc.*, 2008 WL 2168157, 4 (Ct. App. 2008); *Wyatt v. Fowler*, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (1997); *Rogers v. S.C. Dep't of Parole and Cmty. Corr.*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995); *Tanner v. Florence Co. Treasurer*, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 13

A product can be defective in either design or manufacture. In cases alleging manufacturing defects, the Plaintiff must prove that the product, as manufactured by the Defendant, did not conform to the manufacturer's own design specifications. The Plaintiff must prove how the particular product at issue differed from the manufacturer's specifications and other products manufactured by the Defendant, and prove that the manufacturing defect proximately caused his injuries. Manufacturing defects only affect one or a limited number of products, rather than all products manufactured by the Defendant.

In cases alleging design defects, the Plaintiff must prove the manufacturer failed to adopt a reasonable safe design for the product, thereby rendering the product defective and unreasonably dangerous. Unlike manufacturing defects, design defects render all products with the same design defective. In design defect cases, state of the art and industry standards are relevant to show both the reasonableness of the design and whether the product was dangerous beyond the expectations of the ordinary consumer. While any product can be made more safe, the fact, that it is not, does not automatically make the product unreasonably dangerous. Rather, in the final analysis, numerous factors must be considered, including the usefulness and desirability of the product, the cost involved for added safety, the likelihood and potential seriousness of injury, and the obviousness of danger.

*Reed v. Tiffin Motor Homes, Inc.*, 697 F.2d 1192 (4th Cir. 1982) (interpreting South Carolina law); *Claytor v. General Motors Corp.*, 286 S.E.2d 129, 131 (S.C. 1982).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 14

Two tests have evolved to determine whether a product is in a defective condition and unreasonably dangerous for its intended use. The first test is whether the product is unreasonably dangerous to the ordinary consumer or user given the conditions and circumstances that foreseeably attend the use of the product. Under the second test, a product is unreasonably dangerous and defective if the danger associated with the use of the product outweighs the utility of the product.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. Ct. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129, 131 (S.C. 1982);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 15**

I charge you, Ladies and Gentlemen of the Jury, that if you are reasonably satisfied from the evidence in this case that at the time the 1996 Ford F-250 truck in question left physical control of the Defendant, that it was in a reasonably safe condition for its intended use, then you must find for the Defendant.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. Ct. App. 1995).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 16**

A product is not defective in design or unreasonably dangerous simply because it does not incorporate only features representing the ultimate in safety. Nor is a product defective or unreasonably dangerous simply because an alternative design existed that would have reduced the risk of injury, if the alternative design would have introduced other dangers or disadvantages that outweigh the benefits.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129, 132 (S.C. 1982);
Austin v. Clark Equipment Co., 48 F.3d 833, 837 (4th Cir. 1995);
Mickle v. Blackmon, 166 S.E. 2d 173, 198 (S.C. 1969)
Stonehocker v. General Motors Corp., 587 F.2d 151 (4th Cir. 1978);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 17**

In order to establish products liability under South Carolina law, Plaintiffs must introduce evidence that a safer alternative design of the product was feasible and cannot rely upon mere conceptual design theories.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 327 (S.C. Ct. App. 1995);
Sunvillas Homeowners Assoc. v. Square D Co., 391 S.E.2d 868, 870 (S.C. Ct. App. 1990);
Stanczyk v. Black & Decker. Inc., 836 F. Supp. 565 (N.D. Ill. 1993);
Little v. Brown and Williamson Tobacco Corp., 243 F. Supp. 2d 480 (D.S.C. 2001);
Cohen v. Winnebago Industries, Inc., 2000 U.S. App. LEXIS 4850, *14 (4th Cir. 2000) (unpublished).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 18

A manufacturer of a product is not the insurer of the safety of the product's user. The manufacturer is not required to make a product which is accident-proof, nor does a manufacturer have a duty to produce a product incorporating only features representing the ultimate in safety. A product is not defective in design or unreasonably dangerous simply because it causes injury or is capable of causing injury.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129, 132 (S.C. 1982);
Austin v. Clark Equipment Co., 48 F.3d 833, 837 (4th Cir. 1995);
Mickle v. Blackmon, 166 S.E. 2d 173, 198 (S.C. 1969)
Stonehocker v. General Motors Corp., 587 F.2d 151 (4th Cir. 1978);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 19**

While any product can be made safer, the fact that it was not made safer by the Defendant does not automatically mean that the product is unreasonably dangerous.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129, 132 (S.C. 1982).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 20**

You may consider the state-of-the-art and industry standards, custom and practice in determining whether the design of the product was reasonable and whether it was dangerous beyond the expectations of the ordinary consumer.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. Ct. App. 1995);
Bennett v. Morbark Motor Co., 236 F. Supp. 558, 562 (D.S.C. 2002);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192, 1196 (4th Cir. 1982);
Cohen v. Winnebago, 2000 U.S. App. LEXIS 4850 (4th Cir. 2000) (unpublished).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 21**

In determining whether a product is defective or unreasonably dangerous, the product must be measured against a standard existing at the time of the sale or against reasonable customer expectations held at the time of the sale. Hindsight opinions by experts or others suggesting that more should have been done are insufficient to discredit the conclusion that the manufacturer met the standard of care.

Bragg v. Hi-Ranger, 462 S.E.2d 321, 331 (S.C. Ct. App. 1995);
Sexton v. Bell Helmets, Inc., 926 F.2d 331, 337 (4th Cir. 1991);
Doe v. Miles Laboratories, 927 F.2d 187, 193 (4th Cir. 1991).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 22**

A product is defective and unreasonably dangerous only if Plaintiffs prove by a preponderance of the evidence that an reasonable alternative design was available, and that the disadvantages, if any, associated with that alternative design are outweighed by the benefits of that design in significantly reducing the risk of injury.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321 (S.C. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129 (S.C. 1982);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982);
Austin v. Clark Equipment Co., 48 F.3d 833 (4th Cir. 1995);
Mickle v. Blackmon, 166 S.E. 2d 173 (S.C. 1969)
Stonehocker v. General Motors Corp., 587 F.2d 151 (4th Cir. 1978);
Sunvillas Homeowners Assoc. v. Square D Co., 391 S.E.2d 868, (S.C. App. 1990);
Stanczyk v. Black & Decker. Inc., 836 F. Supp. 565 (N.D. Ill. 1993);
Cohen v. Winnebago Industries, Inc., 2000 U.S. App. LEXIS 4850, *14 (4th Cir. 2000);
Little v. Brown and Williamson Tobacco Corp., 243 F. Supp.2d 480 (D.S.C. 2001).
Restatement (Third) of Torts: Products Liability, § 2

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 23

South Carolina law holds that product manufacturers have no duty to design or manufacture a product that will not eventually wear out. If the product is in a good condition when sold, the seller is not responsible when it undergoes subsequent changes, or eventually wears out. The mere lapse of time since the sale by the defendant, during which there has been continued safe use of the product, is always relevant, as indicating that the seller was not responsible for the defect.

Mickle v. Blackmon, 252 S.C. 202, 237, 166 S.E.2d 173, 189 (1969).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 24

You may consider a large number of factors in deciding whether, on balance, the omission of a reasonable alternative design renders the product defective and unreasonably dangerous, including the magnitude and probability of the foreseeable risks of harm, the extent to which the risk of harm was obvious or generally known, the extent to which the alternative design would have reduced or increased those risks, and the effect of the alternative design on production costs, product longevity, ease and cost of maintenance and repair, esthetics, convenience and ease of use, and range of consumer choice among products.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321 (S.C. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129 (S.C. 1982);
Dreisonstok v. Volkswagenwerk, 489 F.2d 1066, 1072-73 (4th Cir. 1974);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982).
Restatement (Third) of Torts: Products Liability, § 2, comment f

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 25

In balancing the risk and utility of a product, you may consider several factors including the usefulness and desirability of the product, the costs involved for added safety, the likelihood and potential of serious injury, and the obviousness of danger.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. Ct. App. 1995);
Claytor v. General Motors Corp., 286 S.E.2d 129, 132 (S.C. 1982).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 26

Every case such as this involves a delicate balancing of many factors in order to determine whether the manufacturer has used ordinary care in designing a product, which, giving consideration to the market purposes and utility of the product, did not involve unreasonable risk of injury to users within the range of its intended use.

Dreisonstok v. Volkswagenwerk, 489 F.2d 1066, 1073 (4th Cir. 1974).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 27

The mere fact that a product malfunctions does not demonstrate the manufacturer's negligence nor does it establish that the product was defective.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 328 (S.C. App. 1995);
Sunvillas Homeowners Assoc. v. Square D Co., 391 S.E.2d 868, (S.C. App. 1990).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 28**

Industry custom and practice may be considered by you as evidence that a product is not defective or unreasonably dangerous. However, such evidence is not necessarily conclusive, if the Plaintiff proves that the entire automotive industry adopted an unreasonable standard.

Stonehocker v. General Motors Corp., 587 F.2d 151, 156-157 (4th Cir. 1978);
Sexton v. Bell Helmets, Inc., 926 F.2d 331 (4th Cir. 1991);
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 29**

A manufacturer has no duty to notify previous purchasers of its products about later developed safety devices or to retrofit those products if the products were non-defective under standards existing at the time of the manufacture or sale of the product.

Bragg v. Hi-Ranger, Inc., 462 S.E.2d 321, 331(S.C. Ct. App. 1995);
Romero v. International Harvester Co., 979 F.2d 1444, 1451 (10th Cir. 1992).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 30

A product is defective only where the product is, at the time it leaves the seller's hands, in a condition not contemplated by the ultimate consumer, which will be unreasonably dangerous to him. Defendant is not held to an awareness of unforeseeable uses or misuses or the unreasonable assumption by Plaintiff of obvious hazards accompanying the product.

Anderson v. Green Bull, Inc., 471 S.E.2d 708, 710 (S.C. Ct. App. 1996);
Restatement (Second) of Torts § 402A, *comment g*.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 31

Proximate cause is an essential element of Plaintiff's burden of proof, no matter the theory of recovery.

Young v. Tide Craft. Inc., 242 S.E.2d 671, 675 (S.C. 1978).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 32

I charge you that in addition to proving that the product in question was in a defective condition unreasonably dangerous to Plaintiff, Plaintiff in this case must also prove that the defective condition of the product, if shown, was due to the manufacturer's negligence in failing to adopt a safe design. The fact that a product malfunctions does not demonstrate negligence or defect.

*Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 505 S.E.2d 354 (Ct. App. 1998); *Madden v. Cox*, 284 S.C. 574, 328 S.E.2d 108 (Ct. App. 1985); *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 215-18, 609 S.E.2d 565, 568-70 (Ct. App. 2005); *Small*, 329 S.C. at 462-63, 494 S.E.2d at 842; *Bragg*, 319 S.C. at 539, 462 S.E.2d at 326; *Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321, 328 (S.C. App. 1995); *Sunvillas Homeowners Assoc. v. Square D Co.*, 391 S.E.2d 868, (S.C. App. 1990).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 33

In addition to proving that the product in question was in a defective condition unreasonably dangerous due to the manufacturer's negligence, Plaintiff must also prove that the defective condition of the product, if shown, was due to the proximate cause of its injury. If, after the presentation of all evidence, it is just as reasonable to find that Plaintiff's injuries were caused by some factor not attributable to the condition of the product, then Plaintiff has not met its burden of proof, and you must find for Defendant.

Messier v. Adicks, 161 S.E.2d 845 (S.C. 1968).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 34

Proximate cause has been defined as the direct cause, the efficient cause, the thing that brought about the injury complained of.

Burnett v. Augusta Coca-Cola Bottling Company, 154 S.E. 645, 646-647 (S.C. 1930).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 35

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff's injury would not have occurred "but for" the defective condition. Legal cause is proved by establishing foreseeability. An injury is foreseeable if it is the natural and probable consequence of the defective condition.

Hurd v. Williamsburg County, 363 S.C. 421, 428, 611 S.E.2d 488, 492 (S.C. 2005)

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 36**

In order for a plaintiff to recover, there must be proof not only of the damage, but also that it was caused by a defect in the product. In other words, the mere fact that Plaintiff was damaged by a product manufactured by Defendant does not entitle it to recover from Defendant unless it has proven, by a preponderance of the evidence, that the damages it suffered were proximately caused by a defect in this product.

Marker v. Universal Oil Products, 250 F.2d 603, 605 (10th Cir. 1957);
Dreisonstok v. Volkswagenwerk A.G., 489 F.2d 1066, 1068-71 (4th Cir. 1974);
Marshal v. H.K. Ferguson Company, 623 F.2d 882, 885 (4th Cir. 1980).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 37

Where the cause of Plaintiff's injury may be as reasonably attributed to an act for which Defendant is not liable as to one for which it is liable, Plaintiff has failed to carry the burden of establishing that Plaintiff's injuries were the proximate result of Defendant's negligence.

Messier v. Adicks, 161 S.E.2d 845, 846 (S.C. 1968).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 38

If you find that the Plaintiff would have received the damages sustained even if the product had not been in a defective and unreasonably dangerous condition, then the defect was not a cause of the Plaintiff's injuries and you shall find for the Defendant.

Dreisonstok v. Volkwagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 39

If the evidence reveals several possible causes of an accident or damage, it is improper to guess which cause might have been the proximate cause of the Plaintiff's damages and a verdict should be rendered for the Defendant.

Harris v. Rose's Stores, 433 S.E.2d 905 (S.C. Ct. App. 1993).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 40**

The measure of actual damages is the loss actually suffered. A party cannot recover for losses that are conjectural or speculative in nature. Actual damages must be shown by the greater weight of the evidence.

*Kline Iron and Steel Co. v. Superior Trucking Co.*, 261 S.C. 542, 201 S.E.2d 388 (1973); *Manning v. Columbia*, 297 S.C. 451, 377 S.E.2d 335 (1989).
Ervin, South Carolina Requests to Charge – Civil § 14-5 (1994).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 41**

The owner of damaged property has a duty to exercise reasonable care and diligence to minimize any further damage.

*Dubose v. Bultman,* 215 S.C. 468, 56 S.E.2d 95 (1949);
*Coleman v. Levkoff,* 128 S.C. 487, 122 S.E. 875 (1924);
*Sullivan v. Anderson,* 81 S.C. 478, 62 S.E. 862 (1908).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 42**

The existence or amount of damages cannot be left to conjecture, guess or speculation. However, proof of amount of loss with absolute or mathematical certainty is not required. Damages must be susceptible to ascertainment with a reasonable degree of certainty.

*Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968);
*United Merchants & Mfrs., Inc. v. South Carolina Electric & Gas Co.*, 113 F. Supp 257 (D.S.C. 1953), *aff'd* 208 F.2d 685 (4th Cir. 1953);
Ervin, South Carolina Requests to Charge – Civil § 24-26 (1994).

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 43**

The Plaintiff has the burden of proving the value of personal property damages alleged. The law allows actual damages. That throws upon the plaintiff the burden of proving his damage, and the jury cannot go beyond that.

*McFail v. Barnwell County*, 35 S.E. 562, 565 (S.C. 1900);
*Joyner v. St. Matthews Builders*, 208 S.E.2d 48, 50 (S.C. 1974);
*Ryan v. Baldrick*, 14 S. C. L. (3 McCord) 498, 505 (1826);
*Sparrow v. Toyota of Florence, Inc.*, 396 S.E.2d 645, 647 (S.C. Ct. App. 1990);
Catherine A. Haselden, 11 S.C. Juris. Damages § 10 (Supp. 2006) ("The plaintiff has the burden of proving the value of both pecuniary and nonpecuniary damages.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 44

As a general rule, the measure of damages for injury to personal property is the difference between the market value of the property immediately before and its value immediately after the injury. If a market does not exist for such property, the rule is not applied and the cost of repairs or the replacement value of the property is used. Any fanciful or sentimental value attributed by Plaintiff must be excluded.

*Duke Power Co. v. Thornton*, 401 S.E.2d 195, 196 (S.C. Ct. App. 1991);
*Coleman v. Levkoff*, 122 S.E. 875, 876 (S.C. 1924);
Nelson v. Coleman Co., 155 S.E.2d 917, 921 (S.C. 1967);
*Perry v. Estate of Perry*, 473 S.E.2d 860, 864 (S.C. Ct. App. 1996) ("The value given personal property should be its fair market value.").

**DEFENDANT FORD'S REQUEST TO CHARGE NO. 45**

Spoliation of evidence refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. The duty to preserve material evidence arises not only during litigation, but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.

When a piece of evidence is lost or destroyed by a party, you may draw an inference that the evidence which was lost or destroyed by that party would have been adverse to that party or his claims or allegations.

*Stokes v. Spartanburg Regional Medical Center*, 368 S.C. 515, 629 S.E.2d 675 (Ct. App. 2006); *Kershaw County Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990); *Silvestri v. General Motors Corp.*, 271 F.3d 583, 593 (4th Cir. 2001).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 46

In tort actions, there may be aggravating circumstances that warrant the awarding or imposing of additional damages called punitive damages.[1] Punitive damages, when authorized, are imposed not as compensation to a plaintiff but to punish, penalize, or deter a defendant.[2] Before you may award punitive damages, the plaintiff must prove by clear and convincing evidence that the defendant's actions were willful, wanton, or in reckless disregard of the plaintiff's rights, and included a "consciousness of wrongdoing" at the time of the conduct.[3]

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[1] SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)– CIVIL, § 13-21 (2002); *South Carolina Farm Bureau Mutual Ins. Co. v. Love Chevrolet, Inc.*, 478 S.E.2d 57, 58 (S.C. 1996) (punitive damages meant only to "redress[] egregious wrongs"); *id.* at 59 ("[T]he court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damage award. If not, the issue of punitive damages may not be submitted to the jury.").

[2] SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)– CIVIL, § 13-21 (2002); *Clark v. Cantrell*, 529 S.E.2d 528, 534 (S.C. 2000) ("[T]he paramount purpose for awarding exemplary damages is not to compensate the plaintiff, but to punish and set an example for others."); *Austin v. Specialty Transp. Services, Inc.*, 594 S.E.2d 867, 875 (S.C. App. 2004) (same); *Clark*, 529 S.E.2d at 533 ("[W]e find unpersuasive Cantrell's attempt to blur all distinctions between actual and punitive damages by unduly emphasizing that compensatory aspect."); *Gamble v. Stevenson*, 406 S.E.2d 350, 354 (S.C. 1991) ("In South Carolina, punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.") (citation omitted); *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 100 (4th Cir. 1991) (applying South Carolina law) ("The law of South Carolina permits a jury to award punitive damages to punish, deter, and vindicate the rights of the plaintiff whenever the conduct of the defendant is willful, wanton or reckless."). *Cf. Garner v. Wyeth Laboratories, Inc.*, 585 F.Supp. 189, 194 (D.S.C. 1984) (applying South Carolina law) ("In South Carolina, punitive damages do not compensate the plaintiff for any loss. Instead, they are awarded to punish the defendant and deter others who might undertake similar action.").

[3] SOUTH CAROLINA CODE ANN. § 15-33-135 ("[i]n any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."); SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)– CIVIL, § 13-21 (2002); *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 449-50 (4th Cir. 2001) (applying South Carolina law) ("Under South Carolina law, punitive damages may be awarded to punish only those tortfeasors who have acted in a 'reckless, willful, or wanton' manner."); *Martasin v. Hilton Head Health Sys., L.P.*, 613 S.E.2d 795, 802 (S.C. App. 2005) ("Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights."); *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 100 (4th Cir. 1991) (applying South Carolina law) ("The plaintiff must prove by clear and convincing evidence that the conduct included a 'consciousness of wrongdoing' at the time of the conduct."); *Scott v. Porter*, 530 S.E.2d 389, 396 (S.C. App. 2000) ("In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights.") (citation and internal quotation marks omitted); *Clark v. Cantrell*, 529 S.E.2d 528, 534 (S.C. 2000) ("With punitive damages, however, the focus is on only the defendant. The central inquiry is whether the defendant's conduct was so reckless, willful, wanton, or malicious that the defendant should be punished and deterred by requiring him or her to pay money to the plaintiff.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 47

lear and convincing evidence is evidence that causes you to firmly believe, without hesitancy, each essential element of the claim to be highly probable. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence, but less than the beyond a reasonable doubt standard required in criminal cases.[4]

[4] *See* SOUTH CAROLINA CODE ANN. § 15-33-135; SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)–CIVIL, § 13-21 (2002) (the highest burden of proof known to the civil law is applicable punitive damages); *Austin v. Specialty Transp. Services, Inc.*, 594 S.E.2d 867, 875 (S.C. App. 2004) ("On the issue of punitive damages, the highest burden of proof known to the civil law is applicable."); *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (applying South Carolina law) ("The basis for an award of punitive damages must be proved by 'clear and convincing evidence.' And 'clear and convincing' has been defined as 'evidence . . . of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established,' and, as well, as evidence that proves the facts at issue to be 'highly probable.'") (citations omitted).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 48

You may not award punitive damages merely because you have found by a preponderance of the evidence that the product was defective or that the defendant was negligent, or even grossly negligent.[5] An innocent mistake or error of judgment does not constitute the type of misconduct that will support an award of punitive damages.[6] Accordingly, you may not award punitive damages if there is a bona fide controversy about whether the product is defective. Rather, you may award punitive damages only if you find by clear and convincing evidence that reasonable people could not in good faith disagree about whether the product was defective.[7]

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[5] SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)– CIVIL, § 13-21 (2002) ("Mere negligence will not support a punitive damages award."); *Rogers v. Florence Printing Co.*, 106 S.E.2d 258, 263 (S.C. 1958) ("We have held in many cases that exemplary damages should not be awarded for mere gross negligence . . . ."); *id.* ("It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor."); *Stonehocker v. General Motors Corp.*, 587 F.2d 151, 158 (4th Cir. 1978) (applying South Carolina law) ("[E]xemplary damages should not be awarded for mere gross negligence.") (citations omitted); *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (applying South Carolina law) ("Punitive damages are designed to punish only behavior that was obviously reckless at the time of commission.").

[6] SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE) – CIVIL, § 13-21 ("It is the *present* consciousness of wrongdoing that justifies the assessment of punitive damages against the wrongdoer"); *Rogers v. Florence Printing Co.*, 106 S.E.2d 258, 263 (S.C. 1958) ("It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor."); *id.* ("We have held in many cases that exemplary damages should not be awarded for mere gross negligence . . . ."); *id.* ("The test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."); *Hawkins v. Pathology Assoc. of Greenville, P.A.*, 498 S.E.2d 395, 405 (S.C. App. 1998) (same); *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (applying South Carolina law) ("Punitive damages are designed to punish only behavior that was obviously reckless at the time of commission.").

[7] *See, e.g., Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 594 S.E.2d 455, 462 (S.C. 2004) (affirming summary judgment for insurer on bad faith claim and explaining that "[u]nder South Carolina law," a plaintiff can prevail on a bad faith claim only "when there is no reasonable basis to support the insurer's decision"); *Crossley v. State Farm Mutual Automobile Ins. Co.*, 415 S.E.2d 393, 397 (S.C. 1992) (if an insurer has an arguably reasonable basis for contesting a claim, punitive damages for bad faith denial are inappropriate); *Poston v. National Fidelity Life Ins. Co.*, 399 S.E.2d 770, 773 (S.C. 1990) (reversing punitive damage award in bad faith denial case where insurance document was "ambiguous and susceptible of more than one construction," and explaining that even if insurer's interpretation was incorrect, it "does not rise to the level of bad faith" warranting punitive damages); *Jimenez v. Daimler Chrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (applying South Carolina law) ("Punitive damages are designed to punish only behavior that was *obviously* reckless at the time of commission.") (emphasis added); *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 106 (4th Cir. 1991) (applying South Carolina law) ("[A]n award of punitive damages which is entered without a legal standard is unacceptable, regardless of the amount."); *Satcher v. Honda Motor Co.*, 52 F.3d 1311, 1317 (5th Cir. 1995) (vacating award in defective design case where "there is a genuine dispute in the scientific community as to" the reasonableness of the design); *Hillrichs v. Avco Corp.*, 514 N.W.2d 94, 100 (Iowa 1994) (punitive damages inappropriate where "reasonable disagreement" exists over risks and utilities of product); David G. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 38 (1982) ("[Punitive] damages usually will not be appropriate unless the product was very defective, and plainly so, at the time it was sold. A plaintiff usually should be entitled to a directed verdict

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 49

You may not award punitive damages merely because the defendant considered cost in designing the product. A responsible manufacturer must consider the costs in designing products that are affordable to the anticipated users of its products. Nor may you award punitive damages simply because the defendant balanced the risk of harm against other factors (including, for example, cost, convenience, and aesthetics) that affect the utility, usefulness, practicality or desirability of the product to users and consumers.[8]

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on defectiveness, or close thereto, before the punitive damages issue is properly before the jury at all."); *see also Southwestern Tel. & Tel. Co. v. Danaher,* 238 U.S. 482, 490 (1915) (even if the defendant "should have known that the Supreme Court of the State in the exercise of its judicial power might hold [its conduct] unreasonable," a $6,300 civil penalty violated "fundamental principles of justice" where "the prevailing view rule elsewhere was otherwise"); *Colautti v. Franklin,* 439 U.S. 379 (1979) (statute requiring physician to use abortion method providing the best opportunity for the fetus to be born alive without endangering the mother was unconstitutionally vague, where "[t]he choice of an appropriate abortion technique . . . is a complex medical judgment about which experts can—and do—disagree").

