

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

MICHAEL LEE COWEN,

Plaintiff,

vs.

Case No. 2007 CA 008120

FRANK G. IANNACONE,

Defendant.

/

888 Southeast Third Avenue
Fort Lauderdale, Florida
December 19th, 2007
10:00 A.M.

VOLUME NO. 2

VIDEOTAPE DEPOSITION

OF

RICK SWOPE

APPEARANCES:

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SAMUEL M. YAFFA, P. A.
BY: SAMUEL M. YAFFA, ESQ.
301 W. Atlantic Avenue
Suite 01
Del ray Beach, Florida

CLINTON D. FLAGG, P. A.
BY: JOHN BUCHHOLZ, ESQ.
1320 S. Dixie Highway
Suite 1180
Coral Gables, Florida 33146

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Volume 2.

Deposition of RICK SWOPE for purposes of
discovery and for use as evidence in the above
entitled cause, pursuant to notice heretofore filed,
before DEBRA L. STARK, RPR, Registered Professional
Shorthand Reporter and Notary Public in and for the
State of Florida at Large, at the date and time
above-referred to.

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I N D E X

WITNESS DIRECT CROSS

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E X H I B I T S

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TAPE 3

2 BY MR. YAFFA:

3 Q. Before we get into the calculations
4 involving a motorcycle, just a question I had
5 with regard to Mr. Iannacone's vehicle.

6 If I'm not mistaken, you said that
7 you calculated that he was traveling somewhere

8 between 15 and 25 at the point of impact,
9 correct?

10 A. Yes.

11 Q. Now, he testified that he was almost
12 stopped, he thought he was going about two
13 miles an hour at the point of impact, correct?

14 A. Yes, but I -- I wanted to say that
15 it's not exactly what I said.

16 What I -- what I said was, was that
17 you asked me about the differences in
18 calculations.

19 I said, well, he could be going
20 five, he could be going 10, he could be going
21 15 or 20.

22 I didn't give you the 15 to 25 was
23 the range he would be going coming out of the
24 shopping center to the third lane.

25 So I didn't say that he was going 15

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1 or 20 at impact. I didn't say that.

2 Q. I asked you, how fast was Mr.
3 Lannacone going at impact, and you did answer,
4 and you can change it now if you'd like.

5 Unless I heard wrong, I thought you
6 said that he was traveling, at the point of
7 impact, 15 to 25, and I asked the difference,
8 why are you -- why are you estimating
9 difference in the two miles an hour that he's
10 estimating.

11 I just -- I need a clarification in
12 my mind, and I'll ask it again, how fast you
13 believe Mr. Iannacone was traveling at the
14 point of impact.

15 A. I don't know how fast.

16 Q. Okay.

17 A. I believe that's what I answered
18 before.

19 Q. And if you accept his testimony, he
20 was stopping in anticipation of a red light?

21 A. That's right.

22 Q. And if you take his testimony as
23 valid, he was going as slow as two miles an
24 hour at the point that he was impacted?

25 A. Yes.

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1 Q. And is that a logical assumption for
2 you to make, that he was traveling at
3 approximately two miles an hour at the time of
4 impact, based upon what you've evaluated in
5 this case?

6 A. Well, again, I don't know if the
7 impact was in Lane 3 or Lane 4. If he is in
8 Lane 4 and he is stopping for the light, and
9 then there is red lights all the way across,
10 then that would be true.

11 If he -- if we take the testimony of
12 Mr. Cowen -- or Cowen, sorry, and Ms. Eusted,
13 then the lanes are green, and he should be

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14 going faster than that. But I can't tell you
15 based on crush analysis or any damage that's
16 what occurred.

17 Q. Fair enough. But my question wasn't
18 how fast should he have been going. My
19 question was, based upon what you've
20 evaluated, how fast was he going when he was
21 impacted?

22 MR. BUCHHOLZ: Objection, form.

23 THE WITNESS: I can't tell you
24 again.

25 BY MR. YAFFA:

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1 Q. But the range is anywhere between
2 two miles an hour and what?

3 MR. BUCHHOLZ: Objection, form.

4 THE WITNESS: I have no change
5 specifically, other than I told you that
6 he would be going 15 to 20 when he makes
7 his lane change. I'm sorry, 15 to 25.