[8] *See Claytor v. General Motors Corp.*, 286 S.E.2d 129, 132 (S.C. 1982) ("Most any product could be made more safe. Academically, it can be argued that all products are defective because they can be made more safe. However, . . . [i]n the final analysis, we have another of the law's balancing acts and numerous factors must be considered, including the usefulness and desirability of the product, the cost involved for added safety, the likelihood and potential seriousness of injury, and the obviousness of danger."); *Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321, 328 (S.C. App. 1995) (same); Restatement (Third) of Torts: Products Liability, § 2, comment f at 23 ("[T]he likely effects of the alternative design on production costs; the effects of the alternative design on product longevity, maintenance, repair, and esthetics; and the range of consumer choice among products are factors that may be taken into account. . . . [E]vidence of the magnitude and probability of foreseeable harm may be offset by evidence that the proposed alternative design would reduce the efficiency and the utility of the product.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 50

The fact that a product is designed to meet or surpass government standards normally establishes the existence of a bona fide controversy about whether the product is defective. Accordingly, punitive damages generally are not appropriate where a manufacturer has designed its product to meet government standards or to perform better than government standards require.[9]

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[9] *See, e.g., Stonehocker v. General Motors Corp.*, 587 F.2d 151, 156-57 (4th Cir. 1978) (applying South Carolina law) (error, in action by plaintiff seeking punitive damages, to exclude evidence that defendant complied with federal motor vehicle safety standards); *accord Satcher v. Honda Motor Co.*, 52 F.3d 1311, 1316-17 (5th Cir. 1995) (vacating jury award of punitive damages, in part, on ground that no governmental agency has ever required anything other than the allegedly defective feature); *Richards v. Michelin Tire Corp.*, 21 F.3d 1048, 1059 (11th Cir. 1994) (holding evidence insufficient to support award of punitive damages in light of compliance with federal safety standards); *Drabik v. Stanley-Bostich, Inc.*, 997 F.2d 496, 510 (8th Cir. 1993); *Cooper v. General Motors Corp.*, 702 So. 2d 428, 434 (Miss. 1997) ("As a general rule, a state cannot impose common law damages on individuals for doing what a federal act or regulation authorized them to do."); *Chrysler Corp. v. Wolmer*, 499 So.2d 823, 826 (Fla. 1986) (holding evidence insufficient to support award of punitive damages in light of compliance with federal safety standards); *Miles v. Ford Motor Co.*, 922 S.W.2d 572, 589 (Tex. Ct. App. 1996) (holding evidence insufficient to support award of punitive damages in light of compliance with federal safety standards), *aff'd in part, rev'd in part on other grounds*, 967 S.W.2d 377 (Tex. 1998); American Law Institute, *Reporter's Study: Enterprise Responsibility for Personal Injury*, Vol. II, at 101 (1991) ("At a minimum, such regulatory compliance should preclude the award of punitive damages."); *Prosser and Keeton on Torts*, § 36 at n.41 ("In most contexts . . . compliance with a statutory standard should bar liability for punitive damages."); David C. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 42 (1982) ("[P]roof of compliance with the regulation or statute ordinarily should be deemed to be conclusive proof of good faith and hence a conclusive defense to a punitive damages claim.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 51

Similarly, the fact that an industry has adopted designs or practices consistent with the defendant's generally shows that there is an arguably-legitimate basis for those designs and practices. Thus, punitive damages are generally not appropriate where the defendant has complied with industry custom or practice.[10]

[10] *See, e.g., Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (applying South Carolina law) (reversing punitive damage award, in part, because "[t]here is no evidence in the record that DaimlerChrysler or any engineer in the industry recognized during the [relevant] time period that using a trunk latch for the liftgate of the minivan could create a safety problem"); *Reed v. Tiffin Motor Homes, Inc.*, 697 F.2d 1192, 1198 (4th Cir. 1982) (applying South Carolina law) ("Clearly, whether or not [defendants] followed industry standards . . . while designing the motor home is probative on the issue of the wantonness, willfulness and maliciousness of their acts."); David G. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 42 (1982).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 52

There is no right to punitive damages. Accordingly, you need not award punitive damages even if you find that the standard for imposing punitive damages has been satisfied.[11]

[11] *See Smith v. Wade*, 461 U.S. 30, 52 (1983) ("[A] key feature of punitive damages [is] that they are never awarded as of right, no matter how egregious the defendant's conduct.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 53

The purpose of compensatory damages is to compensate the plaintiff and to make him whole. However, a substantial award of compensatory damages also has the effect of punishing and deterring misconduct. Therefore, in determining the amount of punitive damages, if any, necessary for appropriate punishment and deterrence, you must consider the punishment and deterrent effect associated with an award of compensatory damages alone.[12]

[12] *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 103 (4th Cir. 1991) (applying South Carolina law) (punitive damages were historically awarded to remedy "the inadequacy of the existing standards for awarding compensatory damages . . . [for] mental anguish . . . [or] indignity and suffering, injuries for which compensation was not ordinarily available . . . . Even though the law of compensatory damages now permits awards for mental anguish and suffering, . . . punitive damages nevertheless continued in the jurisprudence on the basis that they had . . . been available earlier"); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003) ("Compensatory damages, however, already contain this punitive element."); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 582 (1996) (suggesting that high punitive damages award is not warranted where compensatory award is large); *Prosser and Keeton on Torts* § 4 at 25-26 (one reason for imposing tort liability is to provide incentive to avoid future harm; this "idea of prevention shades into punishment of the offender").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 54

You may not award any punitive damages for the purpose of punishing the defendant for the sale of vehicles in other States, for any injuries which may have occurred in other States, or for the purpose of changing the defendant's conduct in other States.[13]

[13] *Hundley v. Rite Aid of South Carolina*, Inc., 529 S.E.2d 45, 61 (S.C. App. 2000) ("[O]ne state may not punish for conduct occurring in another state which is acceptable within that other state.") (citation omitted); *id.* (claim for punitive damages improper when not "base[d] . . . on the manufacturer's activities in [forum State] alone, but included instances of similar conduct occurring in other states, where it was not illegal or improper") (citation omitted); *Lister v. NationsBank of Delaware, N.A.*, 494 S.E.2d 449, 459 (S.C. App. 1997) (punitive damages intended to "protect[] South Carolina citizens"); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) ("A State cannot punish a defendant for conduct that *may* have been lawful where it occurred); *id.* ("A jury *must* be instructed . . . that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.") (emphasis added); *id.* ("Nor, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996) ("[A] State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other states.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 55

Any individuals other than the plaintiff who might claim to have been harmed by the defendant have the right to bring their own lawsuit seeking compensatory and punitive damages for the wrong, if any done to them. Therefore, if you decide to impose punitive damages, you may not impose punitive damages for the purpose of punishing the defendant for any wrong except the wrong done to the plaintiff in this case.[14]

[14] *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003) ("Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis . . . . Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 56

In determining the amount of punitive damages, the most important factor to consider is the reprehensibility or blameworthiness of the defendant's conduct.[15] In evaluating the reprehensibility of the defendant's conduct, you must consider, for example, (1) the extent to which the product met or surpassed government standards, (2) the extent to which the product complied with industry custom and practice, (3) the extent to which the defendant had fair notice in advance that its product would be found defective under South Carolina law, and (4) whether the defendant had other arguably-legitimate grounds to conclude that its conduct was lawful and that the product was not defective.[16]

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[15] *South Carolina Farm Bureau Mutual Ins. Co. v. Love Chevrolet, Inc.*, 478 S.E.2d 57, 58 n.3 (S.C. 1996) ("[T]he single most important indicium of the reasonableness of a punitive damage award is the degree of reprehensibility of the defendant's conduct."); *Collins Entertainment Corp. v. Coats & Coats Rental Amusement*, 584 S.E.2d 120, 140 (S.C. App. 2003) (same); *Hundley v. Rite Aid of South Carolina*, Inc., 529 S.E.2d 45, 61-62 (S.C. App. 2000) (same); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (same); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996) (same).

[16] *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 577-80 (1996) (evaluating defendant's reprehensibility in light of compliance with state disclosure statutes, which provided a "good faith basis for believing that no duty to disclose exists"); *see also supra* notes 7-10.

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 57

In determining the amount of punitive damages, if any, you should also consider the following factors: the type of punishable conduct the defendant engaged in; the extent and duration of that conduct; whether it is likely that the defendant would act in that way again; whether the defendant acted with the intent to cause harm, and if not, what its intent was; whether the defendant made a profit from wrongful acts or omissions, and if so, the amount of that profit.[17]

[17] *Gamble v. Stevenson*, 406 S.E.2d 350, 354 (S.C. 1991) (listing factors to consider during post-trial review); *Collins Entertainment Corp. v. Coats & Coats Rental Amusement*, 584 S.E.2d 120, 138 (S.C. App. 2003) (same); *Scott v. Porter*, 530 S.E.2d 389, 396 (S.C. App. 2000) (same).

## DEFENDANT FORD'S REQUESTS TO CHARGE NO. 58

Any amount of punitive damages you award must bear a reasonable relationship to the harm caused to the plaintiff. In cases such as this, where compensatory damages are substantial, a punitive damages award equal to the compensatory award can reach the outermost limit permitted by law, although a lesser amount may be appropriate based upon the other factors I have identified for you.[18]

[18] *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) ("When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee."). *See also Gamble v. Stevenson*, 406 S.E.2d 350, 354 (S.C. 1991) ("[N]o award [may] be grossly disproportionate to the severity of the offense."); *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 104 (4th Cir. 1991) (applying South Carolina law) (to comport with due process, punitive damages must "not [be] grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages"); *id.* at 106 ("[N]o punitive damages award [may] be 'grossly disproportionate' to the severity of the conduct.") (citation omitted); *id.* at 110 ("[A]ny penalty imposed should bear a relationship to the nature and extent of the conduct and the harm caused, including the compensatory damage award made by the jury."); *Lister v. NationsBank of Delaware, N.A.*, 494 S.E.2d 449, 458 (S.C. App. 1997) ("The Due Process Clause of the Fourteenth Amendment prohibits states from imposing grossly excessive punishments on tortfeasors."); *id.* at 459 (punitive damage award must be "reasonably related to the harm likely to result from this conduct"); *Hundley v. Rite Aid of South Carolina, Inc.*, 529 S.E.2d 45, 61 (S.C. App. 2000) ("Punitive damages must bear a 'reasonable relationship' to compensatory damages."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580-81 (1996) ("The principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 59

In determining the proper amount of punitive damages, you may not consider the defendant's wealth or size.[19]

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[19] SOUTH CAROLINA JURY INSTRUCTIONS (REQUESTS TO CHARGE)– CIVIL, § 13-21 (2002); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003) ("The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award."); *BMW of North America v. Gore*, 517 U.S. 559, 574-85 (1996) (wealth of defendant irrelevant to due process analysis); *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 464 (1993) ("[T]he emphasis on the wealth of the wrongdoer increas[s] the risk that the awarded may have been influenced by prejudice against large corporations, a risk that is of special concern when the defendant is a nonresident."); *Honda Motor Company, Ltd. v. Oberg*, 512 U.S. 415, 432 (1994) ("[T]he presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences."); *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 110 (4th Cir. 1991) (applying South Carolina law) (financial evidence considered to "limit[] . . . punishment and thus . . . not effect economic bankruptcy"); *Hundley v. Rite Aid of South Carolina*, Inc., 529 S.E.2d 45, 61 (S.C. App. 2000) (jury considered "financial status" evidence only to ascertain whether the defendant "had the ability to pay the award"); American Law Institute, *Reporters' Study: Enterprise Responsibility for Personal Injury*, Vol. II, at 254 (1991) ("[W]hat is relevant is not the defendant's overall wealth, but rather the profit it realized from the particular tortious activity in question."); Malcolm E. Wheeler, *A Proposal for Further Common Law Development of the Use of Punitive Damages in Modern Product Liability Litigation*, 40 Ala. L. Rev. 919, 947 (1989); *but see Frazier v. Badger*, 603 S.E.2d 587, 592 (S.C. 2004) ("[T]he United States Supreme Court recently refused to include the defendant's ability to pay in its due process analysis of punitive damages."); *id.* ("A jury may consider a defendant's financial worth in determining the amount of punitive damages to award, but a jury is not required to make this consideration before it may award punitive damages.").

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 60

The Constitution's Due Process Clause forbids imposing a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e., injury that it inflicts upon those who are, essentially, strangers to the litigation. I charge you, Ladies and Gentlemen, that you may not use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.

*Phillip Morris USA v. Williams*, 2007 WL 505781 (U.S. Sup. Ct. Feb. 20, 2007).

## DEFENDANT FORD'S REQUEST TO CHARGE NO. 61

Of course, the fact that I have given you instructions concerning the issue of the plaintiffs' damages should not be interpreted in any way as an indication that I believe the plaintiffs should, or should not, prevail in this case.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if you become convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room you should first select one of your number to act as foreperson who will preside over your deliberations and will be your spokesperson here in court.

A form of special verdict has been prepared for your convenience. You will take this form to the jury room where you will answer each of the questions in the order they have been submitted. Do not deliberate on these questions out of this order.

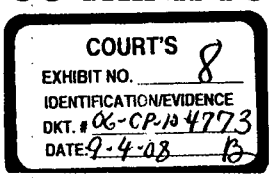
After answering all of the questions on the special verdict form, your foreperson will date and sign the special verdict form and you will return to the courtroom to publish your verdict.

If, during your deliberations you should desire to communicate with the Court, please reduce your message or question to writing signed by your foreperson, and pass the note to the bailiff who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU THINK YOU HAVE ANY IDEA AS TO WHAT THE LAW

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IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS, YOU MUST FORGET THAT IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.[1] A TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT ABOUT THE FACTS IN A CASE. SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, DO NOT THINK BY ANYTHING I HAVE SAID DURING THE TRIAL THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS.

STATEMENTS, OBJECTIONS, AND ARGUMENTS OF COUNSEL ARE NOT EVIDENCE IN THE CASE. WHEN, HOWEVER, THE

ATTORNEYS ON BOTH SIDES STIPULATE OR AGREE AS TO THE EXISTENCE OF A FACT, THE JURY MUST, UNLESS OTHERWISE INSTRUCTED, ACCEPT THE STIPULATION AND REGARD THAT FACT AS PROVED.

THE COURT MAY TAKE JUDICIAL NOTICE OF CERTAIN FACTS OR EVENTS. WHEN THE COURT DECLARES IT WILL TAKE JUDICIAL NOTICE OF SOME FACT OR EVENT, THE JURY MUST, UNLESS OTHERWISE INSTRUCTED, ACCEPT THE COURT'S DECLARATION AS EVIDENCE, AND REGARD AS PROVED THE FACT OR EVENT WHICH HAS BEEN JUDICIALLY NOTICED.

UNLESS YOU ARE OTHERWISE INSTRUCTED, THE EVIDENCE IN THE CASE ALWAYS CONSISTS OF THE SWORN TESTIMONY OF THE WITNESSES, REGARDLESS OF WHO MAY HAVE CALLED THEM; AND ALL EXHIBITS RECEIVED IN EVIDENCE, REGARDLESS OF WHO MAY HAVE PRODUCED

THEM; AND ALL FACTS WHICH HAVE BEEN ADMITTED OR STIPULATED; AND ALL FACTS AND EVENTS WHICH MAY HAVE BEEN JUDICIALLY NOTICED.

ANY EVIDENCE AS TO WHICH AN OBJECTION WAS SUSTAINED BY THE COURT, AND ANY EVIDENCE ORDERED STRICKEN BY THE COURT, MUST BE ENTIRELY DISREGARDED.

PREPONDERANCE OF THE EVIDENCE

THE BURDERN OF PROOF IS ON THE PLAINTIFF. IN THIS CASE THE BURDEN OF PROOF IS BY A PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE. IT IS

EVIDENCE WHICH, AS A WHOLE, SHOWS THAT THE FACT SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE.[2]

THIS CAN BE ILLUSTRATED BY IMAGINING A SET OF SCALES. WHEN THE CASE BEGINS, THE SCALES ARE EVEN. AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED, IF THE SCALES REMAIN EVEN OR IF THEY TIP EVEN SLIGHTLY IN FAVOR OF THE DEFENDANT, THEN THE PLAINTIFF HAS FAILED TO MEET THE BURDEN OF PROOF AND WOULD NOT BE ENTITLED TO RECOVER IN THIS CASE. IF, ON THE OTHER HAND, THE SCALES TIP EVEN SLIGHTLY IN FAVOR OF THE PLAINTIFF, THE PLAINTIFF WILL HAVE MET THE BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR THE PLAINTIFF.

THE PREPONDERANCE OF THE EVIDENCE IS NOT DETERMINED BY THE NUMBER OF WITNESSES. INSTEAD, IT

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MUST BE DETERMINED BY THE GREATER WEIGHT OF ALL OF THE EVIDENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.[3]

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE

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OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.[4] IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE.[5] FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE.

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THE EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR CONJECTURE.[6]

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

*SPOLIATION OF EVIDENCE*

WHEN EVIDENCE IS LOST OR DESTROYED BY A PARTY, YOU MAY INFER THAT THE EVIDENCE WHICH WAS LOST OR DESTROYED BY THAT PARTY WOULD HAVE BEEN ADVERSE TO THAT PARTY. [7]

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CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU IT IS TRUE.[8]

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A

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WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER THE WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS PREJUDICED TOWARD EITHER THE PLAINTIFF OR THE DEFENDANT, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AND THE WAY THE WITNESS ACTS ON THE WITNESS STAND.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL EXPERT WITNESSES. A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE,

OR PROFESSION, MAY GIVE AN OPINION AS TO THE SUBJECT THE WITNESS CLAIMS TO BE AN EXPERT IN, AND MAY ALSO GIVE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION GIVEN BY A WITNESS AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT AN EXPERT WITNESS' OPINION IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU DECIDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT, AND YOU DO

NOT HAVE TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS UNCONTRADICTED.[9]

CORPORATION AS PERSON

IN OUR COURTS, NO DISTINCTION IS MADE BETWEEN CORPORATIONS AND INDIVIDUALS. A CORPORATION IS A PERSON IN THE EYES OF THE LAW.[10] A CORPORATION IS ENTITLED TO THE SAME FAIR AND IMPARTIAL CONSIDERATION AND TO JUSTICE BY THE SAME LEGAL STANDARDS AS AN INDIVIDUAL.

PRODUCT LIABILITY

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THE PLAINTIFF CLAIMS THAT THE DEFENDANT'S PRODUCT INJURED THE PLAINTIFF AND THAT THE DEFENDANT SHOULD BE REQUIRED TO COMPENSATE THE PLAINTIFF FOR THE INJURIES. THE DEFENDANT WOULD BE RESPONSIBLE FOR THE PLAINTIFF'S INJURIES IF THE PRODUCT WAS IN A DEFECTIVE, UNREASONABLY DANGEROUS CONDITION AT THE TIME IT LEFT THE DEFENDANT'S POSSESSION AND IT WAS USED THE WAY IT WAS INTENDED TO BE USED.

NEGLIGENCE

THE PLAINTIFF CLAIMS THAT THE DEFENDANT WAS NEGLIGENT IN DESIGN OF THE FORD TRUCK WHICH INJURED THE PLAINTIFF. THE FOCUS UNDER A NEGLIGENCE THEORY IS ON THE CONDUCT OF THE DEFENDANT AND RESPONSIBILITY IS DETERMINED ACCORDING TO FAULT. IN ORDER TO RECOVER FOR NEGLIGENCE, THE PLAINTIFF

MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, THE FOLLOWING. FIRST, THAT THE DEFENDANT, WHO WAS IN THE BUSINESS OF SELLING THE PRODUCTS, DESIGNED, MANUFACTURED AND SOLD THE PRODUCT WHICH, AT THE TIME OF THE SALE, WAS IN A DEFECTIVE CONDITION THAT WAS UNREASONABLY DANGEROUS TO THE USER.

UNREASONABLE DANGER

IN DECIDING WHETHER A PRODUCT IS UNREASONABLY DANGEROUS AND DEFECTIVE, YOU SHOULD CONSIDER WHAT DANGERS WOULD BE REASONABLY ANTICIPATED BY A TYPICAL USER OF A PRODUCT OF THIS KIND. THEN, YOU SHOULD DECIDE WHETHER THE PARTICULAR PRODUCT INVOLVED IN THIS CASE HAD A TENDENCY FOR CAUSING DAMAGE BEYOND THOSE DANGERS WHICH AN ORDINARY USER WITH COMMON KNOWLEDGE OF THE PRODUCT'S

CHARACTERISTICS WOULD ANTICIPATE. YOU SHOULD ALSO CONSIDER WHETHER THE DANGERS ASSOCIATED WITH THE USE OF THE PRODUCT OUTWEIGH THE USEFULNESS OF THE PRODUCT, THE COST INVOLVED FOR ADDED SAFETY, THE LIKELIHOOD AND POTENTIAL SERIOUSNESS OF THE INJURY, AND THE OBVIOUSNESS OF THE DANGER.[11]

THE DEFENDANT IS NOT RESPONSIBLE FOR ANY AND ALL ACCIDENTS THAT OCCUR FROM THE USE OF THE PRODUCT. ALL THAT THE DEFENDANT IS REQUIRED TO DO IS TO MAKE A PRODUCT WHICH IS FREE FROM DEFECTIVE AND UNREASONABLY DANGEROUS CONDITIONS. A PRODUCT IS NOT DEFECTIVE SIMPLY BECAUSE AN ACCIDENT OR MALFUNCTION OCCURRED WHEN SOMEONE WAS USING THE PRODUCT. A PRODUCT NEED NOT BE ACCIDENT-PROOF. THE DEFENDANT IS NOT AN INSURER OF THE ABSOLUTE

SAFETY OF ITS PRODUCT. IT IS ENOUGH IF THE PRODUCT IS REASONABLY SAFE.

Negligent in design

THE FACT THAT A PRODUCT CAN BE MADE MORE SAFE ALONE DOES NOT MAKE THE PRODUCT UNREASONABLY DANGEROUS.[12]

IN ORDER TO ESTABLISH PRODUCTS LIABILITY UNDER SOUTH CAROLINA LAW, PLAINTIFFS MUST INTRODUCE EVIDENCE THAT A SAFER ALTERNATIVE DESIGN OF THE PRODUCT WAS FEASIBLE AND CANNOT RELY UPON MERE CONCEPTUAL DESIGN THEORIES.

IN CASES ALLEGING DESIGN DEFECTS, THE PLAINTIFF MUST PROVE THE MANUFACTURER FAILED TO ADOPT A REASONABLE SAFE DESIGN FOR THE PRODUCT, THEREBY RENDERING THE PRODUCT DEFECTIVE AND UNREASONABLY DANGEROUS. UNLIKE MANUFACTURING

DEFECTS, DESIGN DEFECTS RENDER ALL PRODUCTS WITH THE SAME DESIGN DEFECTIVE. IN DESIGN DEFECT CASES, STATE OF THE ART AND INDUSTRY STANDARDS ARE RELEVANT TO SHOW BOTH THE REASONABLENESS OF THE DESIGN AND WHETHER THE PRODUCT WAS DANGEROUS BEYOND THE EXPECTATIONS OF THE ORDINARY CONSUMER. WHILE ANY PRODUCT CAN BE MADE MORE SAFE, THE FACT, THAT IT IS NOT, DOES NOT AUTOMATICALLY MAKE THE PRODUCT UNREASONABLY DANGEROUS. RATHER, IN THE FINAL ANALYSIS, NUMEROUS FACTORS MUST BE CONSIDERED, INCLUDING THE USEFULNESS AND DESIRABILITY OF THE PRODUCT, THE COST INVOLVED FOR ADDED SAFETY, THE LIKELIHOOD AND POTENTIAL SERIOUSNESS OF INJURY, AND THE OBVIOUSNESS OF DANGER

IN DETERMINING WHETHER A PRODUCT IS DEFECTIVE OR UNREASONABLY DANGEROUS, THE PRODUCT MUST BE

MEASURED AGAINST A STANDARD EXISTING AT THE TIME OF THE SALE OR AGAINST REASONABLE CUSTOMER EXPECTATIONS HELD AT THE TIME OF THE SALE.

SECOND, THE PLAINTIFF MUST PROVE THAT THE PRODUCT WAS EXPECTED TO AND DID REACH THE ULTIMATE USER WITHOUT A SUBSTANTIAL CHANGE IN THE CONDITION IN WHICH THE DEFENDANT SOLD IT. THE PLAINTIFF MUST ALSO PROVE THAT THE PLAINTIFF'S INJURIES WERE PROXIMATELY CAUSED BY THE DEFECTIVE PRODUCT. IN ADDITION, TO RECOVER UNDER A NEGLIGENCE THEORY, THE PLAINTIFF MUST PROVE THAT THE DEFENDANT WAS NEGLIGENT.[13]

DUTY

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TO PROVE NEGLIGENCE, THE PLAINTIFF MUST ALSO PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT FAILED TO EXERCISE DUE CARE IN SOME RESPECT.[14]

YOU MUST FIRST DETERMINE WHETHER THE DEFENDANT OWED THE PLAINTIFF A DUTY OF CARE. THE DEFENDANT WILL OWE THE PLAINTIFF A DUTY OF CARE WHEN THE DEFENDANT KNOWS OF THE RISK OF HARM.[15] THIS BURDEN MAY BE MET BY SHOWING THAT THE DEFENDANT WAS AWARE OF THE DANGER AND FAILED TO TAKE REASONABLE STEPS TO CORRECT IT.[16]

A MANUFACTURER IS HELD TO THE SKILL OF AN EXPERT IN THE FIELD AND IS CHARGED WITH AN EXPERT'S

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KNOWLEDGE OF THE MATERIALS AND PROCESSES USED IN THE INDUSTRY. A MANUFACTURER HAS A DUTY TO STAY AWARE OF CURRENT STANDARDS AND SCIENTIFIC KNOWLEDGE IN ITS INDUSTRY AS EXIST AT THE TIME OF MANUFATURE.[17]

ALTHOUGH EVIDENCE OF THE INDUSTRY STANDARD MAY BE CONSIDERED AS EVIDENCE OF THE STANDARD OF CARE, AN INDUSTRY CANNOT SET ITS OWN UNREASONABLE STANDARDS. AN ENTIRE INDUSTRY MAY HAVE EXCESSIVELY LAGGED BEHIND IN THE ADOPTION OF NEW AND AVAILABLE PRODUCTS OR SAFETY FEATURES. THE FAILURE TO USE DUE CARE, EVEN IF NO ONE IN THE INDUSTRY DOES, DOES NOT EXCUSE NEGLIGENCE. IT IS FOR YOU TO DETERMINE WHETHER THE STANDARD OF CARE

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WAS PROPER CONSIDERING WHAT A REASONABLE PERSON WOULD HAVE DONE IN SIMILAR CIRCUMSTANCES.[18]

A MANUFACTURER OWES A DUTY OF CARE IN THE MANUFACTURE OF ITS PRODUCT PROPORTIONATE TO THE DANGERS INVOLVED IN THE PRODUCT'S USE. A MANUFACTURER OF A PRODUCT MADE UNDER A PLAN OR DESIGN, WHICH MAKES IT DANGEROUS FOR THE USES FOR WHICH IT WAS MADE, OWES A DUTY TO USE REASONABLE CARE IN THE ADOPTION OF A SAFE PLAN OR DESIGN TO THOSE THE MANUFACTURER SHOULD EXPECT TO USE THE PRODUCT OR TO BE ENDANGERED BY ITS PROBABLE USE.[19]

THE SELLER ASSUMES THE DUTIES OF THE MANUFACTURER. WHERE A PRODUCT IS ACTUALLY DESIGNED AND MANUFACTURED BY ANOTHER COMPANY,

THE SELLER ASSUMES THE DUTIES OF THE MANUFACTURER WHEN IT LABELS AND SELLS THE PRODUCT AS ITS OWN.[20]

DUTY TO INSTALL SAFETY DEVICE

A MANUFACTURER MAY HAVE A DUTY TO INSTALL A SAFETY DEVICE IF YOU FIND THAT REASONABLE CARE IN MAKING THE PRODUCT SAFE FOR FORESEEABLE RISKS REQUIRES THAT A SAFETY DEVICE BE INSTALLED.

DUTY TO TEST

A MANUFACTURER OWES A DUTY TO CONDUCT ADEQUATE TESTS ON AND INSPECTIONS OF ITS PRODUCT TO DISCOVER LATENT DEFECTS OR DEFECTS WHICH ARE NOT VISIBLE OR APPARENT ON A REASONABLE INSPECTION OF THE

---

PRODUCT. IF THE MANUFACTURER HAD REASON TO KNOW THAT THE PRODUCT WAS LIKELY TO BE DANGEROUSLY DEFECTIVE, THE MANUFACTURER HAS A DUTY TO EXERCISE REASONABLE CARE IN INSPECTING AND TESTING THE PRODUCT BEFORE SELLING IT, IF A REASONABLE INSPECTION OR TEST WOULD HAVE DISCLOSED THE DEFECT.[21]

IN DECIDING WHETHER THE DEFENDANT HAD THE DUTY TO TEST THE PRODUCT, YOU SHOULD CONSIDER THE DEFENDANT'S ABILITY TO CONDUCT THE TESTS AT THE TIME THE PRODUCT WAS SOLD.[22]

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23

BREACH OF DUTY

NEXT, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT BREACHED THAT DUTY BY A NEGLIGENT ACT OR OMISSION.

NEGLIGENCE MEANS THAT A PERSON DID NOT USE THE SAME AMOUNT OF CARE THAT A PERSON OF ORDINARY REASON AND PRUDENCE WOULD USE IN THE SAME OR SIMILAR CIRCUMSTANCES.[23] IN OTHER WORDS, A NEGLIGENT PERSON HAS DONE SOMETHING THAT A REASONABLE PERSON WOULD NOT HAVE DONE OR HAS FAILED TO DO SOMETHING THAT A REASONABLE PERSON WOULD HAVE DONE IN THE SAME SITUATION.[24]

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IN DECIDING WHETHER THE DEFENDANT BREACHED THE DUTY OF CARE, YOU SHOULD CONSIDER WHETHER THE DEFENDANT HAS FOLLOWED THE NORMAL AND CUSTOMARY PRACTICES AND PROCEDURES IN THE INDUSTRY AS WELL AS THE DEFENDANT'S EXPERTISE AND ABILITY TO SEE AND APPRECIATE THE PROBLEM AND ITS CAUSE.[25]

IF THE DEFENDANT FAILED TO EXERCISE REASONABLE CARE IN FULFILLING ANY OF THE DEFENDANT'S DUTIES, THE DEFENDANT WOULD BE RESPONSIBLE FOR INJURIES TO ANY PERSON THE DEFENDANT SHOULD EXPECT WILL USE ITS PRODUCT OR BE ENDANGERED BY IT USE IF (1) THE DEFENDANT KNEW OR HAD REASON TO KNOW THAT THE PRODUCT WAS OR WAS LIKELY TO BE DANGEROUS FOR THE USE FOR WHICH IT IS DESIGNED, MANUFACTURED OR SOLD; (2) THE DEFENDANT HAD NO REASON TO BELIEVE THAT THE

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25

USER OR PERSON ENDANGERED BY THE PRODUCT'S USE WOULD REALIZE THE POTENTIAL DANGER; AND (3) THE DEFENDANT FAILED TO EXERCISE REASONABLE CARE TO INFORM THE USER OF THE PRODUCT'S DANGEROUS CONDITION OR OF THE FACTS WHICH MAKE IT LIKELY TO BE DANGEROUS.

A MANUFACTURER HAS NO DUTY TO NOTIFY PREVIOUS PURCHASERS OF ITS PRODUCTS ABOUT LATER DEVELOPED SAFETY DEVICES OR TO RETROFIT THOSE PRODUCTS IF THE PRODUCTS WERE NON-DEFECTIVE UNDER STANDARDS EXISTING AT THE TIME OF THE MANUFACTURE OR SALE OF THE PRODUCT.

SOUTH CAROLINA LAW HOLDS THAT PRODUCT MANUFACTURERS HAVE NO DUTY TO DESIGN OR MANUFACTURE A PRODUCT THAT WILL NOT EVENTUALLY WEAR OUT.

RECKLESSNESS

RECKLESSNESS IS THE KNOWING FAILURE TO EXERCISE REASONABLE CARE UNDER ALL OF THE SURROUNDING CIRCUMSTANCES. AN ACT IS RECKLESS IF IT IS COMMITTED IN A MANNER AND UNDER CIRCUMSTANCES, WHICH A PERSON OF ORDINARY REASON AND PRUDENCE WOULD KNOW WOULD INVADE THE RIGHTS OF THE INJURED PERSON.[26]

PROXIMATE CAUSE

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27

FINALLY, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DAMAGES WERE PROXIMATELY CAUSED BY THE DEFENDANT'S BREACH OF DUTY.

PROXIMATE CAUSE IS SOMETHING THAT PRODUCES A NATURAL CHAIN OF EVENTS WHICH, IN THE END, BRINGS ABOUT THE INJURY.[27] IT IS THE DIRECT CAUSE OF THE INJURY.[28]

TO PROVE THAT THE DEFENDANT'S NEGLIGENCE PROXIMATELY CAUSED THE PLAINTIFF'S INJURY, THE PLAINTIFF MUST FIRST PROVE CAUSATION IN FACT. THIS IS PROVEN BY SHOWING THAT THE INJURY WOULD NOT HAVE OCCURRED BUT FOR THE DEFENDANT'S NEGLIGENCE.[29]

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THE PLAINTIFF MUST ALSO PROVE LEGAL CAUSE. LEGAL CAUSE IS PROVEN BY SHOWING THAT THE INJURY WAS FORESEEABLE. THIS MEANS THAT THE INJURY OCCURRED AS A NATURAL AND PROBABLE CONSEQUENCE OF THE DEFENDANT'S NEGLIGENCE. THE PLAINTIFF MUST PROVE THAT SOME INJURY FROM THE DEFENDANT'S NEGLIGENCE WAS FORESEEABLE, BUT DOES NOT HAVE TO PROVE THAT THE PARTICULAR INJURY THAT OCCURRED WAS FORESEEABLE. HOWEVER, THE DEFENDANT CANNOT BE HELD RESPONSIBLE FOR SOMETHING WHICH COULD NOT BE EXPECTED TO HAPPEN.[30]

PROXIMATE CAUSE DOES NOT MEAN THE ONLY CAUSE. THE DEFENDANT'S ACT CAN BE A PROXIMATE CAUSE OF THE

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29

PLAINTIFF'S INJURY IF IT WAS AT LEAST ONE OF THE DIRECT, CONCURRING CAUSES OF THE INJURY.[31]

GENERAL DENIAL

THE DEFENDANT HAS ANSWERED THE PLAINTIFF'S COMPLAINT WITH A GENERAL DENIAL. THIS MEANS THAT THE DEFENDANT DENIED EACH AND EVERY CLAIM THAT WOULD MAKE THE DEFENDANT RESPONSIBLE FOR THE PLAINTIFF'S INJURIES. BECAUSE OF THIS GENERAL DENIAL, THE PLAINTIFF HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF THE CAUSE OF ACTION.[32]

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ACTUAL DAMAGES

IF YOU DECIDE THAT THE PLAINTIFF IS ENTITLED TO A VERDICT, YOUR NEXT STEP WOULD BE TO DECIDE HOW MUCH MONEY THE DEFENDANT SHOULD BE REQUIRED TO PAY.

ACTUAL DAMAGES ARE TO COMPENSATE THE PLAINTIFF FOR THE PLAINTIFF'S INJURIES OR LOSS[33] AND TO PUT THE PLAINTIFF, AS NEAR AS POSSIBLE, IN THE SAME POSITION THAT THE PLAINTIFF WAS IN BEFORE THE INCIDENT OCCURRED. IN OTHER WORDS, ACTUAL DAMAGES WOULD BE THE ACTUAL LOSSES AND EXPENSES WHICH THE PLAINTIFF HAS SUFFERED BECAUSE OF THE DEFENDANT'S NEGLIGENCE.[34]

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ACTUAL DAMAGES - MOTOR VEHICLE

THE AMOUNT OF DAMAGES TO A MOTOR VEHICLE IS THE DIFFERENCE BETWEEN THE VALUE OF THE VEHICLE IMMEDIATELY BEFORE IT WAS STRUCK AND THE VALUE OF THE VEHICLE IMMEDIATELY AFTER IT WAS STRUCK.[35]

IF REPAIRING THE VEHICLE WOULD PUT IT IN AS GOOD A CONDITION AS BEFORE THE ACCIDENT, THEN THE MEASURE OF DAMAGES WOULD BE THE COST OF REPAIR PLUS ANY AMOUNT BY WHICH THE VALUE OF THE VEHICLE WAS DECREASED DUE TO ITS INVOLVEMENT IN A COLLISION. THIS IS ALSO CALLED DEPRECIATION.[36]

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IF THE VEHICLE CANNOT BE REPAIRED, THE MEASURE OF DAMAGES WOULD BE THE VALUE OF THE VEHICLE IMMEDIATELY BEFORE IT WAS STRUCK, MINUS ANY SALVAGE VALUE.[37]

LOST PROFITS

THE PALINTIFF IS SEEKING LOST PROFITS. THE CRUCIAL REQUIREMENT FOR LOST PROFITS DETERMINATIONS IS THAT THEY BE ESTABLISHED WITH REASONABLE CERTAINTY FOR RECOVERY CANNOT BE HAD FOR PROFITS THAT ARE CONJECTURAL OR SPECULATIVE> THE PROOF MUST PASS THE RELM OF CONJECTURE, SPECULATION, OR OPINION NOT FOUNDED ON FACTS AND MUST CONSIST OF ACTUAL FACTS FROM WHICH A REASONABLY ACCURATE

CONCLUSION REGARDING THE CAUSE AND THE AMOUNT OF LOSS CAN BE LOGICALLY AND RATIONALLY DRAWN.

DUTY TO MITIGATE DAMAGES

WHEN THE PLAINTIFF IS INJURED OR DAMAGED BY THE WRONGFUL ACT OF ANOTHER PERSON, IT IS THE DUTY OF THE PLAINTIFF TO REASONABLY TRY TO AVOID AND LESSEN THE DAMAGES.[38] THOSE DAMAGES WHICH MAY BE AVOIDED BY THE USE OF REASONABLE EFFORTS, CARE, AND PRUDENCE BY THE PLAINTIFF CANNOT BE THE PROXIMATE RESULT OF THE DEFENDANT'S WRONGFUL ACT. THEREFORE, THE PLAINTIFF CANNOT RECOVER FOR DAMAGES WHICH REASONABLY MIGHT HAVE BEEN AVOIDED.

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THE EFFORTS REQUIRED BY THE PLAINTIFF MUST BE DETERMINED BY THE RULES OF COMMON SENSE AND FAIR DEALING AND WHAT A PERSON OF ORDINARY REASON AND PRUDENCE WOULD DO UNDER THE SAME CIRCUMSTANCES.[39] THE PLAINTIFF IS NOT REQUIRED TO USE UNREASONABLE EFFORTS OR GREAT EXPENSE TO AVOID AND LESSEN THE DAMAGES.[40] THE DEFENDANT HAS THE BURDEN OF PROVING A FAILURE TO LESSEN DAMAGES ON THE PART OF THE PLAINTIFF BY THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE.[41]

PUNITIVE DAMAGES- NEGLIGENCE ACTIONS

THE PLAINTIFF CLAIMS THAT THE DEFENDANT ACTED WITH RECKLESSNESS, WILLFULNESS, AND WANTONNESS AND

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THAT, THEREFORE, THE PLAINTIFF IS ENTITLED TO PUNITIVE DAMAGES FROM THE DEFENDANT.

RECKLESSNESS MEANS A CONSCIOUS FAILURE TO USE REASONABLE CARE. A PERSON WHO IS NEGLIGENT ACTS CARELESSLY. HOWEVER, A PERSON WHO ACTS RECKLESSLY, WILLFULLY, AND WANTONLY IS NOT ONLY CARELESS, BUT IS ALSO AWARE THAT HE [SHE] IS BEING CARELESS

PUNITIVE DAMAGES

IF YOU AWARD ACTUAL DAMAGES, YOU MAY ALSO CONSIDER AN AWARD OF PUNITIVE DAMAGES. PUNITIVE DAMAGES ARE INTENDED TO PUNISH THE DEFENDANT FOR EXTRAORDINARY AND OUTRAGEOUS MISCONDUCT AND TO PREVENT THE DEFENDANT AND OTHERS FROM COMMITTING SIMILAR ACTS IN THE FUTURE. PUNITIVE DAMAGES CAN ONLY BE AWARDED WHEN CONDUCT OF

THE DEFENDANT HAS BEEN SOMETHING MORE THAN MERE NEGLIGENCE. THE EVIDENCE MUST ESTABLISH THE DEFENDANT'S ACTS WERE RECKLESS, WILLFUL AND WANTON, MEANING THERE WAS A CONSCIOUS FAILURE TO EXERCISE DUE CARE OR A CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF OTHERS OR A RECKLESS DISREGARD THEREOF.

IF YOU FIND THAT THE DEFENDANT'S CONDUCT WAS WILLFUL, WANTON, OR RECKLESS, YOU MAY AWARD THE PLAINTIFF PUNITIVE DAMAGES. TO SUPPORT AN AWARD OF PUNITIVE DAMAGES, THE PLAINTIFF MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE CONDUCT COMPLAINED OF INCLUDED A CONSCIOUSNESS OF WRONGDOING AT THE TIME OF THE CONDUCT.[42]

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CLEAR AND CONVINCING IS MORE THAN JUST A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE, WHICH REQUIRES ONLY PROOF WHICH PERSUADES YOU THAT A PARTY'S CLAIM IS MORE LIKELY TRUE THAN NOT TRUE. ON THE OTHER HAND, CLEAR AND CONVINCING PROOF IS NOT AS HIGH A STANDARD AS THE BURDEN OF PROOF IN CRIMINAL CASES, WHICH IS PROOF BEYOND A REASONABLE DOUBT.[43] CLEAR AND CONVINCING PROOF LEAVES NO SUBSTANTIAL DOUBT IN YOUR MIND. IT MEANS THAT THE EVIDENCE IS NOT AMBIGUOUS, DOUBTFUL, EQUIVOCAL OR CONTRADICTORY. CONVINCING MEANS PERSUADING BY PROOF OR ARGUMENT, CAUSING ONE TO BELIEVE IN THE TRUTH OF WHAT IS ASSERTED.[44] CLEAR AND CONVINCING PROOF ESTABLISHES IN YOUR MIND, NOT

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ONLY THAT THE FACT IS PROBABLE, BUT THAT IT IS HIGHLY PROBABLE.[45]

YOU MAY NOT AWARD PUNITIVE DAMAGES MERELY BECAUSE YOU HAVE FOUND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PRODUCT WAS DEFECTIVE OR THAT THE DEFENDANT WAS NEGLIGENT, OR EVEN GROSSLY NEGLIGENT.[46] AN INNOCENT MISTAKE OR ERROR OF JUDGMENT DOES NOT CONSTITUTE THE TYPE OF MISCONDUCT THAT WILL SUPPORT AN AWARD OF PUNITIVE DAMAGES.[47] ACCORDINGLY, YOU MAY NOT AWARD PUNITIVE DAMAGES IF THERE IS A BONA FIDE CONTROVERSY ABOUT WHETHER THE PRODUCT IS DEFECTIVE. RATHER, YOU MAY AWARD PUNITIVE DAMAGES ONLY IF YOU FIND BY CLEAR AND CONVINCING EVIDENCE THAT REASONABLE PEOPLE COULD NOT IN GOOD

FAITH DISAGREE ABOUT WHETHER THE PRODUCT WAS DEFECTIVE.[48]

THERE IS NO RIGHT TO PUNITIVE DAMAGES. ACCORDINGLY, YOU NEED NOT AWARD PUNITIVE DAMAGES EVEN IF YOU FIND THAT THE STANDARD FOR IMPOSING PUNITIVE DAMAGES HAS BEEN SATISFIED.[49]

YOU MAY NOT AWARD PUNITIVE DAMAGES MERELY BECAUSE THE DEFENDANT CONSIDERED COST IN DESIGNING THE PRODUCT. A RESPONSIBLE MANUFACTURER MUST CONSIDER THE COSTS IN DESIGNING PRODUCTS THAT ARE AFFORDABLE TO THE ANTICIPATED USERS OF ITS PRODUCTS. NOR MAY YOU AWARD PUNITIVE DAMAGES SIMPLY BECAUSE THE DEFENDANT BALANCED THE RISK OF HARM AGAINST OTHER FACTORS (INCLUDING, FOR EXAMPLE, COST, CONVENIENCE, AND AESTHETICS) THAT AFFECT THE UTILITY, USEFULNESS, PRACTICALITY OR

DESIRABILITY OF THE PRODUCT TO USERS AND CONSUMERS.[50]

SIMILARLY, THE FACT THAT AN INDUSTRY HAS ADOPTED DESIGNS OR PRACTICES CONSISTENT WITH THE DEFENDANT'S GENERALLY SHOWS THAT THERE IS AN ARGUABLY-LEGITIMATE BASIS FOR THOSE DESIGNS AND PRACTICES. THUS, PUNITIVE DAMAGES ARE GENERALLY NOT APPROPRIATE WHERE THE DEFENDANT HAS COMPLIED WITH INDUSTRY CUSTOM OR PRACTICE.[51]

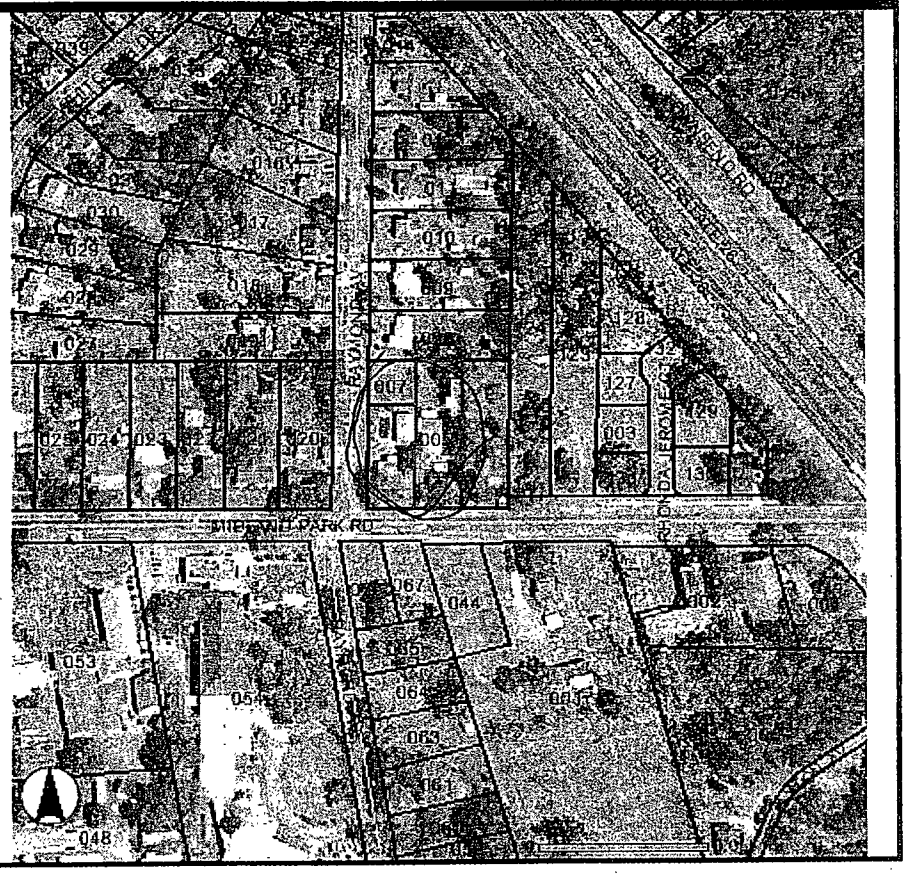
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**Charleston County**

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Charleston County GIS
4045 Bridge View Drive
North Charleston, SC 29405-7464

Legend

- Selected Features
- Streets/Roads
- Parcels
- Mar 2001 Color Photos




PLAINTIFF'S EXHIBIT
1
9-3-08 B

## A

| FDID ☆ | State ☆ | Incident Date (MM / DD / YYYY) ☆ | Station | Incident Number ☆ | Exposure ☆ |
|---|---|---|---|---|---|
| 10308 | SC | 9 / 26 / 2005 | 10 | 053578 | 0 |

☐ Delete ☐ Change ☐ No Activity

**NFIRS - Basic**

## B Location ☆

☐ Check this box to indicate that the address for this incident is provided on the Wildland Fire Module in Section B "Alternative Location Specification." Use only for Wildland fires

Census Tract: ____ - ____

☒ Street address
☐ Intersection
☐ In front of
☐ Rear of
☐ Adjacent to
☐ Directions
☐ National Grid

| Number/Milepost | Prefix | Street or Highway | Street Type | Suffix |
|---|---|---|---|---|
| 2340 | | MIDLAND PARK | RD | |

| Apt./Suite/Room | City | State | Zip Code |
|---|---|---|---|
| | NORTH CHARLESTON | SC | 29406 - |

Cross Street, Directions, or National Grid, as applicable:

## C Incident Type ☆

131 — Passenger vehicle fire (Incident Type)

## D Aid Given or Received ☆

1 ☐ Mutual aid received
2 ☐ Automatic aid recv.
3 ☐ Mutual aid given
4 ☐ Automatic aid given
5 ☐ Other aid given
N ☒ None

Their FDID: ____ Their State: ____
Their Incident Number: ____

## E1 Dates & Times

Midnight is 0000

Check boxes if dates are the same as Alarm Date.

| | Month | Day | Year | Hour | Min |
|---|---|---|---|---|---|
| Alarm ☆ (ALARM always required) | 9 | 26 | 2005 | 07:22:18 | |
| ☒ Arrival ☆ (ARRIVAL required, unless canceled or did not arrive) | 9 | 26 | 2005 | 07:25:40 | |
| ☐ Controlled (CONTROLLED optional, except for wildland fires) | | | | | |
| ☒ Last Unit Cleared (LAST UNIT CLEARED, required except for wildland fires) | 9 | 26 | 2005 | 08:40:03 | |

## E2 Shifts & Alarms

Local Option

| Shift or platoon | Alarms | District |
|---|---|---|
| A | 1 | 10 |

## E3 Special Studies

Local Option

| Special Study ID# | Special Study Value |
|---|---|
| | |

## F Actions Taken ☆

| | |
|---|---|
| 81 | Incident command |
| 11 | Extinguish |
| 86 | Investigate |

Primary Action Taken (1)
Additional Action Taken (2)
Additional Action Taken (3)

## G1 Resources ☆

☐ Check this box and skip this section if an Apparatus or Personnel form is used.

| | Apparatus | Personnel |
|---|---|---|
| Suppression | 3 | 7 |
| EMS | 0 | 0 |
| Other | 1 | 2 |

☐ Check box if resource counts include aid received resources.

## G2 Estimated Dollar Losses & Values

LOSSES: Required for all fires if known. Optional for non fires. ☐ None

| | | |
|---|---|---|
| Property | $ ____ , 9 , 000 | ☐ |
| Contents | $ ____ , ____ , 0 | ☐ |

PRE-INCIDENT VALUE: Optional

| | | |
|---|---|---|
| Property | $ ____ , ____ , ____ | ☐ |
| Contents | $ ____ , ____ , ____ | ☒ |

## Completed Modules

☒ Fire-2
☐ Structure-3
☐ Civilian Fire Cas.-4
☐ Fire Serv. Casualty-5
☐ EMS-6
☐ HazMat-7
☐ Wildland Fire-8
☒ Apparatus-9
☒ Personnel-10
☐ Arson-11

## H1 ☆ Casualties ☐ None

| | Deaths | Injuries |
|---|---|---|
| Fire Service | 0 | 0 |
| Civilian | 0 | 0 |

## H2 Detector

Required for confined fires

1 ☐ Detector alerted occupants
2 ☐ Detector did not alert them
U ☐ Unknown

## H3 Hazardous Materials Release

____

## I Mixed Use Property

NN — Not mixed use

## J Property Use ☆ *Structures*

891 — Warehouse

PLAINTIFF'S EXHIBIT 2 9-3-18 B

## K1 Person/Entity Involved

Local Option

5 STAR LAWN CARE INC — Business name (if applicable)

843 – 514 – 8861 — Area Code / Phone Number

☐ Check this box if same address as incident location. Then skip the three duplicate address lines

MR — Mr., Ms., Mrs.
STAN — First Name
MI
SHELBY — Last Name
Suffix

2520 — Number
Prefix
ATLANTIC PALMS LN. — Street or Highway
Street Type
Suffix

Post Office Box
Apt./Suite/Room
NORTH CHARLESTON — City

SC — State
29406 – Zip Code

☐ More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary.