8 If he is stopped for the light, or
9 stopping for the light, he can be going
10 two, three, five, one, I don't know. I
11 mean, there's no -- there's no way
12 that -- I think Don said the same thing,
13 we can't correlate how fast he was going.

14 BY MR. YAFFA:

15 Q. Are you able to opine, within a
16 reasonable degree of reconstructionist

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17 probability, that he was not traveling at or
18 about two miles hour when his vehicle was
19 impacted based upon physical damage and angle
20 of crush?

21 MR. BUCHHOLZ: Objection, form,
22 predicate.

23 THE WITNESS: No.

24 BY MR. YAFFA:

25 Q. Okay. In any of these calculations

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1 that you performed, has there been a reason to
2 determine a deceleration factor yet?

3 A. Well, I gave you a deceleration
4 factor as to how long it would take Iannacone
5 to stop, but as far as like rolling to a
6 stop --

7 Q. Correct.

8 A. -- or something like that, no, I
9 didn't look at that, no.

10 Q. What about a calculation as to a
11 drag factor?

12 A. I think the roadway drag factor I
13 came up with out there was .76, and I think I
14 used that calculation on this cycle, but I
15 believe it was .76 with the roadway.

16 Q. Now, is that determined based upon
17 evidence on the road scene?

18 A. No. A coefficient is just figuring
19 out the coefficient of the roadway when I went

20 there.

21 Q. And what instrument did you use to
22 determine the friction coefficient on the road
23 surface?

24 A. I think I used in this case a
25 Vericom. I have a Vericom and I also have a

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1 drag sled, but I think I used the Vericom
2 computer, but I'm not sure.

3 Q. Does that computer require
4 calibration prior to each test?

5 A. It's calibrated internally like a
6 breath tester or something like that.

7 Q. And what information does a drag
8 factor give you in a case where you have no
9 evidence of braking?

10 A. Well, all it gives you is a
11 coefficient of the roadway, which you use
12 to -- in other words, a lot of the
13 calculations I gave you had to do with how
14 long would it take the cycle to stop, how long
15 would it take the car to stop. That's all
16 it's given me.

17 It's just for my own edification on
18 how long it would take, what the frictions
19 would be when a car changes lanes, in other
20 words, what would the maximum friction be of a
21 bike stopping, those kind of things. That's
22 all it gives me.

23 Q. Okay. Did you rely upon any
24 authority when determining your drag factor?
25 A. Yeah.

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1 Q. What authority?

2 A. Me.

3 Q. Any -- any citation you want to
4 direct me to, whether it's a book, a text,
5 article, anything like that?

6 A. You can pull 50 accident
7 reconstruction books and they're all the same.
8 I mean, you can pull Limpert's book, it tells
9 you how to do a drag test and how to do a
10 coefficient of friction. I've done probably
11 thousands because I taught students for 15
12 years.

13 In accident reconstruction
14 investigation, I did literally hundreds and
15 hundreds of skid tests and -- hundreds of
16 them.

17 Q. In determining the length of time it
18 took Mr. Iannacone's vehicle to travel from
19 Lane 1 into Lane 3, changing lanes, what body
20 of authority did you rely upon?

21 A. This book, and also myself, and the
22 testing the car, moving the car four times
23 from Lane 1 to Lane 3.

24 All I did is mathematically figure
25 out how long it took me, what the distance was

1 laterally, how long it took me timewise, and
2 what the friction would be as it -- as I move
3 over the lanes, and that's it. Simple.

4 Q. Would that be contained within
5 chapter 31, 35 or 36?

6 A. Yes.

7 Q. Okay. Do you know what chapter, off
8 the top of your head?

9 A. I think it's 31.

10 Q. Okay, that's fine.

11 All right. Now, let's get the
12 motorcycle time distance analysis.

13 A. Okay. Same thing I have on this as
14 I did Mr. Iannacone's. You'll be able to
15 read, Mr. Yaffa, each - the top of each page
16 will tell you what it is, what I'm doing.

17 Q. So just identify it as you -- you
18 tell me what it is you're looking at.

19 A. I will.

20 This is cycle rider time to come to
21 a complete stop.

22 Now, this one, I have the cycle
23 rider going at 45, and I have an approximate
24 impact speed of about 20. So what I want to
25 know here is, is that, well, if he's going 45

1 and the car is in front of him or pulls out in
2 front of him, and he hits him at approximately
3 20, how much time is that, I mean, in other
4 words, how long it'd take him to grab the
5 brakes and go down from 45 to 20, and that's
6 1.2 seconds, and adding perception reaction
7 time, it comes out to 2.76.

8 Q. And what was the perception reaction
9 time you used?

10 A. I used 1.5 in every one of them.

11 Q. Which is the average?

12 A. That's the average.

13 Q. Okay.

14 A. So that's just giving me an idea in
15 my head again as to how much time does he have
16 to decelerate from 45 to 20. That's all I
17 want to know at that point. I'm not saying
18 he's going 20. I just want to know for myself
19 how much time frame does he have.

20 Q. Okay. So this was 45 to 20 --

21 A. Right.

22 Q. -- 1.2 seconds using a 1.5 reaction
23 time?

24 A. That's right.

25 Q. Okay.

1 A. The next one is again going 45, but
2 now he impacts at about 15. And I think --
3 and again, I hate to refer to your expert,

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4 but, you know, Don and I come up with about
5 the same thing, roughly 15 maybe mile an hour
6 impact difference in speed, and that would be
7 1.51 seconds, plus perception reaction gives
8 us 3.01.

9 So again, it tells me that if, for
10 some reason, he decelerates from 45 to 15,
11 it's going to take him about three seconds to
12 do this.

13 Q. Okay. Okay. Thank you.

14 A. Now, the next one is -- I'm looking
15 at -- assuming that the cycle does not impact
16 anybody, he's just -- he's going 45, how much
17 time does it take him to come to a complete
18 stop?

19 In other words, how long does it
20 take him to go from 45 to 0 miles per hour,
21 and that would be 3.77 seconds total.

22 Q. Uh-huh.

23 A. That's -- that's what I wanted to
24 know in this case, how much time it was.

25 Q. Okay.

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1 A. And then distance wise, if he's
2 going 45, and the time I just gave you, which
3 is 3.77, I wanted to know, with perception
4 reaction, how many feet would he cover to
5 decelerate to a stop --

6 Q. Okay.

7 A. -- and that would be 174 feet. He
8 can actually stop at 75 feet, but if you add
9 perception reaction, that's another 99 feet.
10 Q. Well, you have to --
11 A. Yeah --
12 Q. -- add perception and reaction?
13 A. Right, but a lot of times -- how do
14 I want to phrase it, a lot of attorneys just
15 ask the specific question, like, well what's
16 the stopping distance, but the stopping
17 distance is really 75 feet. But with
18 perception reaction, some guys don't ask that.
19 I know you do, but -- so I wanted to make
20 sure -- I wanted to make sure when you look at
21 this paper, that you -- it's all printed as a
22 result --
23 Q. Okay.
24 A. Okay?
25 Q. All right. So did you do the same

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1 stopping distance for each of your scenarios
2 that you ran on the distance equation?
3 A. No, because I don't need to, because
4 I know in my head that if he hit at 20 or he
5 hit at 15, then obviously all you do is take
6 that distance off --
7 Q. Okay.
8 A. -- so it's really, you know -- I
9 mean, because if -- obviously we know an

10 impact occurred, so we know it's not 0 feet.

11 Q. So -- well, we know at the point
12 that he began perceiving the danger in
13 reacting --

14 A. Right.

15 Q. -- he was closer than 174 feet to
16 Mr. Iannacone?

17 A. Yes.

18 Q. And he was unable to stop?

19 A. Well --

20 MR. BUCHHOLZ: Objection, form,
21 predicate.

22 THE WITNESS: Right. And when he
23 perceived him or when he made the action
24 to stop, that is correct, that's not when
25 he should have perceived him or when he

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1 should have seen the hazard.

2 In other words, I'm just looking at
3 the fact of he's coming along, and all of
4 a sudden this car appears out of nowhere,
5 and he stops. And he tries to stop or
6 tries to swerve to the left or whatever.