## K2 Owner

Local Option

☒ Same as person involved? Then check this box and skip the rest of this section.

5 STAR LAWN CARE INC — Business name (if applicable)

843 – 514 – 8861 — Area Code / Phone Number

☐ Check this box if same address as incident location. Then skip the three duplicate address lines.

MR — Mr., Ms., Mrs.
STAN — First Name
MI
SHELBY — Last Name
Suffix

2520 — Number
Prefix
ATLANTIC PALMS LN. — Street or Highway
Street Type
Suffix

Post Office Box
Apt./Suite/Room
NORTH CHARLESTON — City

SC — State
29406 – Zip Code

## L Remarks:

Local Option

**********

Narrative Title: Narrative From CAD
Date Entered: 09/26/2005 8:48:59 AM

045
CONC 2005124988
Complaint Type: 1070C - FIRE COMMERCIAL
Caller Name: GREGORY POE
[09/26/2005 08:40:16 : DINGLED]
E10 ADV THT HE IS AT THE HYDRANT ON MIDLAND PARK

[09/26/2005 08:26:31 : DINGLED]
SER3 BCK 76 TO THIS 20

[09/26/2005 07:36:37 : DINGLED]
BAT9 REQUS F5 TO 25 AT THIS 20



ITEMS WITH A ☆ MUST **ALWAYS** BE COMPLETED!

**Fire Module Required?**

**Check the box that applies and then complete the additional Fire mod. based on Incident Type as follows:**

| | |
|---|---|
| ☐ Buildings 111 | Complete Fire & Structure |
| ☐ Special structure 112 | Complete Fire Mod. & the I block on Structure Module |
| ☐ Confined 113-118 | Complete Basic Module |
| ☐ Mobile Property 120-123 | Complete Fire Module |
| ☒ Vehicle 130-138 | Complete Fire Module |
| ☐ Vegetation 140-143 | Complete Fire or Wildland |
| ☐ Outside rubbish fire 151-155 | Complete Basic Module |
| ☐ Special outside fire 161-164 | Complete Fire Module |
| ☐ Crop fire 170-173 | Complete Fire Module |

☐ More remarks? Check this box and attach Supplemental Forms(NFIRS-1S) as necessary.

## M Authorization

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| F41 | SANDERS,JONATHAN D | Captain | ENGINE 10 | 9 | 25 | 2005 |
| Officer in charge ID | Signature | Position or rank | Assignment | Month | Day | Year |
| ☐ Check box if same as Officer in charge. ⇨ F68 | HOWARD,TIMOTHY | ENGINEER | ENGINE 10 | | | |
| Member making report ID | Signature | Position or rank | Assignment | Month | Day | Year |

**Complete this side for all fires**

**NFIRS - 2 Fire**

**A**

| FDID | State | Incident Date (MM DD YYYY) | Station | Incident Number | Exposure |
|---|---|---|---|---|---|
| 10308 | SC | 9 26 2005 | 10 | 053578 | 0 |

☐ Delete ☐ Change

## B Property Details

**B1** 0 ☐ Not Residential
Estimated number of residential living units in building of origin *whether or not all units became involved*

**B2** 1 ☐ Buildings not involved
Number of buildings involved

**B3** ____ , ____ ☐ None ☐ Less than one acre
Acres burned (outside fires)

## C On-Site Materials or Products ☐ None

Complete if there were any significant amounts of commercial, industrial, energy or agricultural products or materials on the property, *whether or not they became involved*

Enter up to three codes. Check one box for each code entered.

NNN None
On-site material (1)
1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☐ Packaged goods for sale
4 ☐ Repair or service

____ ____
On-site material (2)
1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☐ Packaged goods for sale
4 ☐ Repair or service

____ ____
On-site material (3)
1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☐ Packaged goods for sale
4 ☐ Repair or service

## D Ignition

**D1** 83 Engine area, running gear, wheel area
Area of fire origin

**D2** 00 Heat source: other
Heat source

**D3** 81 Electrical wire, cable insulation
Item first ignited
1 ☐ Check box if fire spread was confined to object of origin

**D4** 41 Plastic
Type of material first ignited
Required only if item first ignited code is 00 or <70

## E1 Cause of Ignition

☐ Check box if this is an exposure report. → Skip to Section G

3 Failure of equipment or heat source

## E2 Factors Contributing To Ignition ☐ None

NN None
Factor contributing to ignition (1)

____ ____
Factor contributing to ignition (2)

## E3 Human Factors Contributing To Ignition

Check all applicable boxes ☐ None

1 ☐ Asleep
2 ☐ Possibly impaired by alcohol or drugs
3 ☐ Unattended person
4 ☐ Possibly mentally disabled
5 ☐ Physically disabled
6 ☐ Multiple persons involved
7 ☐ Age was a factor

Estimated age of person involved ____

1 ☐ Male 2 ☐ Female

## F1 Equipment Involved In Ignition

☐ None → If equipment was not involved, skip to Section G

NNN None
Equipment Involved

Brand ____

Model ____

Serial # ____

Year ____

## F2 Equipment Power

____ ____
Equipment Power Source

## F3 Equipment Portability

1 ☐ Portable
2 ☐ Stationary

Portable equipment normally can be moved by one person, is designed to be used in multiple locations, and requires no tools to install.

## G Fire Suppression Factors

Enter up to three codes. ☐ None

NNN None
Fire suppression factor (1)

____ ____
Fire suppression factor (2)

____ ____
Fire suppression factor (3)

## H1 Mobile Property Involved

3 Involved in ignition and burned

## H2 Mobile Property Type & Make

21 General use truck, dump truck, fire apparatus
Mobile property type

FO Ford
Mobile property make

F-250
Mobile property model

1996
Year

P333081 SC ____
License Plate Number State VIN Number

**Structure fire? Please be sure to complete the other side of this form.**

## Local Use

☐ Pre-Fire Plan Available

Some of the information presented in this report may be based upon reports from other agencies:

☐ Arson report attached
☐ Police report attached
☐ Coroner report attached
☐ Other reports attached

NFIRS-2 Revision 01/19/99

CITY OF NORTH CHARLESTON FIRE DEPARTMENT

**A**

| FDID | State | Incident Date (MM) | Incident Date (DD) | Incident Date (YYYY) | Station | Incident Number | Exposure | Delete / Change |
|---|---|---|---|---|---|---|---|---|
| 10308 | SC | 9 | 26 | 2005 | 6 | 053578 | 0 | |

**NFIRS - 9 Apparatus or Resources**

| B Apparatus or Resource (Use codes listed below) | Dates and Times (Check if same date as alarm date) | Sent [X] | Number of People | Use (Check ONE box for each apparatus to indicate its main use at the incident.) | Actions Taken |
|---|---|---|---|---|---|
| 1 ID: E10 Type: 11 | Dispatch: 9 / 26 / 2005 / 07:22:18<br>Arrival: 9 / 26 / 2005 / 07:32:44<br>Clear: 9 / 26 / 2005 / 08:52:59 | [X] | 3 | [X] Suppression [ ] EMS [ ] Other | 81, 11, 12, 80 |
| 2 ID: E3 Type: 11 | Dispatch: 9 / 26 / 2005 / 07:26:33<br>Arrival: 9 / 26 / 2005 / 07:30:30<br>Clear: 9 / 26 / 2005 / 08:52:59 | [X] | 5 | [X] Suppression [ ] EMS [ ] Other | 81, 76, 12, 80 |
| 3 ID: SER3 Type: 60 | Dispatch: 9 / 26 / 2005 / 07:22:18<br>Arrival:<br>Clear: 9 / 26 / 2005 / 08:52:59 | [X] | 2 | [ ] Suppression [ ] EMS [X] Other | 81, 57, 56, 80 |
| 4 ID: TR6 Type: 60 | Dispatch: 9 / 26 / 2005 / 07:22:18<br>Arrival:<br>Clear: | [X] | 3 | [X] Suppression [ ] EMS [ ] Other | 93 |
| 5 ID: Type: | Dispatch:<br>Arrival:<br>Clear: | [ ] | | [ ] Suppression [ ] EMS [ ] Other | |
| 6 ID: Type: | Dispatch:<br>Arrival:<br>Clear: | [ ] | | [ ] Suppression [ ] EMS [ ] Other | |
| 7 ID: Type: | Dispatch:<br>Arrival:<br>Clear: | [ ] | | [ ] Suppression [ ] EMS [ ] Other | |
| 8 ID: Type: | Dispatch:<br>Arrival:<br>Clear: | [ ] | | [ ] Suppression [ ] EMS [ ] Other | |
| 9 ID: Type: | Dispatch:<br>Arrival:<br>Clear: | [ ] | | [ ] Suppression [ ] EMS [ ] Other | |

**Type of Apparatus or Resource**

**Ground Fire Suppression**

- 11 Engine
- 12 Truck or aerial
- 13 Quint
- 14 Tanker & pumper combination
- 16 Brush truck
- 17 ARF (Aircraft Rescue and Firefighting)
- 10 Ground fire suppression, other

**Heavy Ground Equipment**

- 21 Dozer or plow
- 22 Tractor
- 24 Tanker or tender
- 20 Heavy equipment, other

**Aircraft**

- 41 Aircraft: fixed wing tanker
- 42 Helitanker
- 43 Helicopter
- 40 Aircraft, other

**Marine Equipment**

- 51 Fire boat with pump
- 52 Boat, no pump
- 50 Marine apparatus, other

**Support Equipment**

- 61 Breathing apparatus support
- 62 Light and air unit
- 60 Support apparatus, other

**Medical & Rescue**

- 71 Rescue unit
- 72 Urban search & rescue unit
- 73 High angle rescue unit
- 75 BLS unit
- 76 ALS unit
- 70 Medical and rescue unit, other

**Other**

- 91 Mobile command post
- 92 Chief officer car
- 93 HazMat unit
- 94 Type 1 hand crew
- 95 Type 2 hand crew
- 99 Privately owned vehicle
- 00 Other apparatus/resource

More apparatus? Use additional sheets.

NN None
UU Undetermined

NFIRS-9 Revision 11/17/98

CITY OF NORTH CHARLESTON FIRE DEPARTMENT

**A** | 10308 (FDID) | SC (State) | MM: 9 | DD: 26 | YYYY: 2005 (Incident Date) | STA 10 - S1 (Station) | 053578 (Incident Number) | 0 (Exposure) | ☐ Delete ☐ Change | **NFIRS - 10 Personnel**

| B Apparatus or Resource | Dates and Times (Check if same date as alarm date) | Sent | Number of People | Use (Check ONE box for each apparatus to indicate its main use at the incident.) | Actions Taken (List up to 4 actions for each apparatus and each personnel.) |
|---|---|---|---|---|---|
| 1 ID: E10<br>Type: 11 | Dispatch: 9 / 26 / 2005 / 07:22:18<br>Arrival: 9 / 26 / 2005 / 07:32:44<br>Clear: 9 / 26 / 2005 / 08:52:59 | ☒ | 3 # | ☐ Suppression ☒ EMS ☐ Other | 81, 11, 12, 80 |

| Personnel ID | Name | Rank or Grade | Attend | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| F175 | RANUCCI VINCENT J | FIREFIGHTER | ☒ | 81 | | | |
| F168 | COBIN BRADLEY E | FIREFIGHTER | ☒ | 81 | 11 | 12 | 80 |
| F68 | HOWARD TIMOTHY | ENGINEER | ☒ | 81 | 58 | 55 | 80 |
| F41 | SANDERS JONATHAN D | Captain | ☒ | 81 | 11 | 12 | 80 |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

| | | | | |
|---|---|---|---|---|
| 2 ID: E3<br>Type: 11 | Dispatch: 9 / 26 / 2005 / 07:26:33<br>Arrival: 9 / 26 / 2005 / 07:30:30<br>Clear: 9 / 26 / 2005 / 08:52:59 | ☒ | 5 # | ☐ Suppression ☒ EMS ☐ Other | 81, 76, 12, 80 |

| Personnel ID | Name | Rank or Grade | Attend | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| F165 | FRANK GENE D | FIREFIGHTER | ☒ | 81 | 70 | 12 | 80 |
| F51 | BURDING BRUCE E | Captain | ☒ | 81 | 70 | 12 | 80 |
| F64 | DIETZEL BRODY J | ENGINEER | ☒ | 81 | 58 | 76 | 80 |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

| | | | | |
|---|---|---|---|---|
| 3 ID: SER3<br>Type: 60 | Dispatch: 09 / 26 / 2005 / 07:22:18<br>Arrival:<br>Clear: 09 / 26 / 2005 / 08:52:59 | ☒ | 2 # | ☐ Suppression ☐ EMS ☒ Other | 81, 57, 56, 80 |

| Personnel ID | Name | Rank or Grade | Attend | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| F196 | WEST PETER J | FIREFIGHTER | ☒ | 81 | 57 | 12 | 80 |
| F208 | SALVO MICHAEL D | FIREFIGHTER | ☒ | 81 | 70 | 12 | 80 |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

CITY OF NORTH CHARLESTON FIRE DEPARTMENT

**A** FDID: 10308 | State: SC | Incident Date (MM DD YYYY): 9 26 2005 | Station: STA 10 - S1 | Incident Number: 053578 | Exposure: 0 | ☐ Delete ☐ Change | **NFIRS - 10 Personnel**

| B Apparatus or Resource | Dates and Times (Check if same date as alarm date) Month Day Year Hours/Mins | Sent | Number of People | Use (Check ONE box for each apparatus to indicate its main use at the incident.) | Actions Taken (List up to 4 actions for each apparatus and each personnel) |
|---|---|---|---|---|---|
| 1 ID: TR6 Type: 60 | Dispatch: 9 26 2005 07:22:18<br>Arrival: 07:32:44<br>Clear: 08:52:59 | ☒ | 3 # | ☐ Suppression ☒ EMS ☐ Other | 93 |

| Personnel ID | Name | Rank or Grade | Attend [X] | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

| 2 ID: Type: | Dispatch: Arrival: Clear: | Sent ☐ | # | ☐ Suppression ☐ EMS ☐ Other |
|---|---|---|---|---|

| Personnel ID | Name | Rank or Grade | Attend [X] | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

| 3 ID: Type: | Dispatch: Arrival: Clear: | Sent ☐ | # | ☐ Suppression ☐ EMS ☐ Other |
|---|---|---|---|---|

| Personnel ID | Name | Rank or Grade | Attend [X] | Action Taken | Action Taken | Action Taken | Action Taken |
|---|---|---|---|---|---|---|---|
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |
| | | | ☐ | | | | |

# Narrative: Page 3

[09/26/2005 07:34:39 : DINGLED]
SER3 76 BACK TO MIDLAND PARK

[09/26/2005 07:31:52 : DINGLED]
BAT12 1022 ALL UNITS EXCEPT E10 AND E3/// ADV BAT9 THT HE NEEDS TO COME 23

[09/26/2005 07:27:41 : DINGLED]
BAT9 COPIED

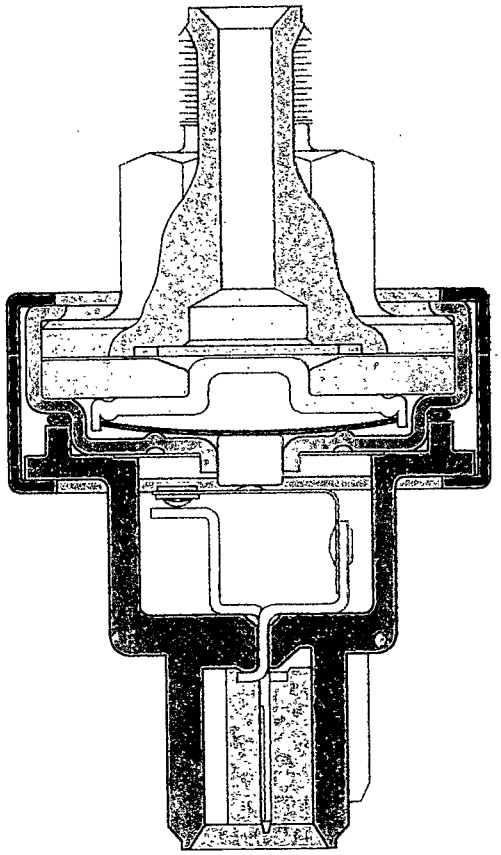
[09/26/2005 07:25:27 : DINGLED]
BAT9 COPIED

[09/26/2005 07:25:00 : LBROWN]
RECVD CALL FRM WORKER ADV SOMETHING IN THE WAREHOUSE WAS 1070 IS EXTINGUISHED ATT

[09/26/2005 07:23:33 : CAD7]
FIVE STAR LAWN CARE

1070 IN SHOP.

1-17-96Landmark:CHRISTY`S HEATING & AIR COND/
1-17-96Landmark:CHRISTY`S HEATING & AIR COND/
Cross streets: RIVERS AV//
Landmark:CHRISTY`S HEATING & AIR COND
1-17-96



# ANALYSIS OF A FORD SPEED CONTROL DEACTIVATION SWITCH FIRE.

PLAINTIFF'S EXHIBIT 3 I.D. B

BY JEFFERY T MORRILL, CFI, CVFI, MARIETTA, GEORGIA—The investigation of a vehicle fire is often a complex and daunting task. Occasionally, when a situation arises that is so widely publicized as the recent recall of nearly four-million Ford vehicles, even the experienced fire investigator tends to view these losses with a bit of tunnel-vision.

The first step in any vehicle fire investigation is to properly identify the vehicle. Only then can a proper origin and cause investigation proceed. To identify a Speed Control Deactivation Switch (SCDS) fire, the investigator must observe the burn patterns and demonstrate evidence consistent with a fire originating at the driver's side of the engine compartment, followed by the proper documentation, collection and analysis of the evidence.

The initial recall was 99v124 for the 1992-1994 Panther platform (consisting of the Lincoln Town Car, Ford Crown Victoria and Mercury Marquis). This was followed by (Ford 05S28), issued January 27, 2005, listing the 2000 model year F-150 Series including the Expedition and Lincoln Navigator, as well as the 2001 F-150 Supercrew. This recall was expanded September 7, 2005, to include the 1994-2002 model year F-150, 1994-1999 F-250 (light duty) 1994-1996 Bronco, 1997-2002 Expedition, 1998-2002 Lincoln Navigator and the 2002 Lincoln Blackwood. Ford stated that the Speed Control Deactivation Switch in these vehicles may "overheat, smoke, or burn". The link to the recall is: http://www-odi.nhtsa.dot.gov/cars/problems/recalls/results.cfm then NHTSA CAMPAIGN ID Number : 05V017000

## Switch Circuitry, Function and Failure

The cruise control system is designed to maintain selected vehicle speed while driving. As part of the cruise control system, there are controls to turn the system on, off and adjust vehicle speed that are typically located on the steering wheel or steering column levers. There are two switches that 'deactivate' the system in response to brake application. The primary switch is an electrical switch, mounted under the dashboard, and responds to the movement of the brake pedal arm. This switch is responsible for energizing the brake lights and deactivating the cruise control system. The second (redundant) switch is pressure activated and mounted on the brake master cylinder. There are two mounting orientations that Ford uses. The most common is a vertical orientation as shown in Figure 1, and the second is a 45 degree down orientation as shown in Figure 2


FIGURE 1


FIGURE 2

The SCDS should only function to deactivate the cruise control if the brake light switch fails; otherwise, this switch is normally closed and carries the electrical load of the cruise control system. The SCDS was manufactured by Texas Instruments design to a Ford specification design. Texas Instruments has stated the switch was only designed to handle a small (1-2 amperes) intermittent DC load. Ford installed the switches in a 15 ampere circuit. Additionally this circuit is energized at all times. Ford stated this was necessary as the switch is in the brake light circuit and must therefore be continuously energized. Figure 3 is a diagram of the switch components.

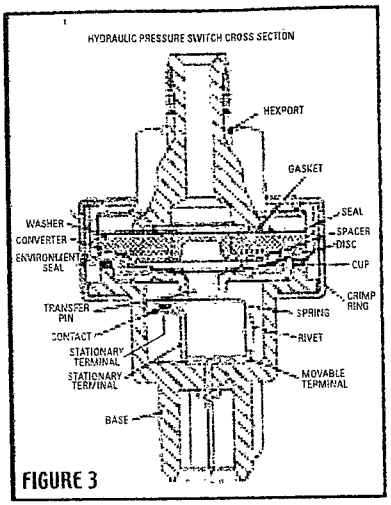


FIGURE 3

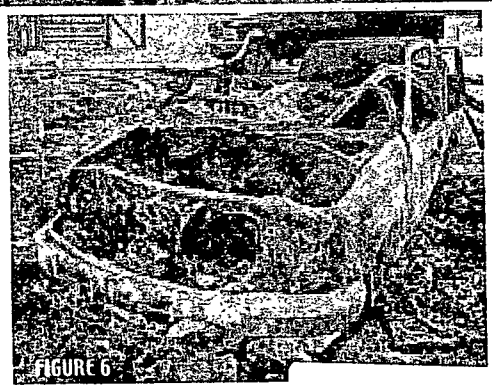
Ford has determined that brake fluid can leak by the "kapton" seals and enter the electrical portion of the switch. Ford further stated that the brake fluid intrusion causes corrosion which can lead to a conductive path-to-ground. A three minute video was prepared by Ford and can be found at: http://www.ford.com/en/innovation/safety/resources/cruiseControl.htm

## Origin Determination

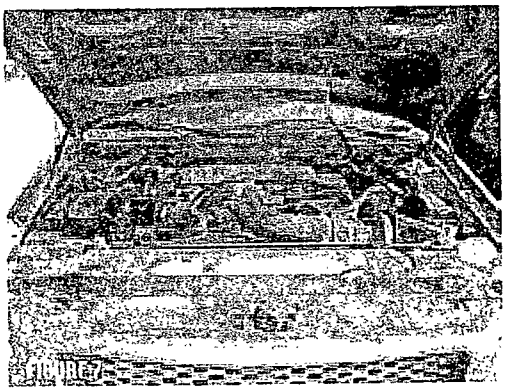
As an objective investigator, you must inspect every vehicle without presumption and evaluate the evidence on its merits. A typical vehicle investigation starts with an overall view of the vehicle, noting any exterior burn damage. Depending on how long they burned, damage from a SCDS fire may be minor, major or total, such as shown in Figures 4, 5, or 6.

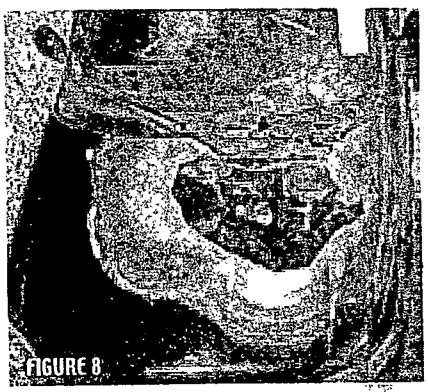


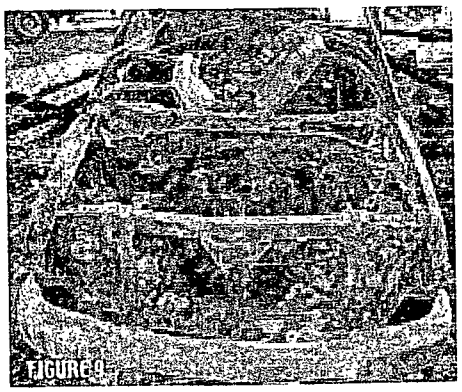

FIGURE 5


FIGURE 6

There may be no fire damage visible on the exterior or the vehicle may be "totally" consumed. Of particular importance in these investigations is that if at all possible, the vehicle should be inspected in place. Often, crucial evidence is lost as it falls from the vehicle to the ground and is crushed during vehicle recovery or disposed of after the vehicle carcass has been hauled away. Once the engine compartment is established as the compartment of origin, it should be divided into four quadrants (front driver's side, rear driver's side, rear passenger's side and front passenger's side) so a comparison of fire damage can be made. Figures 7, 8 and 9, show the differences in fire damage that can be expected between the driver's side and passenger's side, as well as the front and rear of the engine compartment.


FIGURE 7

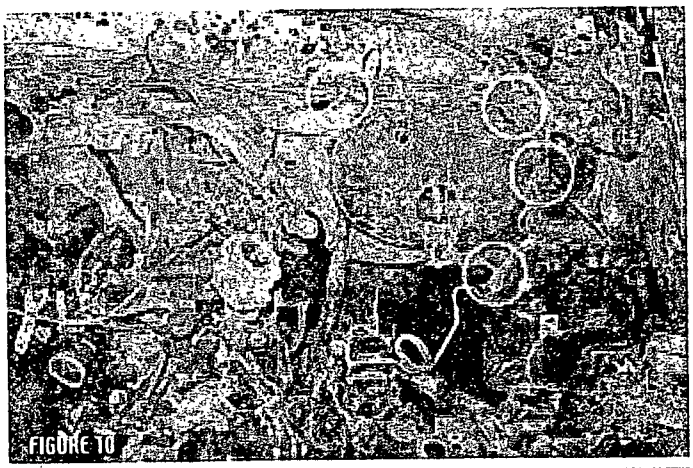

FIGURE 8


FIGURE 9

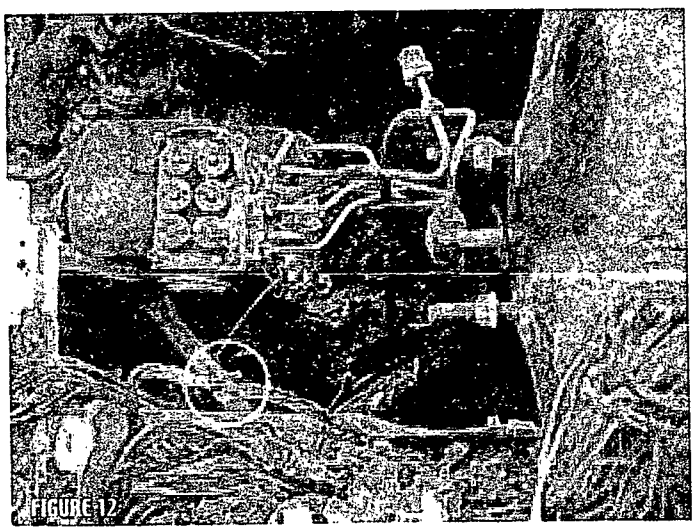
There may be minimal fire damage at the driver's side with no damage at the passenger's side. In more heavily damaged vehicles, the only observable difference may be that there is slightly more hood material in place on the passenger's side then on the driver's side. The investigator should consider the attitude the vehicle was setting at during the fire and any other environmental factors that could affect the burn patterns. No one factor alone should be used to determine origin except in the rare case that there is only fire damage at the switch itself.

Arc mapping of the engine compartment wiring can be used as a tool to assist the investigator in determining whether any identifiable electrical activity occurred on the driver's side of the engine compart

ment. Again, this alone does not mean the switch failed and started the fire. It is only an indicator that there was electrical activity on the driver's side of the engine compartment prior to the battery being depleted. The identification of the areas of electrical activity can be marked with a colored ribbon so as to show better in a photograph. Figures 10, 11, and 12, are examples of the identification of electrical activity and how it can be marked.


FIGURE 10




FIGURE 12

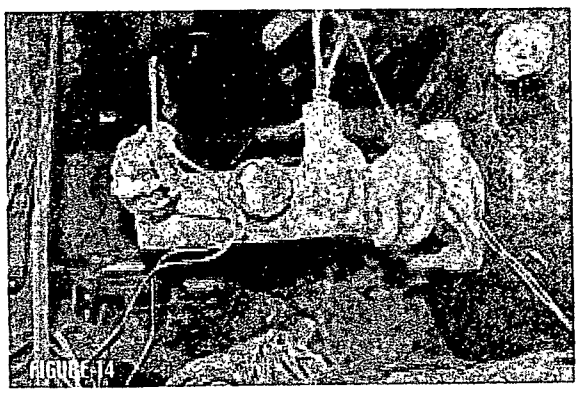
Based on the inspection so far, the investigator should have a working hypothesis about the origin of the fire at the Speed Control Deactivation Switch and be prepared to locate and document the switch remains.

Figure 13 is a view of an undamaged SCDS mounted vertically on the forward end of the master cylinder.

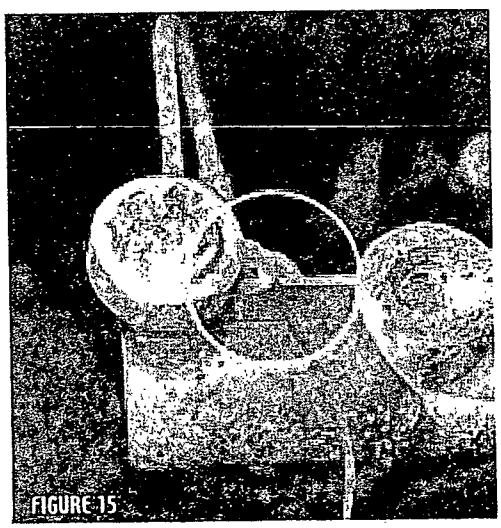

FIGURE 13

## Switch Identification and Collection

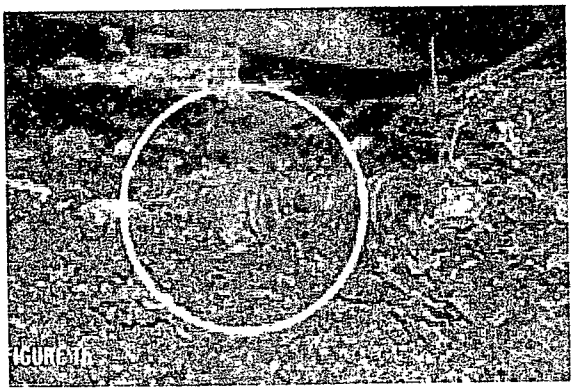
If the switch is still completely intact, in its pre-fire position on the end of the master cylinder, it is recommended that the entire master cylinder be removed and retained. This is the easiest way to recover the switch without any further physical damage. If the wires are still attached, they should be cut back a distance away from the switch. A switch that has not been detached from the master cylinder will typically look like Figure 14.

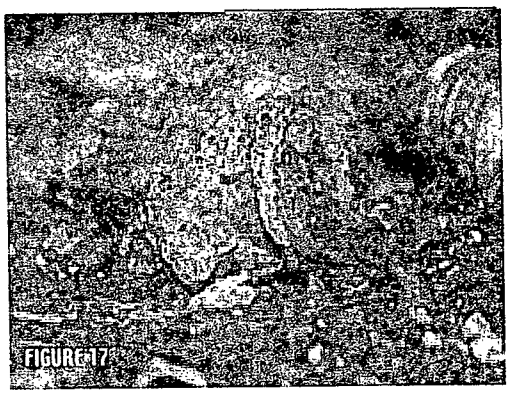

FIGURE 14

Often the electrical (base) portion of the switch will be detached from the hexport (body). The electrical portion may still be attached by the wiring or may have fallen to the inside of the driver's side front tire. A hexport with a detached electrical section may look like the one shown in Figure 15 (the electrical portion is hanging over the master cylinder and still attached by one wire).

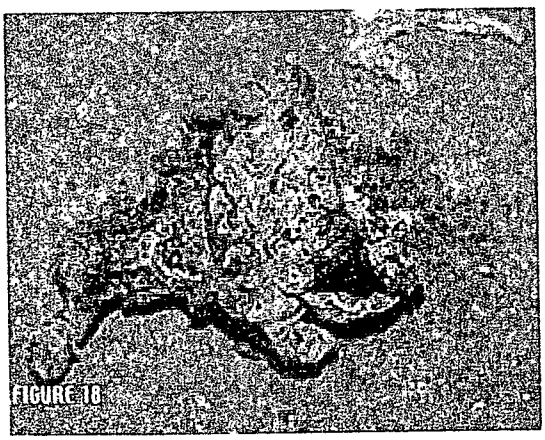

FIGURE 15

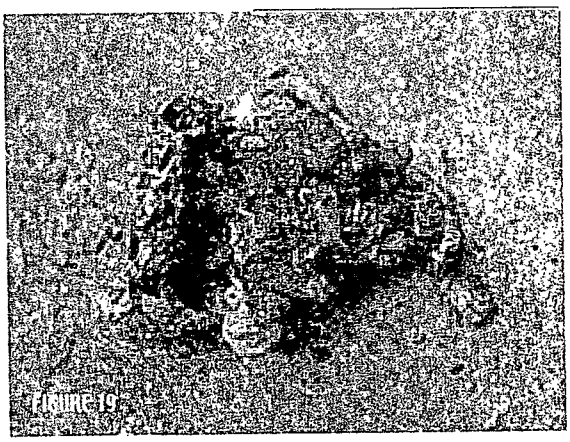
When the fire reaches sufficient intensity, the master cylinder will fail, and the switch parts will fall to the ground. Identification and recovery of the switch parts becomes more complex and difficult. Typically, the electrical section will fall ahead of the axle and the hexport will fall to the rear of the axle, but both will be to the inside of the driver's front tire. This area is subject to the actions of fire suppression and vehicle recovery. If the vehicle is slid over the ground, as in a roll-back recovery operation, the switch electrical remains can be crushed. Figures 16 and 17 show the electrical section in the debris under the vehicle.


FIGURE 16


FIGURE 17

Figures 18 and 19 show the electrical section after recovery from the debris.


FIGURE 18


FIGURE 19

The hexport will also be found in the debris as shown in Figures 20 and 21 and after recovery in Figure 22.

Once these items are recovered, they should be placed in a plastic bag, then padded and placed in a metal can to protect the pieces from further harm.

## NHTSA has prepared a Go, No-Go Complaint Analysis

**SCDS Caused Fire**

• Yes: *The following criteria must be met:*

(1) The fire originated in the area where the speed control deactivation switch is located (left-rear corner of the engine compartment, at the master cylinder). This origin point would be evidenced by burn patterns seen in photographs or by eye witness account.

And (2) or (3);

(2) There was evidence of speed control deactivation switch failure prior to the fire (e.g., inoperable speed control, speed control deactivation switch fuse open—sometimes repeatedly, difficulty shifting out of PARK, evidence of brake fluid leakage from the switch) or

(3) Evidence of speed control switch failure discovered during post-fire forensic examination.

• Maybe: *The following criteria must be met:*

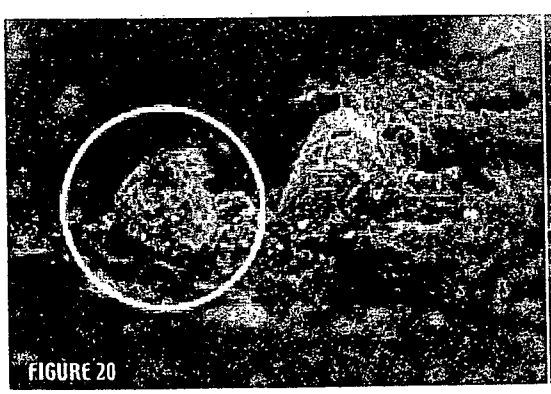
(1) The fire originated in the area where the speed control deactivation switch is located (left-rear corner of the engine compartment, at the master cylinder). This origin point would be evidenced by burn patterns seen in photographs or by eye witness account.

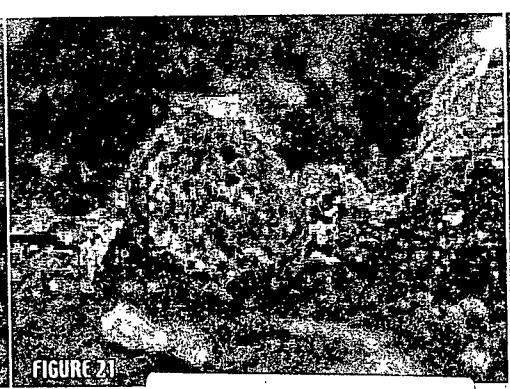
Or;

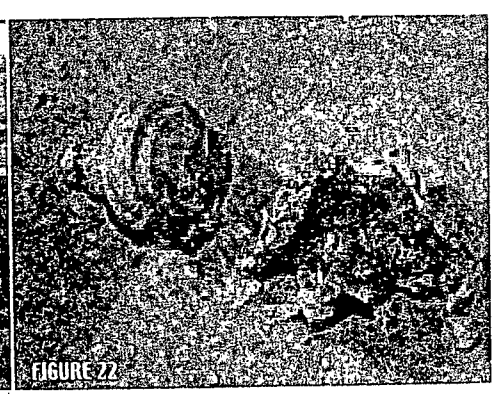
(2) There was evidence of speed control deactivation switch failure prior to the fire (e.g., inoperable speed control, speed control deactivation switch fuse open – sometimes repeatedly, difficulty shifting out of PARK, evidence of brake fluid leakage from the switch)

Or,

(3) Evidence of speed control switch failure discovered during post-fire forensic examination.


FIGURE 20


FIGURE 21


FIGURE 22

• No: *The following criteria must be met:*

(1) The fire originated away from the master cylinder. This origin point would be evidenced by burn patterns seen in photographs or by eye witness account.

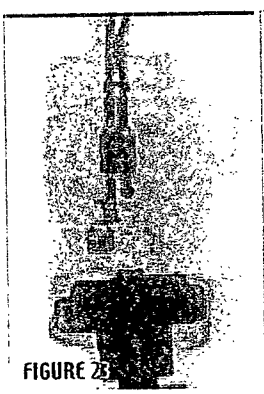
Or;

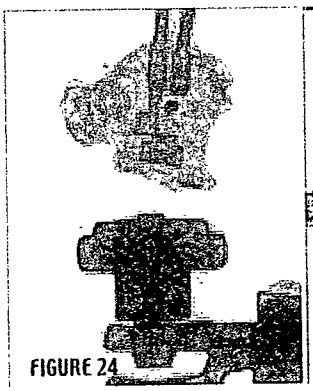
(2) Physical evidence exists that indicate the fire did not start at the SCDS.

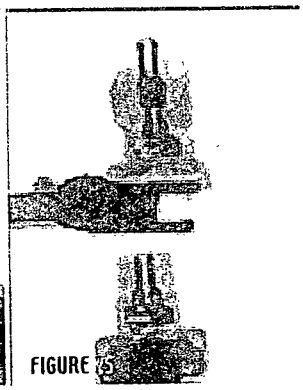
## Laboratory Analysis

As with any evidence submitted to a laboratory, a proper chain of custody is required. Once the laboratory has the parts, an x-ray of the electrical section will reveal whether the switch has failed internally. Caution must be exercised here as a failure could have occurred at any time in the past and not resulted in a fire. If the switch is failed and the cruise control was working properly, then it can be determined that the failed switch was the likely culprit. X-rays of the switch, such as those shown in Figures 23 and 24 can show the extent of the failure (if it exists).

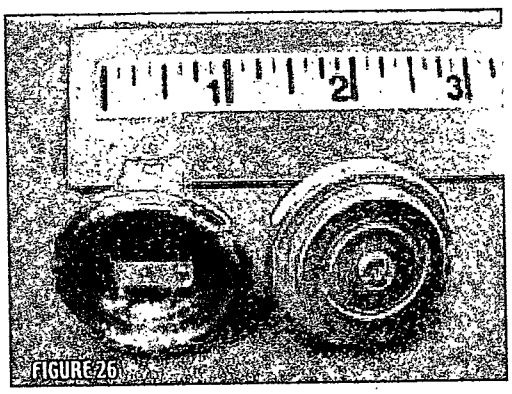
The use of an exemplary switch in the x-ray can make the identification of the internal components much easier (Figure 25). In a failed SCDS, the x-ray will reveal evidence of melting of the copper contacts.

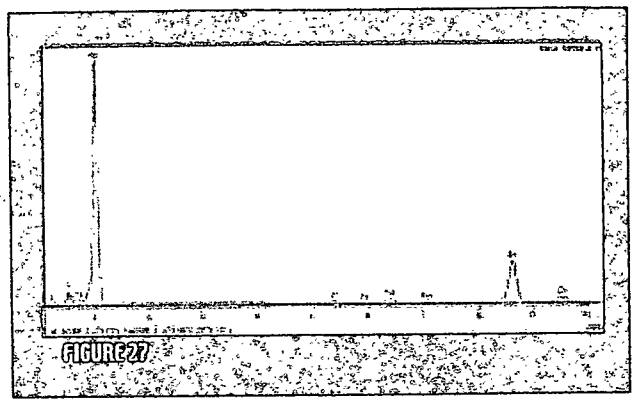

FIGURE 23


FIGURE 24


FIGURE 25

When the electrical section is not recovered, the hexport can still be analyzed. The use of a Scanning Electron Microscope with Energy Dispersive X-Ray Spectroscopy (SEM/EDS) allows the presence of copper to be visualized. In a normally functioning switch, there should be no copper on the face of the hexport. Figure 26 shows a new hexport and Figure 27 is the accompanying EDS spectrum. The zinc (Zn) indicates galvanized steel.


FIGURE 26


FIGURE 27

A recovered hexport from a failed SCDS will typically look like the one shown in Figure 28. Using the SEM, photomicrographs can be taken of the four quadrants (Figure 29 shows quadrant 1) and the EDS scan of the surface (Figure 30) will show the presence of copper if the electrical portion of the switch has failed.

An SEM/EDS with elemental mapping capability can visually show the location of melted copper on the hexport face (Figure 31). port

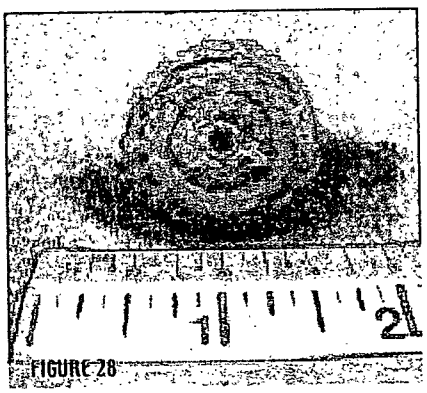
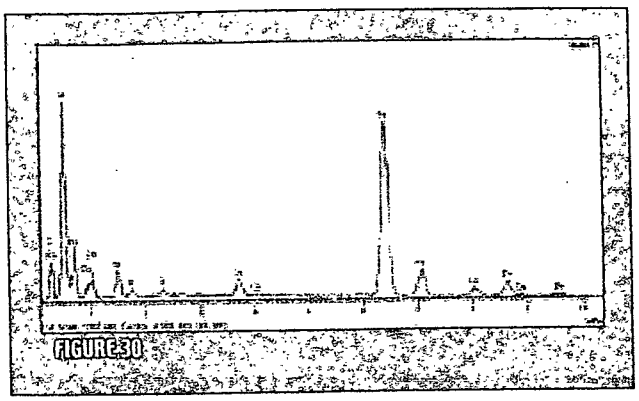

FIGURE 28


FIGURE 29




A fire from another source will not deposit copper on the hexportface. The contacts are some of the most robust materials in the switch. The housing is plastic and will melt, the ring holding the two switch halves together is aluminum and will melt, and the master cylinder is die-cast zinc (pot metal) and will melt prior to any melting of the switch contacts. The author has seen numerous fires that did not start at the switch (or even in the engine compartment) and the switch contacts have been recovered completely intact even though the master cylinder, connector ring and plastic housing have been destroyed.

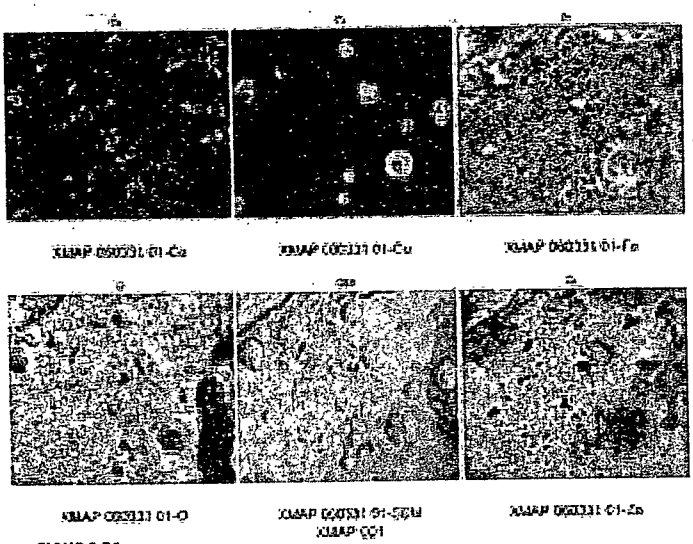


FIGURE 31

## Manufacturer's Involvement

NFPA 921, The Guide for Fire and Explosion Investigation, 2004 edition, addresses the issues of spoliation in Chapter 11 at Section 3.5. This section states that the spoliation of evidence may occur if other interested parties are significantly impaired in obtaining the same evidentiary value from the evidence as any other party. It is the responsibility of the investigator to use care to avoid the destruction of evidence. Additionally, it is recognized that it is sometimes necessary to remove the potential causative agent from the scene and even carry out some disassembly in order to determine whether the object did, in fact, cause the fire. There may be cases where the evidence must be removed to protect it from further damage. The investigator will have to use his or her own judgment about notice to Ford Motor Company prior to the removal of evidence. The author's experience is to notify Ford up front about the possibility of liability, and give them the opportunity to respond. Most of the inspections that do not involve any damage other than the vehicle can proceed without Ford's representation. Remember, it is up to you to determine the necessity of the manufacturer's involvement and the extent of documentation that needs to occur. It is not unusual for me to have several hundred photographs of the vehicle including the recovery of evidence. The additional laboratory analysis can add numerous other photographs of the examination of the evidence, including X-ray images and SEM/EDS photographs and spectrums. ©

**About The Author**

Jeffery Morrill has been investigating fires for Applied Technical Services (ATS), of Marietta, Georgia, for 15 years. He is certified by the International Association of Arson Investigators (IAAI) as a CFI and by the National Association of Fire Investigators (NAFI) as a CFEI, CFII and a CVFI.

Mr. Morrill is one of the staff instructors for the NAFI Certified Vehicle Fire Investigator program, taught at Eastern Kentucky University campus in Richmond, Kentucky.

Additionally, Mr. Morrill is a member of the National Fire Protection Association (NFPA) 921 committee and was heavily involved in the Vehicle Fire Investigation chapter revision in the 2001 edition. Mr. Morrill currently Co-Chairs the task group for the Vehicle Fire Investigation Chapter of NFPA 921, scheduled to be released in 2008. ATS, the largest private laboratory in the Southeast, has the capability to provide both Real-Time X-Ray and SEM/EDS services. Visit us on-line at www.atslab.com

## Call for Papers

IAAI Annual Training Conference
April 29, 2007 - May 4, 2007

The International Association of Arson Investigators, dedicated to providing the finest training to fire investigators, is hosting its 2007 Annual Training Conference in Victoria, British Columbia where a large international membership from its 66 chapters is expected to attend.

Abstracts of papers and training proposals should be submitted electronically to George Codding at gcodding@louisvillefire.com by August 1, 2006. Additonal materials may be requested for consideration. Authors will be notified of acceptance after the review process has been completed.

Frank M Ligon
Ford Motor Company
P O. Box 1904
Dearborn, Michigan 48121

F0026858 0098

STAN W SHELBY
1306 LARK LN
HANAHAN, SC 29406-8500

September 2005

2001 Expedition
Vehicle ID #: 1FMRU15W31LB49545 05S28

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

Ford Motor Company has decided that a defect which relates to motor vehicle safety exists in certain 1994-1996 model year Bronco, 1994-2002 F-150/250 (Under 8500 GVW), 1997-2002 Expedition, 1998-2002 Navigator, and 2002 Blackwood vehicles equipped with speed control. We apologize for this situation and want to assure you that, with your assistance, we will correct this condition. Our commitment, together with Ford and Lincoln Mercury dealers, is to provide you with the highest level of service and support.

**What is the issue?**

On your vehicle, the underhood speed control deactivation switch may overheat, smoke, or burn, which could result in an underhood fire. This condition may occur either when the vehicle is parked or when it is being operated, even if the speed control is not in use.

**What will Ford and your dealer do?**

Parts to repair your vehicle will not be available until November 2005, and as a result, we are implementing a two-stage repair process. Until parts are available for the permanent repair, you should contact your dealer to make an appointment to disconnect the speed control deactivation switch, which is located under the hood of your vehicle. This procedure will temporarily disconnect the speed control system, which will prevent a speed control deactivation switch related fire. The speed control system will then be inoperative until the permanent repair is performed. We recognize this may be an inconvenience, but we believe this preventive action is in the best interest of our customers' safety.

When parts become available for the permanent repair in November 2005, you will be notified to contact your dealer to schedule an appointment to have a fused wiring harness installed and to reconnect the speed control system on your vehicle.

Ford Motor Company and your dealer will perform the above modification free of charge (parts and labor).

**How long will it take?**

Please call your dealer for an estimate of how much time will be required to perform this repair. Your dealer may be able to perform this repair while you wait; however, due to scheduling requirements, your dealer may need your vehicle for a longer period of time.

**What are we asking you to do?**

Please call your dealer without delay and request a service date to have the switch disconnected (Recall 05S28). Provide the dealer with the Vehicle Identification Number (VIN) of your vehicle. The VIN is printed near your name at the beginning of this letter.