7 That doesn't account the lane
8 changes from Lane 1 to Lane 2 into Lane
9 3.

10 MR. YAFFA: Okay.

11 THE WITNESS: Again, assuming that
12 happened.

13 So -- so the time frames that I gave
14 you indicate clearly that Mr. Iannacone
15 was in the road much longer than that.

16 BY MR. YAFFA:

17 Q. When you say road?

18 A. On Lake Worth Boulevard, whether it
19 be in Lane 1, Lane 2, or Lane 3.

20 Q. Okay.

21 A. So -- so my question on that or to
22 myself was what was he doing for this five
23 seconds.

24 Q. What was who doing?

25 A. What was Mr. Cowen doing for five

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1 seconds, because we know it takes that long to
2 get Iannacone from Lane 1 to Lane 3.

3 Q. Five seconds?

4 A. Right. So the question is, what's
5 he doing for five seconds. That's a long
6 time.

7 Q. I thought you actually said that it
8 would take three seconds.

9 A. It takes three seconds to move over.

10 Q. To Lane 3.

11 A. To Lane 3, not --

12 Q. You see, you're being very specific
13 and then a little bit general.

14 I'm not accusing you of anything --

15 A. Okay.

16 Q. -- but you just said on the record
17 that it would take five seconds for Mr.
18 Iannacone to get from Lane 1 to Lane 3.

19 A. Right.

20 Q. But what you meant to say was that
21 it would take five seconds for Mr. Iannacone
22 to get from Lane 1 to Lane 3 and then stop?

23 MR. BUCHHOLZ: Objection to form,
24 predicate.

25 THE WITNESS: No.

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1 BY MR. YAFFA:

2 Q. Okay. So correct me. That's
3 what -- I'm a little confused.

4 A. I think what I said previously and I
5 was alluding to, was that when Mr. Iannacone
6 pulls out, he did not immediately pull into
7 that second lane.

8 He pulled out and he proceeded about
9 30 feet down the road before he began to
10 actually take his action.

11 Q. So that's a couple seconds you're
12 adding on?

13 A. That's right. So if it takes him
14 3.6 to 3.7, actually he starts the maneuver,
15 he's in the roadway at least a minimum of
16 another two seconds.

17 Q. Okay.

18 A. So if -- now, if we take that, on
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19 the same path, and I don't mean to talk too
20 long, but if we're on the same path that it
21 takes five seconds, now it takes him an
22 additional two seconds or more to actually
23 stop his vehicle. So if we believe he's going
24 at, say, two miles an hour or five miles an
25 hour or whatever --

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1 Q. Slowing up?

2 A. Slowing up, that's another couple of
3 seconds before impact occurs. Now you're
4 getting into the seven or eight second range.
5 So the question is, what's the bike doing for
6 seven or eight seconds before impact.

7 Q. All right. Now, the two seconds
8 that you're adding to your numbers there, is
9 there a citation that you can give me that you
10 rely upon in adding that kind of time to this
11 equation?

12 A. Yes, 15, 20 or 25 X 1.466.

13 Q. And that's assuming that Mr.
14 Iannacone pulls into that right-hand lane
15 before making a left-hand turn?

16 A. That's right.

17 Q. It assumes Mr. Iannacone pulled into
18 the right-hand lane before moving to Lane 2?

19 A. That's correct.

20 Q. Okay. If he moved directly from
21 Lane 1 from -- directly from the shopping

22 complex to Lane 2, then those two seconds are
23 lost?

24 A. That's right. Exactly.

25 Q. And it's a much quicker time?

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1 A. Sure. If he -- if he --

2 MR. BUCHHOLZ: Objection, form,
3 predicate.

4 THE WITNESS: If he moves from
5 Lane -- or from the shopping center to
6 Lane 2 and moves directly over to 3, yes,
7 that would be correct.