PLAINTIFF'S EXHIBIT 4 I.D. B



© Copyright 2005 Ford Motor Company

F21327

# STATE OF SOUTH CAROLINA
# CERTIFICATE OF TITLE
## OF A VEHICLE

| VEHICLE ID NUMBER | YEAR | MAKE | MODEL | NEW/USED |
|---|---|---|---|---|
| 1FTHX25H6TEA43869 | 1996 | FORD | COFF25 | USED |

| BODY STYLE | DATE ISSUED | ODOMETER | WEIGHT | TITLE NUMBER |
|---|---|---|---|---|
| TK | 02-07-2005 | 227,000 | 4700 | 770080137720480D |

VEHICLE BRAND(S)
ACTUAL MILEAGE

FULL NAME OF OWNER(S)
5 STAR INC
1306 LARK LN
HANAHAN SC 294068500

CUSTOMER NUMBER: 030816764

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

035422517

PLAINTIFF'S EXHIBIT
5-A
2:08-cv-03



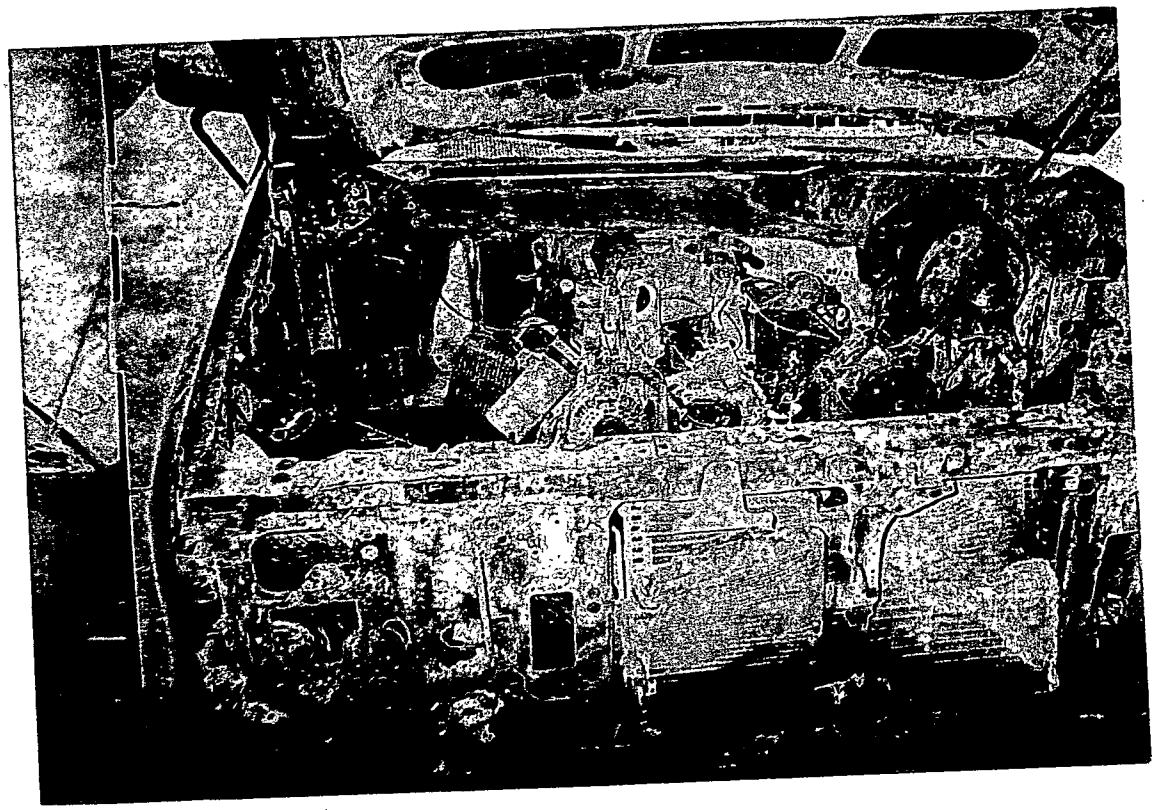

PLAINTIFF'S
EXHIBIT
6




PLAINTIFF'S
EXHIBIT
17
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PLAINTIFF'S
EXHIBIT
8
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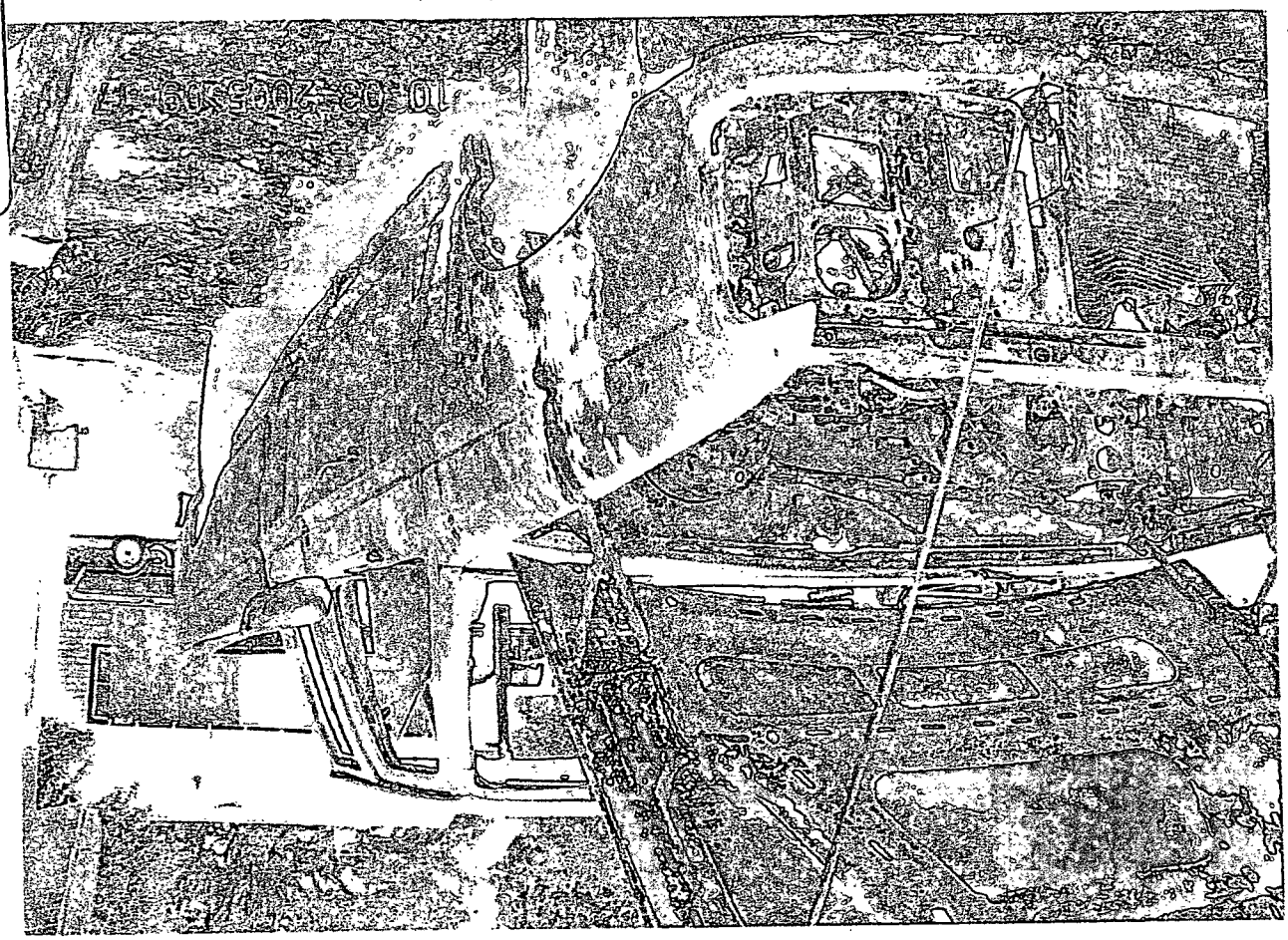
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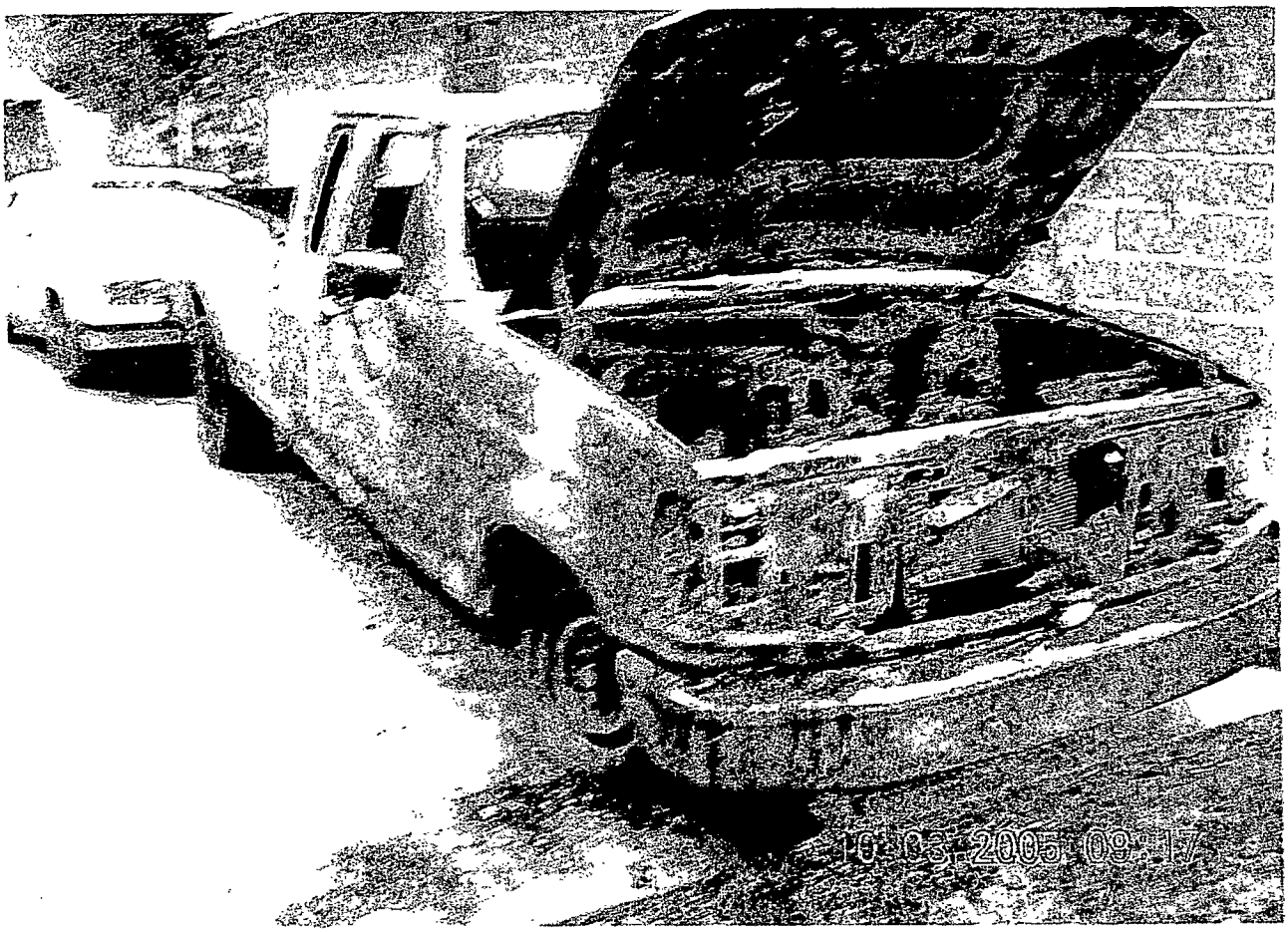
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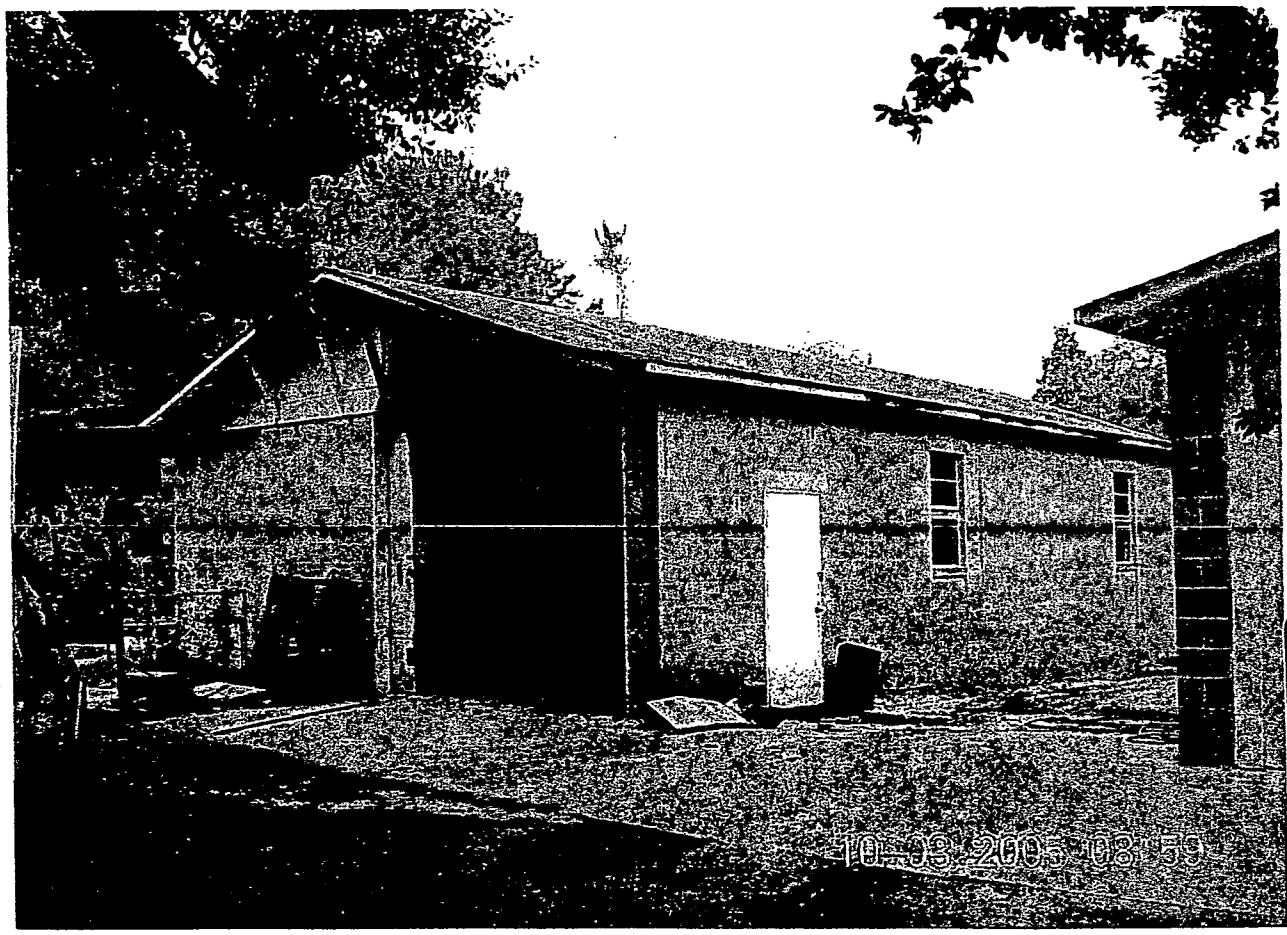
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PLAINTIFF'S EXHIBIT
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9-2-08
13







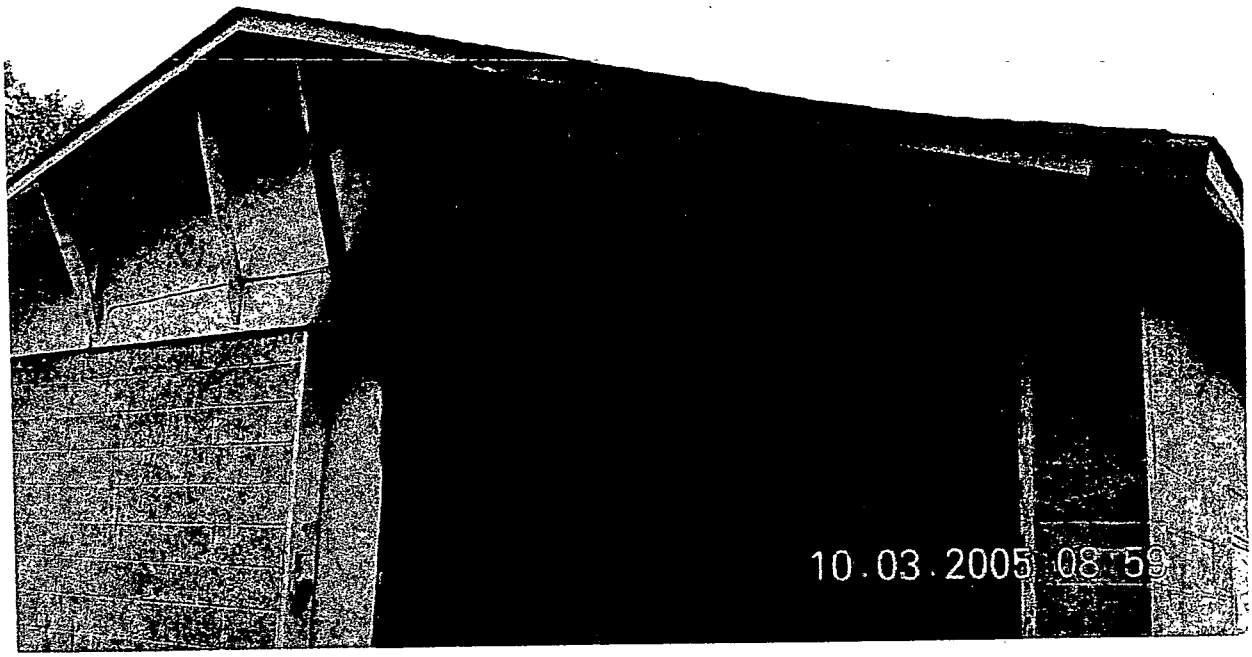




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PLAINTIFF'S EXHIBIT
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9-3-08 KB

PLAINTIFF'S EXHIBIT
14
9-3-08

PLAINTIFF'S
EXHIBIT
15
9-3-08







PLAINTIFF'S EXHIBIT 16 9-3-08










# OFFICE OF DEFECTS INVESTIGATION (ODI)

## Recalls - Search Results

5 Record(s) Displayed.

Report Date : **September 1, 2008 at *12:53 PM***
Search Type : **VEHICLE**
Make : **FORD**
Model : **F250**

**Make** : FORD **Model** : F250 **Year** : 1996

**Manufacturer** : FORD MOTOR COMPANY

**Mfr's Report Date** : SEP 07, 2005

**NHTSA CAMPAIGN ID Number** : 05V388000

**NHTSA Action Number:** EA05005

**Component:** VEHICLE SPEED CONTROL

**Potential Number Of Units Affected** : 4500000

**Summary:**

ON CERTAIN PICKUP TRUCKS AND SPORT UTILITY VEHICLES EQUIPPED WITH SPEED CONTROL, THE SPEED CONTROL DEACTIVATION SWITCH MAY OVERHEAT, SMOKE, OR BURN.

**Consequence:**

A FIRE AT THE SWITCH COULD OCCUR.

**Remedy:**

BY LETTER DATED SEPTEMBER 12, 2005, OWNERS WERE INSTRUCTED TO RETURN THEIR VEHICLES TO THEIR DEALERS TO HAVE THE SPEED CONTROL DEACTIVATION SWITCH DISCONNECTED. OWNERS WHO HAVE HAD THEIR SPEED CONTROL DEACTIVATED ARE BEING NOTIFIED THAT PARTS WILL BE AVAILABLE AND ADVISED TO MAKE AN APPOINTMENT TO RECONNECT THE SPEED CONTROL BEGINNING IN FEBRUARY 2006. OWNERS WHO DID NOT HAVE THEIR SPEED CONTROL DEACTIVATED ARE BEING NOTIFIED TO HAVE THEIR SYSTEM REMEDIED BEGINNING IN FEBRUARY 2006. OWNERS ARE URGED TO AVAIL THEMSELVES OF THE FREE DISCONNECT SERVICE AS SOON AS POSSIBLE BECAUSE OF THE SIGNIFICANT RISK OF FIRE. OWNERS MAY CONTACT FORD AT 1-800-392-3673. (NOTE: ALSO SEE RECALLS 05V017 AND 06V286)

**Notes:**

FORD RECALL NO. 05S28. CUSTOMERS MAY ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S VEHICLE SAFETY HOTLINE AT 1-888-327-4236 (TTY 1-800-424-9153), OR GO TO HTTP://WWW.SAFERCAR.GOV.

---

**Make** : FORD **Model** : F250 **Year** : 1996

**Manufacturer** : CK MOTORSPORT, INC.

**Mfr's Report Date** : MAY 22, 2006

**NHTSA CAMPAIGN ID Number** : 06E049000

**NHTSA Action Number:** N/A

**Component:** EXTERIOR LIGHTING

**Potential Number Of Units Affected** : 27176

**Summary:**

CERTAIN CK MOTORSPORTS COMBINATION HEADLIGHTS, CLEAR CORNER, BUMPER, AND SIDE MARKER LIGHTS SOLD AS REPLACEMENT LAMPS FOR USE ON THE PASSENGER VEHICLES LISTED ABOVE. SOME COMBINATION LAMPS THAT ARE NOT EQUIPPED WITH AMBER SIDE REFLECTORS FAIL TO CONFORM TO FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108, LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT.

**Consequence:**

WITHOUT THE AMBER REFLECTORS, THE VEHICLE WILL BE POORLY ILLUMINATED, POSSIBLY RESULTING IN A VEHICLE CRASH WITHOUT WARNING.

**Remedy:**

CK MOTORSPORT WILL NOTIFY OWNERS AND REPLACE THE NONCOMPLIANT LAMPS FREE OF CHARGE. THE RECALL BEGAN ON JULY 1, 2006. OWNERS MAY CONTACT CK MOTORSPORT AT 1-909-610-7211.

**Notes:**

THIS RECALL ONLY PERTAINS TO AFTERMARKET REPLACEMENT EQUIPMENT AND HAS NO RELATION TO ANY ORIGINAL EQUIPMENT INSTALLED ON VEHICLES MANUFACTURED BY THE VEHICLE MANUFACTURERS. FOR MORE INFORMATION ON THE LAMP MODEL NUMBERS, CLICK ON DOCUMENT SEARCH AND VIEW DOCUMENT TITLED ¿LAMP MODEL NUMBERS.¿ CUSTOMERS MAY CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S VEHICLE SAFETY HOTLINE AT 1-888-327-4236 (TTY: 1-800-424-9153); OR GO TO HTTP://WWW.SAFERCAR.GOV.

---

**Make :** FORD **Model :** F250 **Year :** 1996

**Manufacturer :** FORD MOTOR COMPANY **Mfr's Report Date :** JUL 27, 2006

**NHTSA CAMPAIGN ID Number :** 06V286000 **NHTSA Action Number:** EA05005

**Component:** VEHICLE SPEED CONTROL

**Potential Number Of Units Affected :** 1200000

**Summary:**

ON CERTAIN TRUCKS EQUIPPED WITH SPEED CONTROL, GASOLINE OR NATURAL GAS ENGINES, THE SPEED CONTROL DEACTIVATION SWITCH MAY OVERHEAT.

**Consequence:**

OVERHEATING COULD RESULT IN SMOKE OR BURN AND AN UNDERHOOD FIRE.

**Remedy:**

DEALERS WILL INSTALL A FUSED WIRING HARNESS INTO THE SPEED CONTROL SYSTEM FREE OF CHARGE. THE RECALL BEGAN ON AUGUST 7, 2006. OWNERS MAY CONTACT FORD AT 1-866-436-7332. (NOTE: ALSO SEE RECALLS 05V017 AND 05V388)

**Notes:**

FORD RECALL NO. 05S28. CUSTOMERS MAY ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION¿S VEHICLE SAFETY HOTLINE AT 1-888-327-4236 (TTY 1-800-424-9153), OR GO TO HTTP://WWW.SAFERCAR.GOV.

---

**Make :** FORD **Model :** F250 **Year :** 1996

**Manufacturer :** FORD MOTOR COMPANY **Mfr's Report Date :** JUL 25, 1996

**NHTSA CAMPAIGN ID Number :** 96V146000 **NHTSA Action Number:** N/A

**Component:** STRUCTURE:FRAME AND MEMBERS

**Potential Number Of Units Affected :** 200

**Summary:**

THE CROSSMEMBER FRAME GUSSETS WERE INSTALLED WITH UNDERSIZED THREADED FASTENERS FOLLOWING A BREAKDOWN OF THE PRODUCTION RIVET GUN THAT IS GENERALLY USED. THIS GUSSET IS THE ATTACHMENT POINT FOR THE REAR STRAP OF THE MID-SHIP FUEL TANK.

**Consequence:**

THE SUBJECT FASTENERS CAN SEPARATE CAUSING IN THE REAR STRAP OF THE AFFECTED FUEL TANK TO BECOME DISCONNECTED. A LOOSE OR DISCONNECTED REAR STRAP ALLOWS THE FUEL TANK TO POSSIBLY CONTACT THE ROAD SURFACE INCREASING THE RISK OF A VEHICLE FIRE.

**Remedy:**

DEALERS WILL REPLACE THE CROSSMEMBER GUSSET FASTENERS WITH THE SPECIFIED ALTERNATIVE

FASTENERS (BOLTS).

**Notes:**

OWNER NOTIFICATION: OWNER NOTIFICATION IS EXPECTED TO BEGIN AUGUST 26, 1996. NOTE: OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT FORD AT 1-800-392-3673. ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-800-424-9393.

---

**Make :** FORD **Model :** F250 **Year :** 1996

**Manufacturer :** FORD MOTOR COMPANY **Mfr's Report Date :** AUG 22, 1996

**NHTSA CAMPAIGN ID Number :** 96V161000 **NHTSA Action Number:** N/A

**Component:** EQUIPMENT:OTHER:LABELS

**Potential Number Of Units Affected :** 134770

**Summary:**

THE CERTIFICATION LABELS ON THE INVOLVED VEHICLES HAS INCORRECT REAR TIRE INFLATION PRESSURE DESIGNATIONS. THIS DOES NOT COMPLY WITH FMVSS NO. 120, "TIRE SELECTION AND RIMS FOR MOTOR VEHICLES OTHER THAN PASSENGER CARS."

**Consequence:**

INCORRECT INFLATION PRESSURES COULD CAUSE PREMATURE WEAR OF THE REAR TIRES.

**Remedy:**

OWNERS WILL BE PROVIDED WITH CORRECT CERTIFICATION LABELS AND INSTRUCTIONS FOR INSTALLING THESE LABELS. DEALERS CAN INSTALL THIS LABEL IF THE OWNER SO DESIRES.

**Notes:**

OWNER NOTIFICATION: OWNER NOTIFICATION IS EXPECTED TO BEGIN OCTOBER 18, 1996. NOTE: OWNERS WHO DO NOT RECEIVE THE CORRECT LABEL WITHIN A REASONABLE TIME FREE OF CHARGE SHOULD CONTACT FORD AT 1-800-392-3673. ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-800-424-9393.

---

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

47588
47608

R 7749

DELIVER TO:

DATE OUT: 7-26-05 DATE IN:

INVOICE TO

NAME: STAN SHELLY 5 STAR INC
ADDRESS: PO BOX 62875
N. CHAS SC 29419
PHONE: 514-8861

P.O. NO.:
DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x

TITLE

PLAINTIFF'S EXHIBIT 18 I.D. 18

| | | UNIT NO. | HOUR METER | | RATES | | | |
|---|---|---|---|---|---|---|---|---|
| QTY. | DESCRIPTION | | OUT | IN | DAY | WEEK | MONTH | EXTENDED AMOUNT |
| 1 | 4000 PSI Pipe Wash: | | | | 50.00 | | | |
| | 50 Ft Hose, Chem inj., 4 Tips | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

| | MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| | |
|---|---|
| RENTALS TOTAL | 50.00 |
| MATERIAL TOTAL | |
| SALES TAX TOTAL | 3.00 |
| DAMAGE WAIVER | |
| TOTAL | 53.00 |

872

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

873

# CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

R 7752

DELIVER TO:

DATE OUT: 9-27-05 DATE IN:

INVOICE TO

NAME: Stan Shelby / 5 star Inc.
ADDRESS:
PHONE:

P.O. NO.:
DOG NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

TITLE Mgr

874

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres. Washer | | | | 50.00 | | | 50.00 |
| | 50 ft Hose, Chem Inj., 4 Tips | | | | | | | |
| | | | | | | | | |
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Paid CK # 5008

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| 4000 PSI Pres. Wash. | | | 1275.00 | |
| Sev # [illegible] | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 50.00 |
| MATERIAL | TOTAL | 1275.00 |
| SALES TAX | TOTAL | 80.70 |
| DAMAGE WAIVER | | |
| TOTAL | | 1425.70 |

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

875

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY POR

R 7772

DELIVER TO:

DATE OUT: 10-17-05 10:30 AM DATE IN:

4/84/71
1 day 10-17
1 day 10-19 NOON

INVOICE TO

NAME: S Star Inc.
ADDRESS:
PHONE:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x Frank Simon

TITLE

P.O. NO.:
DOC NO.:

| | | UNIT NO. | HOUR METER | | RATES | | | |
|---|---|---|---|---|---|---|---|---|
| QTY. | DESCRIPTION | | OUT | IN | DAY | WEEK | MONTH | EXTENDED AMOUNT |
| 1 | 4000 PSI Pres. Wash | | | | 50.00 | | | 100.00 |
| | | | | | | | | 150.00 |
| | | | | | | | | |
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| | | | | | | | | |

Paid Visa

| | MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | RENTALS | TOTAL | 150.00 100.00 |
| | | | | | | MATERIAL | TOTAL | 7.00 |
| | | | | | | SALES TAX | TOTAL | 8.00 |
| | | | | | | DAMAGE WAIVER | | 159.00 |
| | | | | | | TOTAL | | 106.00 |

876

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

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14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

877

CESCO
CAROLINA EQUIPMENT & SUPPLY CO., INC.
(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

R 7760

46102

DELIVER TO:

8

DATE OUT: 10-5-05 DATE IN: 10/8/05

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI | | | | 50.00 | | | ~~100.00~~ 150.00 |

Paid 150

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 150.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | ~~6.50~~ 9.00 |
| DAMAGE WAIVER | | |
| TOTAL | | ~~106.50~~ 159.00 |

878

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
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All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

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7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

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13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

879

RENTAL COPY

R 7768

CESCO
CAROLINA EQUIPMENT & SUPPLY CO., INC.
(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

48344

DELIVER TO:

DATE OUT: 10-12-05 DATE IN:

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Linnan

TITLE

880

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI 2 Pres. Wash. | | | | 50.00 | | | 50.00 |
| | | | | | | | | |
| | | | | | | | | |
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Paid TW

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 50.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 3.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 53.00 |

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
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Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

881

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

POR

DELIVER TO: 47000

R 6514

DATE OUT: 10-27-05 DATE IN:

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Simon

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres. Wash. | | | | 50.00 | | | |
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Paid Ck# 5068

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | |
|---|---|---|---|---|---|---|
| | | | | | RENTALS TOTAL | |
| | | | | | MATERIAL TOTAL | |
| | | | | | SALES TAX TOTAL | 3.00 |
| | | | | | DAMAGE WAIVER | |
| | | | | | TOTAL | 53.00 |

882

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

883

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

DELIVER TO: 490.20

R 6529

DATE OUT: 11-3-05 AM

DATE IN:

INVOICE TO

NAME: S Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x

TITLE

884

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres. Wash. | | | | 50.00 | | | 50.00 |

Paid C/H Sale

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
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|---|---|---|
| RENTALS | TOTAL | |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 3.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 53.00 |

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
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Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

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6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

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10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

885

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

R 6538

DELIVER TO:

DATE OUT: 11-10-05 DATE IN: 11/11/05

Clk 5084

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

49364

× _____

TITLE _____

P.O. NO.:

LOC NO.:

886

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 2 | 4000 Pres Wash. | | | | 50.00 | | | 100. |
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| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
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|---|---|
| RENTALS TOTAL | |
| MATERIAL TOTAL | |
| SALES TAX TOTAL | 6.00 |
| DAMAGE WAIVER | |
| TOTAL | 106.00 |

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

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8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

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SIGNED _____

887

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

R 6542

Pd
Returned
11-17-05

DELIVER TO:

DATE OUT: 11-15-05 DATE IN: 11-17-05

INVOICE TO

NAME: S Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

TITLE

4/9529

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pier Wash. (Chem. Inj., Tips, Gun, Hose) | | | | 50.00 | | | 100.00 |

Paid Ck# 5088

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 6.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 106.00 |

888

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

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9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

514-8761

R 6567

DELIVER TO:

DATE OUT: 12-12-05 DATE IN: 12-16-05

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Simmons

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 2 | 4000 PSI Pressure Washer | | | | 50.00 | 150.00 | | 300.00 |

Paid CK # 5147

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | | |
|---|---|---|---|---|---|---|---|
| | | | | | RENTALS TOTAL | | 300.00 |
| | | | | | MATERIAL TOTAL | | |
| | | | | | SALES TAX TOTAL | | 18.00 |
| | | | | | DAMAGE WAIVER | | |
| | | | | | TOTAL | | 318.00 |

890

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

891

# CESCO

**CAROLINA EQUIPMENT & SUPPLY CO., INC.**

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

514-8861

R 6577

DELIVER TO:

DATE OUT: 12-19-05 DATE IN: 12/30/05

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

TITLE

S0848

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1. | 4000 PSI Pres. Wash. | | | | 50.00 | 150.00 | | 300.00 |

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | |
|---|---|---|---|---|---|---|
| | | | | | RENTALS TOTAL | 300.00 |
| | | | | | MATERIAL TOTAL | |
| | | | | | SALES TAX TOTAL | 18.00 |
| | | | | | DAMAGE WAIVER | |
| | | | | | TOTAL | 318.00 |

892

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all-risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

893

# CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

$141.50

R 6588

DELIVER TO:

DATE OUT: 1-5-06 DATE IN: 1-12-06

INVOICE TO

NAME: 5 Star

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x _____

TITLE _____

| | | UNIT NO. | HOUR METER | | RATES | | | |
|---|---|---|---|---|---|---|---|---|
| QTY. | DESCRIPTION | | OUT | IN | DAY | WEEK | MONTH | EXTENDED AMOUNT |
| 1 | 4000 PSI Pressure Washer | | | | 50.00 | 150.00 | | 150.00 |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
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| | | | | | | | | |

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 150.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 9.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 159.00 |

894

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment; the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

895

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

RENTAL COPY

R 6772

DELIVER TO:

DATE OUT: 1-7-06 DATE IN: 1-13-06

INVOICE TO

NAME: 5 Star

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Fred Linnane

TITLE

| QTY. | | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 4000 | PSI Pres. Wash. | | | | 50.00 | 150.00 | | 150.00 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | | | | | | | |

| | MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| | |
|---|---|
| RENTALS TOTAL | 150.00 |
| MATERIAL TOTAL | |
| SALES TAX TOTAL | 9.00 |
| DAMAGE WAIVER | |
| TOTAL | 159.00 |

896

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

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3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
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Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

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5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof, in addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

897

OFFICE COPY

R 6779

**CESCO**
CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

DELIVER TO:

DATE OUT: 1-19-06 DATE IN:

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x Earl Simmons

TITLE

51496

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres. Wash. | | | | 50.00 | 150.00 | | 150.00 |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Paid CK #

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 150.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 9.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 159.00 |

898

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

OFFICE COPY

R 6786

**CESCO**
CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

DELIVER TO:

8:45 AM

DATE OUT: 1/23/06 DATE IN: 1-26-07

INVOICE TO

NAME: S & TAR INC

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Simms

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI washer | | | | | | | |
| | 50' Hose, Gun, White/Red tips | | | | 50.00 | 150.00 | | 150.00 |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Paid CK #

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | |
|---|---|---|---|---|---|---|
| | | | | | RENTALS TOTAL | 150.00 |
| | | | | | MATERIAL TOTAL | |
| | | | | | SALES TAX TOTAL | 9.00 |
| | | | | | DAMAGE WAIVER | |
| | | | | | TOTAL | 159.00 |

906

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

0901

OFFICE COPY

R 6790

**CESCO**
CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

DELIVER TO:

DATE OUT: 1/27/06 DATE IN: 1-28-06

Pet.

INVOICE TO

NAME: 5 $ Tax

ADDRESS:

PHONE:

P.O. NO.:

DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Simons

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 psi Pressure Wash Gun - Hose - Red, White, Blk | | | | 50. | 150. | | 50.00 |

Paid Cash 5.304

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 50.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 3.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 53.00 |

2060

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
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Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

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8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

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SIGNED _____

0903

CESCO

CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

CUSTOMER COPY

R 6792

DELIVER TO:

DATE OUT: 2-2-06 DATE IN: 2-2-06

Ret. 3:15

INVOICE TO

NAME: 5 Star Inc.

ADDRESS:

PHONE:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

Frank Linares

TITLE

P.O. NO.:

DOC NO.:

0904

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres. Wash. White Red Tip | | | | 50.00 | | | 50.00 |

Paid ck# 5204.

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED | | | |
|---|---|---|---|---|---|---|---|
| | | | | | RENTALS TOTAL | | 50.00 |
| | | | | | MATERIAL TOTAL | | |
| | | | | | SALES TAX TOTAL | | 3.00 |
| | | | | | DAMAGE WAIVER | | |
| | | | | | TOTAL | | 53.00 |

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing; provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
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Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
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9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

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13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

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SIGNED _____

0905

CESCO
CAROLINA EQUIPMENT & SUPPLY CO., INC.

(843) 760-3000 • Outside SC (888) 772-3726 • Fax (843) 760-3500
7251 Cross County Road • N. Charleston, SC 29418
P.O. Box 40907 • N. Charleston, SC 29423-0907

OFFICE COPY

R 6795

DELIVER TO:

DATE OUT: 2-6-06 DATE IN: 2/10/06

INVOICE TO

NAME: 5 Star Inc.
ADDRESS:
PHONE:

P.O. NO.:
DOC NO.:

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE RENTAL AGREEMENT STIPULATIONS PRINTED ON THE REVERSE SIDE OF THIS FORM AND AGREE TO ADHERE TO THESE PROVISIONS.

x Frank Simon

TITLE

| QTY. | DESCRIPTION | UNIT NO. | HOUR METER OUT | HOUR METER IN | RATES DAY | RATES WEEK | RATES MONTH | EXTENDED AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 1 | 4000 PSI Pres Washer | | | | 50.00 | 150.00 | | 150.00 |

Paid CK# 5804

| MATERIAL | QTY. | PART NUMBER | PRICE | EXTENDED |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|---|---|
| RENTALS | TOTAL | 150.00 |
| MATERIAL | TOTAL | |
| SALES TAX | TOTAL | 7.00 |
| DAMAGE WAIVER | | |
| TOTAL | | 157.00 |

9060

# RENTAL AGREEMENT

Carolina Equipment & Supply Co., Inc., hereinafter referred to as "Lessor", leases to the Lessee the vehicles, machines or equipment described on the reverse side hereof and hereinafter referred to as the "Equipment", subject to the terms and conditions as follows:

1. This Agreement is one of rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in and to the Equipment except as a Lessee only. THE RENTAL OF THE EQUIPMENT HEREUNDER SHALL NOT BE CONSTRUED AS AN OFFER TO SELL THE EQUIPMENT. IT IS UNDERSTOOD AND AGREED THAT RENTALS PAID WILL NOT APPLY TOWARD any subsequent purchase of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

2. Rental upon the Equipment shall be paid in advance unless otherwise agreed in writing, provided that on rentals of equipment for periods in excess of one month, invoice will be rendered monthly.

3. Rental rates for the day are based upon one shift of 8 hours per day; for the week upon 40 hours per week; for one month upon 176 hours per month of a 30 consecutive day period. In the event that the Equipment is used longer than the above specified time for any period, rental for overtime shall be charged as follows:
Daily basis: 1/8th of the daily rate for each hour used in excess of 8 hours in any one day.
Weekly basis: 1/40th of the weekly rate for each hour used in excess of 40 hours in any one weekly period.
Monthly basis: 1/17th of the monthly rate for each hour used in excess of 176 hours in any monthly period of 30 consecutive days.
All rental rates are F.O.B. the Lessor's warehouse or shipping point. Lessee shall pay any transportation costs in returning the Equipment to the Lessor.

4. On local rentals the rental period shall begin at the time when the Equipment leaves the Lessor's warehouse and shall end when the Equipment is returned to the Lessor's warehouse or receiving point. On out-of-town rentals, the rental period shall begin on and include the date of the bill of lading of shipment to the Lessee and shall end on and include the date of return to the Lessor's warehouse or receiving point.

5. Lessee acknowledges that he has examined the Equipment and that it is in good condition and repair. Lessee agrees to use reasonable care in the operation of the Equipment. Upon termination of the rental, Lessee shall return the Equipment to the place of business of the Lessor in as good condition as received by the Lessee, ordinary wear and tear excepted. Lessee shall pay for any damage to the Equipment and for any missing parts or accessories at the rates and prices customarily charged by the Lessor for repair or replacement of parts. Lessee shall also pay for the cost of cleaning the Equipment if necessary to return it to the same condition as when received by the Lessee.

6. In the event of the loss or destruction of the Equipment or any of its accessories for any reason or the failure to return the same for any reason, the lessee shall promptly pay the Lessor the fair market value thereof. In addition to any rental charges due.

7. After delivery of the Equipment to the Lessee and until redelivery thereof to the Lessor, all risk of loss, injury or destruction to the Equipment or caused by the Equipment shall be the responsibility of the Lessee. Lessee agrees to indemnify and hold the Lessor harmless from and against all losses, the damages, injuries, claims, expenses, including attorney's fees, and liability of whatsoever nature resulting from or arising out of the use or operation of the Equipment during the entire period of rental hereunder. Such indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

8. Lessee agrees to maintain, at its own expense, for the protective of the Lessor, adequate liability, physical damage, and casualty insurance, including all risks covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation or use of the Equipment during the entire period of rental hereunder.

9. Lessee agrees to furnish, at its own expense, a qualified operator and all fuel and lubricants necessary for the satisfactory operation of the Equipment unless an agreement in writing is made prior to delivery of the Equipment.

10. Lessee will not permit the Equipment to be used in violation of any federal, state and municipal statute, law or ordinance, rule or regulation applicable to the operation of such equipment and will indemnify and hold the Lessor harmless from any and/or all fines or penalties for the violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

11. This agreement shall terminate, in the option of the Lessor in the event that the Lessee shall default in the performance of any provision hereunder or in the event Lessee is declared insolvent or bankrupt, or a receiver is appointed, or in the event any petition for bankruptcy is filed by or against Lessee, or in the event any proceedings is demanded by, for or against the Lessee under any provisions of the Federal Bankruptcy Act or any amendment thereof. The Lessor shall have the right to terminate this Agreement at any time and to take possession of the Equipment wherever found, with or without process of law, and for such purpose may enter upon any premise of Lessee and remove the Equipment without liability to Lessee.

12. In the event that suit is instituted by the Lessor to recover possession for the Equipment or to enforce any of the terms, conditions or provisions hereof or to collect any sum or sums of money, damages or costs from the Lessee under this agreement or any sums of money for the use of or rental of said Equipment, the Lessee agrees to pay all cost and reasonable attorney's fees incurred by the Lessor in such suit or suits.

13. The Lessor shall not be liable to the Lessee for any loss or liability of any kind resulting from failure to deliver the Equipment at a specified time, or resulting from defects in, or in efficiency or breakdown of the Equipment.

14. This Agreement contains the entire understanding and agreement with respect to the rental for the Equipment and no representations, promises or agreements, oral or otherwise, not contained herein, shall be of any force and effect. Any subsequent amendment to this Agreement shall be in writing. Lessor's waiver or failure to insist on strict performance of any provision hereunder shall not be construed as a waiver of any other provision or of the right to require subsequent performance of all provisions by the Lessee.

SIGNED _____

0907

CESCO
CAROLINA EQUIPMENT & SUPPLY CO., INC.
7251 CROSS COUNTY RD.
NO. CHARLESTON, SC 29418
P.O. BOX 40907
NO. CHARLESTON, SC 29423
(843) 760-3000 (843) 760-3500

554-5566

[redacted]

====Invoice====  062644  1

02/23/06

EntBy: MH

Bill To:
5 STAR INC.
CASH ACCOUNT
PO BOX 62875
N CHARLESTON, SC 29419

Ship To:
5 STAR INC.
CASH ACCOUNT
PO BOX 62875
N CHARLESTON, SC 29419

| Order# | Ord Dt | Cust# | Loc | Smn | Customer PO | Ship Via |
|---|---|---|---|---|---|---|
| 0052838 | 02/23/06 | FI285 | IN | 009 | | Customer Pickup Col |

| Qty Ord / BO Qty | Ship/Rtn | Item | Unit Price | UM/Disc | Ext. Price |
|---|---|---|---|---|---|
| 1.0000 | 1.0000 | HG4040<br>PRESSURE WASHER<br>4 GPM AT 4000 PSI | 1195.000000 | EA<br>.00 | 1,195.00 |

Paid Ck# 5215

Authorized Signature _____

Comments:

| | |
|---|---|
| Subtotal: | 1,195.00 |
| Miscellaneous: | .00 |
| Freight: | .00 |
| ToTax: | 77.68 |
| Amount Paid: | 1,272.68CR |

Terms: COD

# PROPOSAL

| PROPOSAL NO. | |
|---|---|
| SHEET NO. | |
| DATE | |

PROPOSAL SUBMITTED TO:

NAME Stan Shelby

ADDRESS 2346 B
W. Charleston

PHONE NO. 514-8861

WORK TO BE PERFORMED AT:

ADDRESS

DATE OF PLANS

ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

① Remove Wall Furniture, Clean carpet in office
Kollack Walls & ceiling, Repaint Walls & ceiling
② Remove office furniture & Clean
Paneling & Replace - paint paneling.
Remove 10 ceiling Trusses & Replace 7 Plywood & Shingles
Clean Windows

PRIME PAINT WALLS FROM SOOT $600.00

3 EXTRAS JOIST $300

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Five Thousand

Dollars ($5100.00)

with payments to be made as follows. $1842.600 balance $4358 Pd $700 cash 10-5-05
As to $358 Paid $1000.00 10-7-05
$10,000
2000

Respectfully submitted Bob Hyde Construction

Per Hawkinson Enterprises

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Note — This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature _____

Date _____ Signature _____

NC 3818-50
MADE IN USA

PROPOSAL

PLAINTIFF'S EXHIBIT 19
9-3-08 B

# Replace Lost or Damaged Equipment

| | | |
|---|---|---|
| 1 | SHARP FAX | $154 |
| 1 | SHARP MICROWAVE | $110 |
| 1 | 5 DISC CD CHANGER | $135 |
| 1 | KENMORE FRIDGE SMALL | $124 |
| 1 | SHREDDER | $65 |
| 1 | DVD-VCR | $100 |
| 1 | OFFICE SUPPLIES LIGHTS PENS ETC. | $350 |
| 1 | CHAIR | $175 |
| 1 | FLOOR MAT | $25 |
| 1 | FILE CABINET | $90 |
| 1 | FUTON | $276 |
| 1 | TV STAND | $278 |
| 1 | OFFICE DESK | $ ? |
| 1 | FOLDER HVAC UNIT | $129 |
| 1 | CALCULATOR | $45 |
| 3 | PICTURES | $60 |
| 1 | COMPUTER DELL WITH MONITOR AND PRINTER SCANNING | $1600 |
| 1 | DESK SET | $45 |
| 1 | 20" TV | $105 |
| 1 | FORMS BILLS ETC | $225 |
| 1 | SMALL CHAIR | $85 |
| 1 | FAN | $50 |
| 1 | FIXTURE | $125 |
| 1 | SUBCADET 36 INC LAWN MOWER | $1990 |
| | POWER WASHER 3000 PSI | $1300 |
| | POWER WASHER 3600 PSI | $890 |
| | POWER WASHER 2500 PSI | $1375 |

PLAINTIFF'S EXHIBIT 20 FD

| | | |
|---|---|---|
| 1 | SHOP VAC | $90 |
| 1 | F-250 | $ |
| | VARIOUS SUPPLIES, EQUIPMENT | $ 2500.00 |
| 3 | TRIMMERS | $ @ 1100.00 |
| 1 | WEIGHT SET-WITH BENCH | $ 250 |
| 1 | VARIOUS SUPPLIES EQUIPMENT | $ |
| | BACK PACK SPRAYER | $ 125 |
| | EXTENSION POLES BRUSHES | $ 60 |
| 3 | WRITING DRY ERASE BOARDS | $ 110.00 |

1. Pressure Wash Inside of Building. Replace carpet Repaint walls Ceilings.

2. Remove Office Furniture and Clean Remove and Replace Paneling. Add Sheetrock and Paint

3. Remove 13 ceiling trusses and Replace. [redacted] Add Plywood and Shingles. Clean Windows

$600 Prime Paint walls from soot

Repair [redacted] Building

| | |
|---|---|
| $10,000 | Equipment Supplies |
| + 600 | $12,250 |
| + 300 | Not counting cost of Fuel |
| +3000 | |
| 13,900 | Loss of Office for 2 weeks |
| $26,150 | |

**Summary of Damages**

| | |
|---|---|
| 5-star lawn and office equipment | $14,041.00 |
| Building repair | $ 5,000.00 |
| 1996 Ford F-250 super cab | $ 8,000.00 |
| Rental replacement | $ 3,121.70 |
| Business interruption | $18,000.00 (1,200.00 x 15 days) |

(241 working days divided into 2004 gross receipts)

(365 days - weekends - 10 holidays - 2 weeks vacation = 241 days)

**Total** **$48,162.27**





DEALER 21N 291 | VIN 1FTHX25H6TEA43869

| | | SUGGESTED RETAIL PRICE | AMOUNT |
|---|---|---|---|
| | F259 4X2 SUPERCAB PICKUP/155 | 19175 00 | 16765 00 |
| | 1996 MODEL YEAR | | |
| YZ | OXFORD WHITE CLEARCOAT | | |
| 6V | ROYAL BLUE VINYL | | |
| | .XL TRIM | | |
| 99H | 5.8L EFI V-8 ENGINE | NC | NC |
| 44E | ELECTRONIC 4-SPD AUTO TRANS | 971 00 | 825 00 |
| T35 | .LT235/85RX16E BSW ALL-SEASON | NC | NC |
| X39 | 3.55 RATIO REGULAR AXLE | NC | NC |
| | 209 #1 P/L 4025/GVWR 8800 LBS | NC | NC |
| 153 | FRONT LICENSE PLATE BRACKET | NC | NC |
| 512 | SPARE TIRE AND WHEEL | 267 00 | 227 00 |
| 52N | SPD CONTROL/TILT STEERING WHL | 383 00 | 326 00 |
| 545 | BRT LOW-MOUNT SWINGAWAY MIRROR | 46 00 | 38 00 |
| 572 | AIR CONDITIONING -- CFC FREE | 806 00 | 686 00 |
| 587 | AM/FM ELECTRONIC STEREO/CLOCK | 148 00 | 125 00 |
| 76C | ARGENT REAR STEP BUMPER | 100 00 | 85 00 |
| | NOT FOR AMBULANCE USE. USING THIS VEHICLE TO PRODUCE AN AMBULANCE VOIDS FORD WARRANTY. | | |
| | TOTAL VEHICLE & OPTIONS | 21895 00 | 19070 00 |
| | DESTINATION & DELIVERY | 615 00 | 615 00 |
| | SCHEDULE A (MEMO) .00 | | |
| | TOTAL FOR VEHICLE | 22510 00 | |
| | 14 U.S. GAL GAS FACTORY | | 20 00 |
| | PRICED DORA | | 50 |
| | BATCH-ID SK27104662 N RB 2X | | |
| | PRICE LEVEL 610340X25 | VIN: 1FTHX25H6TEA43869 | |
| | SHIPPING WEIGHT 4703 LBS. | | |

THIS INVOICE MAY NOT REFLECT THE FINAL COST OF THE VEHICLE IN VIEW OF THE POSSIBILITY OF FUTURE REBATES, ALLOWANCES, DISCOUNTS AND INCENTIVE AWARDS FROM FOR MOTOR COMPANY TO THE DEALER

| F DA/FUMDA ASSESSMENT | INVOICE TOTAL | LESS HOLDBACK FOR DEALER ACCOUNT | LESS APPROX FINANCING COST FOR DEALER ACCOUNT | MEMO INVOICE LESS HOLDBACK ATM COST | A PLAN |
|---|---|---|---|---|---|
| .00 | 19,715.50 | 655.00 | 255.00 | 18,805.50 | 18,817.50 |
| 655.00 | 80.00 | 2310.00 | .50 | 575.00 | 16514.00 |

SOLD TO JONES FORD INC 21N291
P.O. BOX 62829
NORTH CHARLESTON SC 29419

| T.O. | 76 | STATE | |
|---|---|---|---|
| 2 | 6 | SC | RC47 |

SHIP TO (IF OTHER THAN ABOVE)

| DATE INV PREPARED | ITEM NUMBER | TRIM | TRANSIT |
|---|---|---|---|
| 10 27 9 | 5 21L236 | 6V | 17 |

SHIP THROUGH

| INVOICE & UNIT IDENTIFICATION NO | FINAL ASSEMBLY POINT | FINAL COMPANY AND/OR BANK | |
|---|---|---|---|
| 1FTHX25H6TEA43869 | KTP LT. TRK. | FORD MOTOR CREDIT | 000001 |