8 BY MR. YAFFA:

9 Q. If he, if he changed lanes any way
10 different than the way that you did with him
11 in your car, quicker, meaning more abrupt, not
12 hesitating from one lane to the other, that
13 would speed up your time equation --

14 MR. BUCHHOLZ: Objection.

15 BY MR. YAFFA:

16 Q. -- correct?

17 MR. BUCHHOLZ: Form.

18 THE WITNESS: It would change the
19 equation.

20 BY MR. YAFFA:

21 Q. And it would give Mr. Cowen less
22 time to react, correct?

23 A. Yes.

24 Q. Okay. So the longer it takes for
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25 Mr. Iannacone to move into Lane 3, the more

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1 time Mr. Cowen should have to appreciate the
2 danger and avoid it, that's the point you're
3 making here?

4 A. Yes, sir.

5 Q. And visa-versa, the shorter -- the
6 quicker it takes for Mr. Iannacone to move
7 into that third lane, the less time Mr. Cowen
8 has to respond to this danger?

9 A. Yes.

10 Q. All right. And it's your opinion
11 that a motorcyclist should be able to
12 appreciate the surroundings and avoid dangers
13 such as these?

14 A. Yes. I -- well, I would think that
15 he would be able to see. There's no vision
16 obstructions for either operator in this case,
17 and I would think that the cycle would be able
18 to see Mr. Iannacone pulling out regardless of
19 what lane he pulls in, but, yeah, I think
20 you'd see him.

21 Q. And it's your opinion that a
22 motorcyclist, any motorcyclist would be able
23 to appreciate a vehicle pulling in front of
24 them and the fact that that's a danger so they
25 should start braking and stop and be able to

1 avoid that type of accident?

2 MR. BUCHHOLZ: Objecti on, form,
3 predi cate.

4 THE WITNESS: Yes. Well, especi ally
5 on thi s type of bike. I mean, there's a
6 di fference, too.

7 I mean, it's like -- I don't know
8 what kind of car you drive, but if you
9 have a Corvette or a Porsche, you're
10 probably able to take a corner
11 di fferently and you're able to maneuver
12 the car probably a little better than
13 somebody in a, you know, 450 Lexus or
14 something like that, or a, you know,
15 heavy car or heavy big car, and bikes are
16 the same way.

17 BY MR. YAFFA:

18 Q. How much did thi s bike wei gh?

19 A. I can tell you exactly.

20 It weighed 350 pounds wi thout the
21 ri der.

22 Q. What size bike is thi s?

23 A. It's an R6 Yamaha. It's a -- it's
24 a -- It's called the Yamaha YZF R6 model .

25 Q. Is there a comparable Honda Shadow

1 si ze wi se?

2 A. Well, there's certainly other race
3 bikes that compromise with it. There's
4 Kawasaki's, there's Suzuki's, there's Hondas.
5 Probably S&S Buell.

6 Q. Harley-Davidson?

7 A. Yeah, these are a -- these are a
8 typical race bike.

9 Q. Okay. But with regard to the
10 perception, I just want to make sure the
11 record's clear, it's your -- your opinion that
12 a motorcycle driver, regardless of experience,
13 should be able to appreciate the surroundings
14 and avoid impacting or avoid an accident where
15 a vehicle pulls in front of them and stops?

16 MR. BUCHHOLZ: Objection to form.

17 THE WITNESS: Yes, I don't recall if
18 I --

19 MR. BUCHHOLZ: Go ahead.

20 THE WITNESS: -- said regardless of
21 experience.

22 BY MR. YAFFA:

23 Q. I mean, I asked it that way
24 specifically for you.

25 A. Right. I'm -- when you say

1 regardless of experience, I would think
2 anybody who operates this type of motorcycle
3 should be experienced and should be able to
4 handle this type of situation or type of

5 motorcycle.

6 I don't know if you have a kid, but
7 if he's 16, you probably wouldn't want to give
8 him a Porsche 600 horsepower engine the first
9 day he's in the car, you know. I don't think
10 you would, but --

11 Q. I'm just winding up before I've got
12 to make this phone call.

13 Assume this was a Harley-Davidson, a
14 non-racer, if that's what you want to call
15 this, a racing type bike --

16 A. It's not what I call it. It's what
17 Yamaha calls it.

18 Q. What do you call it?

19 A. This bike?

20 Q. Yeah.

21 A. This bike is a race bike. Yamaha
22 advertises it as a race bike.

23 Q. Let's assume --

24 A. A track bike.

25 Q. Let's assume that it's a

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1 Harley-Davidson non-race bike.

2 A. Okay.

3 Q. Similar size.

4 A. Okay.

5 Q. And assume Mr. Cowen was on that
6 type of bike at the time of this accident.

7 A. Right.

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8 Q. Is it your opinion that -- that he
9 would have been able to avoid -- avoided this
10 accident, or he should have?

11 MR. BUCHHOLZ: Objection to form,
12 predicate.

13 THE WITNESS: Probably.

14 BY MR. YAFFA:

15 Q. All right. Do you believe that if
16 he was on a bike like that, a non-race bike,
17 he should have been able to avoid this
18 accident just by virtue of being aware of the
19 surroundings?

20 A. He should have, yes.

21 Q. Okay. A motorcyclist should be able
22 to appreciate the surroundings and avoid
23 accidents?

24 A. Yes.

25 Q. Okay. A motorcyclist should be able

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1 to appreciate what's going on around them and
2 make sure that there's sufficient distance
3 between them and any other vehicles in order
4 to avoid any type of situation like this?

5 A. Yes.

6 MR. YAFFA: Where are we?

7 THE TECHNICIAN: Time to stop.

8 MR. YAFFA: Okay. Let's stop.

9 (Whereupon, a recess was had in the
10 proceedings after which the following

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proceedings were had:)

12 THE TECHNICIAN: Back on the video.

13 BY MR. YAFFA:

14 Q. I think we were just going through
15 the time distance analysis you performed with
16 regard to the motorcycle, correct?

17 A. Yes, sir.

18 Q. And you had walked me through three
19 different scenarios, 45 down to 20, 45 down to
20 15, and 45 miles per hour to 0.

21 Then further calculating 45 miles an
22 hour to stop could be accomplished in the
23 approximately 174 feet per second, or was that
24 the -- total distance?

25 A. Total distance. I don't know why I

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1 put that there.

2 Q. So from 45 miles per hour to 0, it
3 would take 174 feet --

4 A. Yes, sir.

5 Q. -- using your drag factor?

6 A. Yes. What is used in the drag
7 factor, plus the bike, you had a little bit,
8 because the bike is able to stop quicker. It
9 has more friction.

10 This particular bike has what is
11 called 100 percent friction. Has more than
12 the full value of the asphalt. You have great
13 rates racing because it's a race bike.

- 14 Q. Does that mean it is skiing?
- 15 A. No, it means it is able to
- 16 decelerate much quicker than an automobile.
- 17 Q. So what acceleration value did you
- 18 use for the bike?
- 19 A. .9.
- 20 Q. What do you typically use?
- 21 A. Typically if it was a car, I would
- 22 use .76.
- 23 Q. For a bike not like this one?
- 24 A. .8 and .85 or something like that.
- 25 But because this is an R6 motorcycle, I think

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- 1 the paper we had showed 100 percent friction
- 2 or more would be around that particular area.
- 3 Q. And what body of authority do you
- 4 use for that deceleration value with this
- 5 bike?
- 6 A. The chapter in Limpert's book, and
- 7 also I pull a braking efficiency chart out of
- 8 the AR Program, which I -- I told you this was
- 9 taken from, 100 plus on the friction value
- 10 with or without skids, so that's the values I
- 11 used.
- 12 Plus I've done motorcycle tests
- 13 myself. I didn't do one in this case, but I
- 14 did tests on Ducatis and things like that.
- 15 Q. What other calculations do you
- 16 perform for the time distance analysis on the

17 motorcycle?

18 A. None. That was it.

19 Q. What's the next time distance

20 analysis, the documents you have now?

21 A. The next one, I wanted to do a

22 vault, which I think is exactly the same as

23 Don had.

24 I wanted to do a vault from the

25 motorcycle rider, from the time it hits the

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1 vehicle to go up on the windshield, I had a 45

2 degree take-off would be 14.6 miles an hour.

3 I think your guy had roughly the same, 14 or

4 15.

5 Q. Do you agree that in all likelihood,

6 Mr. Cowen struck that windshield, the rear

7 windshield?

8 MR. BUCHHOLZ: Objection to form.

9 THE WITNESS: I agree, yes.

10 BY MR. YAFFA:

11 Q. You don't believe that rear

12 windshield fractured or broke because of

13 anything other than Mr. Cowen's body striking

14 it?