TEA43869 1F X25 19951027 951027 SK271 N 610 21N291 2 19715.50 KUI

THIS INVOICE TO BE USED FOR THE BILLING OF VEHICLES ONLY DEALER'S COPY

PLAINTIFF'S EXHIBIT 22 B 9-3-08

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com
Peggy M. Infinger
pinfinger@cobblaw.net
Thomas R. Goldstein
tgoldstein@cobblaw.net

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

December 20, 2005

Mr. Trent Kernodle
P.O. Box 13897
Charleston, S.C. 29422-3897

Dear Trent,

I represent Stan Shelby (and his company 5 Star, Inc., a landscaping company). Stan had a Ford F-150 that ignited one night in his garage because of a defective speed control device. The fire investigator immediately identified the motor vehicle as the source of the fire. Since there is a national recall for this problem, I suspect you might be familiar with the defect. At any rate, I have the file in my office, and I am now in the process of assembling the information regarding the amount of his loss. Should I send the demand letter straight to you, as counsel for Ford Motor Company, or should I go through the usual channel and make my claim directly to the home office for Ford? I appreciate any guidance you could give me in this regard. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc: Stan Shelby



PLAINTIFF'S EXHIBIT 23

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com
Peggy M. Infinger
pinfinger@cobblaw.net
Thomas R. Goldstein
tgoldstein@cobblaw.net

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

January 17, 2006

Mr. Trent Kernodle
P.O. Box 13897
Charleston, S.C. 29422-3897

RE: Stan Shelby & Ford Motor Company

Dear Trent,

I understand that you are representing Ford Motor Company in reference to these engine fires. As I told you, my client Stan Shelby, suffered the loss of a building (2340 Midland Park Road), equipment and the truck as a result of a defective 1996 Ford COFF25 pickup truck. I enclose a copy of the fire inspector's report for your review. I also enclose a copy of Stan's 2004 tax returns, which will support the amount of money that he lost as a result of being without the truck. I also enclose copies of rental equipment invoices totaling $3,121.70 for equipment Stan had to rent during the time that his truck and the equipment on the truck and in the warehouse were out of service. Please give me a call upon receipt of this material and let me know if this is a case that can be resolved. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/rt
enclosure: Fire inspector's report
2004 tax returns
rental equipment invoices
cc: Stan Shelby



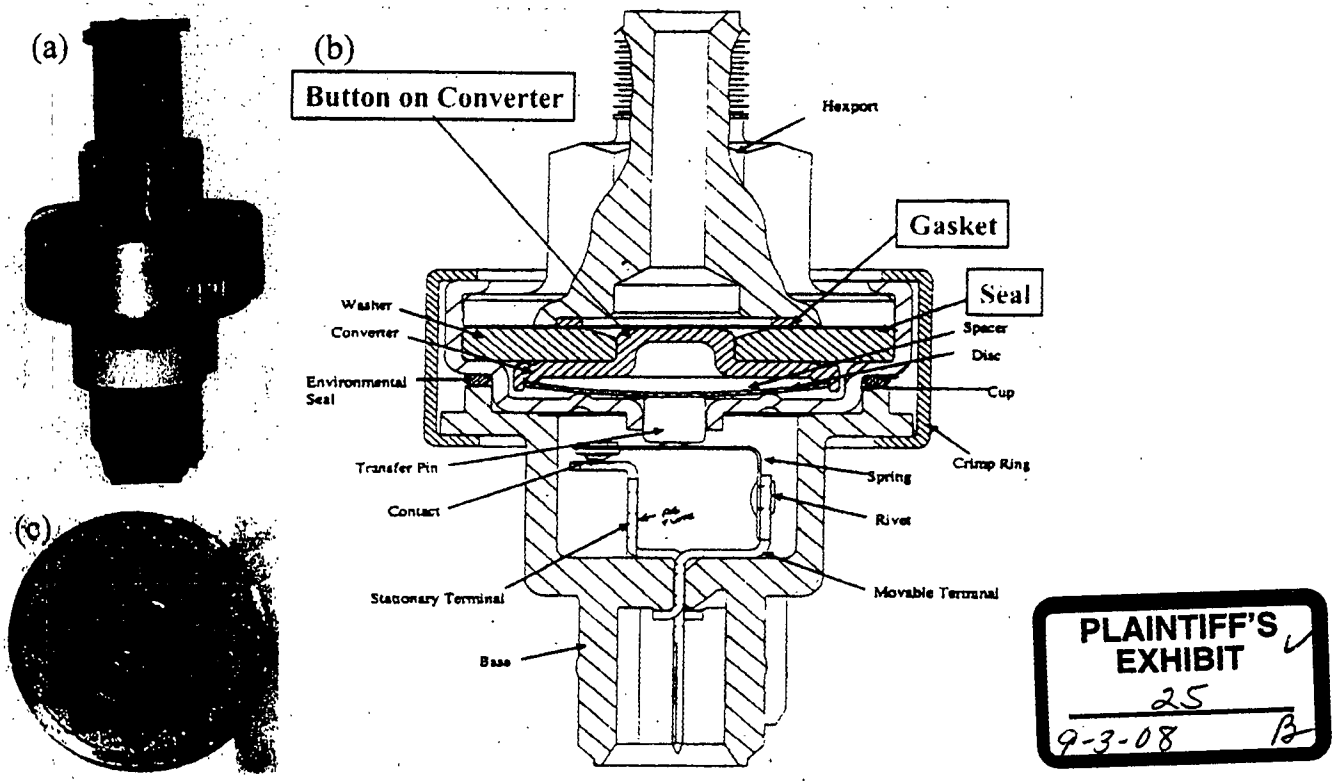



**Figure 1.** Speed Control Deactivation Switch (SCDS) (a) Assembled (b) Assembly Cross-Section Drawing And

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| 5 Star, Inc., Plaintiff, | ) | |
| v. | ) | **PLAINTIFF'S ANSWERS TO DEFENDANT'S SUPPLEMENTAL INTERROGATORIES** |
| Ford Motor Company, Defendant. | ) | |

TO: CARMELO B. SAMMATARO ESQ., ATTORNEY FOR DEFENDANT, FORD MOTOR COMPANY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby respond to Ford Motor Company's supplemental interrogatories as follows:

1. Identify, by name, address, and telephone number, any and all individuals involved in the decision to sell and/or otherwise dispose of the vehicle at issue in these proceedings and describe the nature and extent of each such individual's participation in the decision to sell and/or otherwise dispose of the subject vehicle, from the date of the incident described in Plaintiff's Complaint up to and including the date on which the subject vehicle was "crushed and sent to B.B.J. Metal Company."

ANSWER: Stan Shelby
276 Alexander Drive, Apt. 13
Mt. Pleasant, SC 29464

2. State the date on which the decision was made to crush or otherwise dispose of the subject vehicle, along with the date the vehicle was actually crushed or otherwise disposed of.

ANSWER: On or about February 2, 2006.

3. Identify, by name, address, and telephone number, the individual(s) who crushed or otherwise disposed of the subject vehicle.

ANSWER: B.B.J. Metal Company
403 1st Street



Moncks Corner, SC 29461
843-761-8471

4. State whether Plaintiff or anyone acting on behalf of Plaintiff or at Plaintiff's direction informed Defendant Ford Motor Company of the decision to crush or otherwise dispose of the subject vehicle prior to such crushing or other disposition.

ANSWER: No.

5. State with particularity, e.g., business name, address, and telephone number, the current location and exact condition of the subject vehicle.

ANSWER: B.B.J. Metal Company is where vehicle was disposed.

6. State with particularity the current location of the speed control deactivation switch, or "SCDS", sometimes also referred to as the brake pressure switch, installed in the subject vehicle. If the SCDS has been removed from the subject vehicle, please identify the person(s) who removed the part, the reason it was removed, the chain of custody of the part, the conditions under which the part has been stored, and the current custodian of the SCDS.

ANSWER: B.B.J. Metal Company is where vehicle that contained the speed control deactivation switch was disposed.

7. Please identify every fact that supports your contention that the subject vehicle and/or any of its component parts, subsystems, or assemblies contained a defect that "relates to motor vehicle safety" as indicated in Plaintiff's Answer to Defendant Ford Motor Company's First Set of Interrogatories, Interrogatory No. 10; including, but not necessarily limited to, the following:

a. A detailed description of the alleged manufacturing or design defect that you contend caused or contributed to the incident;

b. A detailed description of how you contend this manufacturing or design defect allegedly caused or contributed to the incident;

c. The name, address and telephone number of each person having any information or knowledge of the alleged manufacturing or design defect;

d. The identity of each document or tangible thing in your possession, or in the possession of anyone acting on your behalf, which you claim shows the alleged manufacturing or design defect; and

e. A detailed description of what you claim should have been done differently in the design or manufacture of the vehicle, system or part to prevent the incident.

ANSWER:

a. Description contained in correspondence from Ford Motor Company attached.

b. Description contained in correspondence from Ford Motor Company attached.

c. Fire Captain Jonathan D. Sanders of the City of North Charleston Fire Department brought to Plaintiff's attention that Ford Motor Company was conducting a recall.

d. Correspondence from Ford of September 2005which was previously produced attached to request to produce.

e. Plaintiff is not properly trained in the area to give an opinion for the design or manufacture of the vehicle, system or part.

Thomas R. Goldstein
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291
ATTORNEY FOR PLAINTIFF

DATED: October 15, 2007

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 15TH DAY OF OCTOBER, 2007.

BY:

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| 5 Star, Inc., Plaintiff, | ) | |
| v. | ) | **PLAINTIFF'S ANSWERS TO DEFENDANT'S SUPPLEMENTAL REQUEST FOR PRODUCTION** |
| Ford Motor Company, Defendant. | ) | |

TO: CARMELO B. SAMMATARO ESQ., ATTORNEY FOR DEFENDANT, FORD MOTOR COMPANY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby respond to Ford Motor Company's supplemental request to produce as follows:

1. All documents or things identified or relied upon in Plaintiff's responses to Defendant Ford Motor Company's First Supplemental Interrogatories to Plaintiff, served contemporaneously herewith.

ANSWER: See attached.

2. The Speed Control Deactivation Switch installed in the subject vehicle on the date of the incident described in Plaintiff's Compliant.

ANSWER: The speed control deactivation switch was attached to vehicle when sent to B.B.J. Metal Company to be disposed of.

Thomas R. Goldstein, Esq.
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, SC 29415-1121
(803) 554-4291
ATTORNEYS FOR PLAINTIFF

October 15, 2007

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 15TH DAY OF OCTOBER, 2007.

BY: _____

Frank M Ligon
Ford Motor Company
P.O Box 1904
Dearborn, Michigan 48121

F0026858 0098

STAN W SHELBY
1306 LARK LN
HANAHAN, SC 29406-8500

September 2005

2001 Expedition
Vehicle ID #: 1FMRU15W31LB49545 05S28

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

Ford Motor Company has decided that a defect which relates to motor vehicle safety exists in certain 1994-1996 model year Bronco, 1994-2002 F-150/250 (Under 8500 GVW), 1997-2002 Expedition, 1998-2002 Navigator, and 2002 Blackwood vehicles equipped with speed control. We apologize for this situation and want to assure you that, with your assistance, we will correct this condition. Our commitment, together with Ford and Lincoln Mercury dealers, is to provide you with the highest level of service and support.

**What is the issue?**

On your vehicle, the underhood speed control deactivation switch may overheat, smoke, or burn, which could result in an underhood fire. This condition may occur either when the vehicle is parked or when it is being operated, even if the speed control is not in use.

**What will Ford and your dealer do?**

Parts to repair your vehicle will not be available until November 2005; and as a result, we are implementing a two-stage repair process. Until parts are available for the permanent repair, you should contact your dealer to make an appointment to disconnect the speed control deactivation switch, which is located under the hood of your vehicle. This procedure will temporarily disconnect the speed control system, which will prevent a speed control deactivation switch related fire. The speed control system will then be inoperative until the permanent repair is performed. We recognize this may be an inconvenience, but we believe this preventive action is in the best interest of our customers' safety.

When parts become available for the permanent repair in November 2005, you will be notified to contact your dealer to schedule an appointment to have a fused wiring harness installed and to reconnect the speed control system on your vehicle.

Ford Motor Company and your dealer will perform the above modification free of charge (parts and labor).

**How long will it take?**

Please call your dealer for an estimate of how much time will be required to perform this repair. Your dealer may be able to perform this repair while you wait; however, due to scheduling requirements, your dealer may need your vehicle for a longer period of time.

**What are we asking you to do?**

Please call your dealer without delay and request a service date to have the switch disconnected (Recall 05S28). Provide the dealer with the Vehicle Identification Number (VIN) of your vehicle. The VIN is printed near your name at the beginning of this letter.



© Copyright 2005 Ford Motor Company

F21327

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| | ) | |
| 5 Star, Inc., | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES** |
| | ) | |
| Ford Motor Company, | ) | |
| Defendant. | ) | |
| | ) | |

TO: CARMELO B. SAMMATARO ESQ., ATTORNEY FOR DEFENDANT, FORD MOTOR COMPANY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby respond to Ford Motor Company's first set of interrogatories as follows:

1. Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: Gregory Pogue
2346 Midland Park
North Charleston, SC 29406

Arthur Carl
6500 Dorchester Road
North Charleston, SC

Clayton Cole
2340B Midland Park
North Charleston, SC 29406

Fire Captain
Jonathan D. Sanders
City of North Charleston Fire Department

Thomas Nolan, Insurance Adjuster
808 North Cedar Street
Summerville, SC 29483
843-851-8880



2. For each person known to Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to advise of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Fire Captain Jonathan D. Sanders of the City of North Charleston Fire Department was a witness concerning the facts of the case and a copy of the fire incident report is attached to the answers to request to produce.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of Plaintiff or counsel that relate to the claim in the case.

ANSWER: See the 5 photographs attached to the answers to request for production #6.

4. Regarding the vehicle, identify:

a. The make, model, year and vehicle identification number;

b. The owner of the vehicle at the time of the incident;

c. The mileage of the vehicle at the time of the incident; and

d. Where the vehicle is located.

ANSWER: a. 1996 Ford, F-250, # 1FTHX25H6TEA43869

b. Owner's name: 5 Star Inc.

c. Vehicle mileage approximately: 227,500 miles

d. The vehicle is currently crushed and at a steel mill.

5. Identify the following with regard to the vehicle:

a. The name and address of the dealership, person or other entity from which the vehicle was purchased or leased by Plaintiff;

b. The date of the purchase or lease;

c. The purchased price of the vehicle; and

d. The mileage on the vehicle when purchased or leased by Plaintiff.

ANSWER: a. The vehicle was purchased from Pat Evans.

b. The vehicle was purchased on

c. The vehicle was purchased for $ 1,500.00.

d. The vehicle had 227,000 miles when purchased.

6. If any inspection, examination, or test of the subject vehicle, or any part or portion thereof, has been made at any time by any person, or if any part or parts of the subject vehicle have been removed from it at any time by any person, please identify every person conducting or participating in each such inspection, examination, test, or removal, together with this person's occupation or profession; state the date or date on which and address or addresses at which each inspection, examination, test or removal was conducted; identify any instruments, instrumentation, tools, machinery, and/or testing materials or devices utilized during each such inspection, examination, test, or removal; and state the nature, purpose, and extent of each inspection, examination, test, or removal, what each person conducting or participating in each inspection, examination, test, or removal did in connection therewith, and every item of equipment, part, or portion of the subject vehicle inspected, examined, tested, or removed.

ANSWER: The vehicle was towed from the property by Barns Towing on February 2, 2006.

7. Please identify every component part that has been removed from the subject vehicle since the accident, the person who removed each part, the reason each part was removed, the chain of custody of each part, the conditions under which each part has been stored, and the current custodian of each part that has been removed.

ANSWER: The vehicle has been crushed and sent to B.B.J. Metal Company.

8. State the name and address of every place where the vehicle was serviced or repaired before the incident. For each, also provide the following:

a. The date of each service or repair;

b. The name and address of the mechanic who serviced or repaired the vehicle;

c. The nature of the service or repair; and

d. The identity of each invoice or document evidencing the service or repair.

ANSWER: None.

9. Please state the date on which and the manner in which you first provided notice to Defendant of the incident and the Plaintiff's alleged damages.

ANSWER: Plaintiff provided notice of incident to Defendant in September 2005.

10. Do you contend that a defect in the manufacture or design of the vehicle or any system or part caused or contributed to the alleged incident? If so:

a. Describe in detail the alleged manufacturing or design defect that you contend caused or contributed to the incident;

b. Describe in detail how you contend this manufacturing or design defect allegedly caused or contributed to the incident;

c. Provide the name, address and telephone number of each person having any information or knowledge of the alleged manufacturing or design defect;

d. Identify each document or tangible thing in your possession, or in the possession of anyone acting on your behalf, which you claim shows the alleged manufacturing or design defect; and

e. Describe in detail what you claim should have been done differently in the design or manufacture of the vehicle, system or part to have prevented the incident.

ANSWER: Yes, the Plaintiff contends that there was a defect with the vehicle that relates to motor vehicle safety pursuant to the correspondence from Ford of September 2005. See correspondence attached to request to produce.

11. Do you contend that the incident was caused in whole or in part by the vehicle not complying with, or in any way violating, any industry, trade or government standard, statute, ordinance, rule regulation and/or any good engineering practice? If so, state:

a. The title and specific section number, citation or other identifying mark of each such standard, statute, ordinance, rule, regulation and/or good engineering

practice which you contend was not complied with or was violated;

b. The specific part, component or system of the vehicle which you contend was not in compliance;

c. The manner in which you contend each part, component or system was not in compliance;

d. The name, address and telephone number of each person having any information or knowledge of this alleged condition; and

e. The identity of each document or tangible thing in your possession, or in the possession of anyone acting on your behalf, which you claim shows the alleged non-compliance.

ANSWER: Yes, as stated by the Ford recall letter attached.

12. Do you contend that any of the documents, warranties, advertisements or statements of Defendant were false, untrue, misleading, exaggerated or fraudulent insofar as they relate to the vehicle in question? If so, identify each such document, warranty, advertisement or statement by Defendant and state in what respect they were false, untrue, misleading, exaggerated or fraudulent.

ANSWER: No.

13. Have you and/or anyone acting in your behalf contacted, consulted or retained any expert who is expected to testify at trial regarding any issue of this action? If so, please state:

a. The name and address of each such expert;

b. The subject matter about which the expert is expected to testify;

c. The substance of the facts and opinions to which the expert is expected to testify; and

d. The summary of the grounds for each opinion.

ANSWER: No expert witness has been retained at this time, but Plaintiff reserves the right to do so at a future time. The captain of North Charleston Fire Department is an expert in origins of fire and can testify that the fire originated in the Ford van that is the subject of this lawsuit.

the following for each such communication:

a. The date of the communication;

b. The name and title of the person with whom you communicated;

c. Describe the method of communication, whether by correspondence, telephone call or otherwise; and

d. The substance of the communication.

ANSWER: No.

These interrogatories shall be deemed continuing so as to require supplemental answers if Plaintiff or any representative or counsel obtains further information between the time the answers are served and the time of trial.

Signature page to follow:

2006-CP-10-4773

Thomas R. Goldstein
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291
ATTORNEY FOR PLAINTIFF

DATED: April 26, 2007

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 26TH DAY OF APRIL, 2007.

BY:

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| | ) | |
| 5 Star, Inc., | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **PLAINTIFF'S ANSWERS TO** |
| | ) | **DEFENDANT'S FIRST SET OF** |
| Ford Motor Company, | ) | **INTERROGATORIES** |
| Defendant. | ) | |
| | ) | |

TO: CARMELO B. SAMMATARO ESQ., ATTORNEY FOR DEFENDANT, FORD MOTOR COMPANY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby respond to Ford Motor Company's first set of interrogatories as follows:

DEFENDANT'S EXHIBIT 1 9-3-08 B

4. Regarding the vehicle, identify:

a. The make, model, year and vehicle identification number;

b. The owner of the vehicle at the time of the incident;

c. The mileage of the vehicle at the time of the incident; and

d. Where the vehicle is located.

ANSWER: a. 1996 Ford, F-250, # 1FTHX25H6TEA43869

b. Owner's name: 5 Star Inc.

c. Vehicle mileage approximately: 227,500 miles

d. The vehicle is currently crushed and at a steel mill.

5. Identify the following with regard to the vehicle:

a. The name and address of the dealership, person or other entity from which the vehicle was purchased or leased by Plaintiff;

b. The date of the purchase or lease;

c. The purchased price of the vehicle; and

d. The mileage on the vehicle when purchased or leased by Plaintiff.

ANSWER: a. The vehicle was purchased from Pat Evans.

b. The vehicle was purchased on

c. The vehicle was purchased for $ 1,500.00.

d. The vehicle had 227,000 miles when purchased.

6. If any inspection, examination, or test of the subject vehicle, or any part or portion thereof, has been made at any time by any person, or if any part or parts of the subject vehicle have been removed from it at any time by any person, please identify every person conducting or participating in each such inspection, examination, test, or removal, together with this person's occupation or profession; state the date or date on which and address or addresses at which each inspection, examination, test or removal was conducted; identify any instruments, instrumentation, tools, machinery, and/or testing materials or devices utilized during each such inspection, examination, test, or removal; and state the nature, purpose, and extent of each inspection, examination, test, or removal, what each person conducting or participating in each inspection, examination, test, or removal did in connection therewith, and every item of equipment, part, or portion of the subject vehicle inspected, examined, tested, or removed.

ANSWER: The vehicle was towed from the property by Barns Towing on February 2, 2006.

7. Please identify every component part that has been removed from the subject vehicle since the accident, the person who removed each part, the reason each part was removed, the chain of custody of each part, the conditions under which each part has been stored, and the current custodian of each part that has been removed.

ANSWER: The vehicle has been crushed and sent to B.B.J. Metal Company.

8. State the name and address of every place where the vehicle was serviced or repaired before the incident. For each, also provide the following:

a. The date of each service or repair;

b. The name and address of the mechanic who serviced or repaired the vehicle;

c. The nature of the service or repair; and

d. The identity of each invoice or document evidencing the service or repair.

ANSWER: None.

These interrogatories shall be deemed continuing so as to require supplemental answers if Plaintiff or any representative or counsel obtains further information between the time the answers are served and the time of trial.

Signature page to follow:

2006-CP-10-4773

Thomas R. Goldstein
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291
ATTORNEY FOR PLAINTIFF

DATED: April 26, 2007

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 26TH DAY OF APRIL, 2007.

BY:

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | Civil Action No.: 2006-CP-10-4773 |
| 5 Star, Inc., | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **PLAINTIFF'S ANSWERS TO** |
| | ) | **DEFENDANT'S SUPPLEMENTAL** |
| Ford Motor Company, | ) | **INTERROGATORIES** |
| Defendant. | ) | |
| | ) | |

TO: CARMELO B. SAMMATARO ESQ., ATTORNEY FOR DEFENDANT, FORD MOTOR COMPANY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby respond to Ford Motor Company's supplemental interrogatories as follows:

1. Identify, by name, address, and telephone number, any and all individuals involved in the decision to sell and/or otherwise dispose of the vehicle at issue in these proceedings and describe the nature and extent of each such individual's participation in the decision to sell and/or otherwise dispose of the subject vehicle, from the date of the incident described in Plaintiff's Complaint up to and including the date on which the subject vehicle was "crushed and sent to B.B.J. Metal Company."

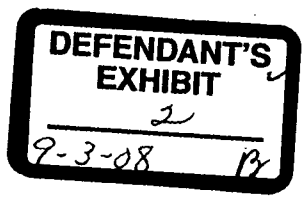
ANSWER: Stan Shelby
276 Alexander Drive, Apt. 13
Mt. Pleasant, SC 29464

2. State the date on which the decision was made to crush or otherwise dispose of the subject vehicle, along with the date the vehicle was actually crushed or otherwise disposed of.

ANSWER: On or about February 2, 2006.

3. Identify, by name, address, and telephone number, the individual(s) who crushed or otherwise disposed of the subject vehicle.

ANSWER: B.B.J. Metal Company
403 1st Street



Moncks Corner, SC 29461
843-761-8471

4. State whether Plaintiff or anyone acting on behalf of Plaintiff or at Plaintiff's direction informed Defendant Ford Motor Company of the decision to crush or otherwise dispose of the subject vehicle prior to such crushing or other disposition.

ANSWER: No.

5. State with particularity, e.g., business name, address, and telephone number, the current location and exact condition of the subject vehicle.

ANSWER: B.B.J. Metal Company is where vehicle was disposed.

6. State with particularity the current location of the speed control deactivation switch, or "SCDS", sometimes also referred to as the brake pressure switch, installed in the subject vehicle. If the SCDS has been removed from the subject vehicle, please identify the person(s) who removed the part, the reason it was removed, the chain of custody of the part, the conditions under which the part has been stored, and the current custodian of the SCDS.

ANSWER: B.B.J. Metal Company is where vehicle that contained the speed control deactivation switch was disposed.

Thomas R. Goldstein
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291
ATTORNEY FOR PLAINTIFF

DATED: October 15, 2007

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 15TH DAY OF OCTOBER, 2007.

BY:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

---

Case No: 2006-CP-10-4773

---

5 Star, Inc., .....Respondent,

v.

Ford Motor Company, .....Appellant.

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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

By: _____

Curtis L. Ott
David C. Marshall
Turner Padget Graham & Laney P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200

Counsel for Appellant

RECEIVED
MAR 17 2010
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

The Honorable Kristi Lea Harrington, Circuit Court Judge

---

Case No: 2006-CP-10-4773

---

5 Star, Inc., .....Respondent,

v.

Ford Motor Company, .....Appellant.

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PROOF OF SERVICE

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I certify that I have served three copies each of APPELLANT'S FINAL BRIEF and APPELLANT'S REPLY BRIEF on Respondent by mailing same to its attorney of record, Thomas R. Goldstein of Belk, Cobb, Infinger & Goldstein, P.A., at P. O. Box 71121, Charleston, SC 29415-1121, on March 17, 2010.

TURNER PADGET GRAHAM & LANEY P.A.

By: _____

Curtis L. Ott
David C. Marshall
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957
ATTORNEYS FOR APPELLANT