15 A. I agree with that statement.

16 Q. What part of his body struck it?

17 A. That I don't know. Obviously

18 whether he hit it with his helmet and went

19 somewhat into the vehicle or not, I don't

20 know. But he certainly hit it with, I would
21 say, the major portion of his torso. I am not
22 a biomechanic. He hit it hard enough to
23 shatter it.

24 Q. At what angle did he hit it?

25 A. Well, with angle, I can't tell you.

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1 I can tell you he came off the bike at a
2 45-degree angle to launch himself off the bike
3 and to get on the windshield, which I believe
4 the windshield is about 3.5 feet, and it's
5 about six feet from the distance of where he
6 would be on the bike until where he reaches
7 the windshield, maybe a little bit more, so
8 that's the only thing I can give you. I can't
9 tell what angle he hit it but he was ejected
10 at about 45 degrees.

11 Q. At what speed was he ejected?

12 A. The minimum speed was 14.
13

14 It could have been 18, 20. I kind
15 of doubt if it would be much over 20. I mean,
16 it could be, but I kind of doubt it, because I
17 don't really know if he actually went into the
18 car. I don't know if -- it didn't look like
19 from the pictures his body was flung onto the
20 car.

21 In other words, I think he hit the
22 windshield, shattered it, and probably rolled

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23 off the car. If he would have went over the
24 car, and rolled off to the side, or went in
25 front of Mr. Iannacone, then that would be

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1 certainly a much higher speed, but I don't
2 have any evidence that that occurred.

3 Q. What was the speed that the
4 motorcycle was traveling at the point of
5 perception?

6 A. Don't know.

7 Well, if Mr. Cowen's testimony is he
8 was going 45 or near there, that would be the
9 speed limit going on perception.

10 Q. Are you going to show up in court
11 and testify that he was going faster than 45
12 at the time that he perceived Mr. Iannacone's
13 vehicle in front of him?

14 A. I can't tell you he was going faster
15 than 45, just like I can't tell you he was
16 going 45. And I indicated previously in the
17 depo that I don't know what his deceleration
18 was, how long he decelerated until he hit the
19 back of the car. He could have been going 40,
20 could have been going 60. We don't know that.
21 We don't have that information.

22 Q. Was speed a factor in this accident?

23 MR. BUCHHOLZ: Objection to form.

24 Predicate.

25 THE WITNESS: Speed could be a

1 factor, but that would be combined with
2 possibly inexperience, if he's
3 inexperienced, inattention. You know,
4 technically, if he's going 20 miles an
5 hour and paying inattention, my answer to
6 you would be speed would be a factor,
7 even though he's going less than the
8 speed limit.

9 So -- and I'm not certainly going to
10 come into court and say he was going 50,
11 60, 80 miles an hour. I'm certainly not
12 going to say that.

13 But is speed a factor, it could be
14 based on those -- that information I gave
15 you.

16 BY MR. YAFFA:

17 Q. What would you base an inexperience
18 comment on?

19 What evidence did you see with
20 regard to the impact of the vehicle, damage to
21 the motorcycle, that would suggest
22 inexperience on the part of Michael Cowen?

23 A. He ran into the back of the car and
24 he didn't see the car until right before
25 impact. That's -- that's inexperience and

1 inattention.

2 Q. By not avoiding this accident, you
3 would say that was his inattention and his
4 inexperience?

5 A. Absolutely, no question.

6 Q. And that is assuming that Mr.
7 Iannacone was driving his vehicle
8 appropriately?

9 A. No. I don't think it all is based
10 on that. I think that the fact is is that the
11 motorcyclist, regardless of how Mr. Iannacone
12 came out of the shopping center, I'm not
13 talking about him coming out at 80 miles a
14 hour, I'm talking whether he pulled into Lane
15 1 or 2, the fact that Mr. Cowen did not see
16 the car at any point until right before impact
17 is inattention. There is -- there was no
18 reason he shouldn't have seen the car.

19 Q. Well, let's discuss that for a
20 second.

21 In your experience teaching driver's
22 courses -- do you teach driver's courses?

23 A. Yes.

24 Q. What kind of driver's courses do you
25 teach?

1 A. Well, I initially taught pursuit
2 courses, I taught some motorcycle accident
3 investigation courses and reconstruction

4 courses.

5 Q. Right.

6 A. And I've taught driving courses.

7 I'm a certified driving instructor for AAA and

8 the State of Florida.

9 Q. Are there different degrees of
10 consciousness?

11 A. What do you mean by that?

12 MR. BUCHHOLZ: What?

13 BY MR. YAFFA:

14 Q. Different degrees of consciousness,
15 or of appreciation maybe.

16 MR. BUCHHOLZ: Objection to form.

17 BY MR. YAFFA:

18 Q. I mean, does someone appreciate
19 something on the side of the road with the
20 same consciousness and awareness as maybe they
21 would appreciate a danger on the road? Do you
22 understand?

23 MR. BUCHHOLZ: Objection to form.

24 THE WITNESS: I understand, and
25 again that, that can amount to a number

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1 of things.

2 BY MR. YAFFA:

3 Q. Do you agree that a driver's
4 attention consists of five elements?

5 A. Yes.

6 Q. What would those elements be?

7 A. I'd have to look it up. I mean,
8 percepti on's one. I mean, there's all kinds
9 of di fferent -- I have to look right now
10 without -- I don't know off the top of my head
11 what they are.

12 Q. Concentrati on, scope, di stri buti on,
13 flexi bili ty, and consi stency, does that sound
14 about right?

15 A. I might have one or two di fferent
16 ones that I might have put in an article, I'm
17 not sure.

18 Q. Do you know if you put it in this
19 arti cle?

20 A. No, I don't know.

21 MR. BUCHHOLZ: You have to show him
22 the arti cle.

23 MR. YAFFA: I'm going to, I'm going
24 to.

25 THE WITNESS: I don't remember off

233

1 the top of my head all those thousands of
2 paragraphs I've written.

3 BY MR. YAFFA:

4 Q. What is di stri butive attenti on?

5 A. Di stri butive attenti on would mean
6 attenti on on several di fferent factors. In
7 other words, you look at your speed, you know
8 your surroundings, you know when to brake,
9 when to proceed, when to react, all kinds of

10 things.

11 Q. Would you agree that with
12 distributive attention, a driver observes many
13 objects but none of them in great detail?

14 A. Well, in great detail, sure.

15 Q. As opposed to concentrative
16 attention.

17 A. Yes, when you're looking and you
18 concentrate on a specific subject or -- or
19 something in the roadway, yes.

20 Q. Would it be reasonable for someone
21 to see a vehicle maybe using their
22 distributive attention, not remember it, not
23 appreciate it, until it is presenting a danger
24 to them where it then becomes a concentrative
25 attention issue?

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1 MR. BUCHHOLZ: Objection, form,
2 predicate.

3 THE WITNESS: Well, it depends what
4 kind of time span you're looking at. If
5 you're talking about seconds, no. If
6 you're talking about minutes, yes.

7 BY MR. YAFFA:

8 Q. Vehicle coming out of the shopping
9 complex, two lanes over, is that something
10 that should be evaluated using your
11 distributive attention or your concentrative
12 attention?

13 A. Concentrative.

14 MR. BUCHHOLZ: Objecti on.

15 BY MR. YAFFA:

16 Q. Okay. And you should be aware that
17 that could present a danger?

18 A. Sure.

19 Q. Just as a vehicle driving by you, if
20 you're on a motorcycle, you should be aware of
21 that vehicle with your concentrative
22 attention, correct?

23 A. Yes.

24 Q. You should be aware of it so that if
25 that vehicle were to come in front of you, you

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1 would appreciate the danger, potentially,
2 correct?

3 A. Yes.

4 Q. So that you should avoid the
5 accident, correct?

6 A. Yes.

7 Q. Just as in Mr. Iannacone's
8 situation; it's your contention that Mr. Cowen
9 should have appreciated Mr. Iannacone,
10 regardless of whatever actions Mr. Iannacone
11 was making driving across the lanes of travel,
12 correct?

13 MR. BUCHHOLZ: Objecti on, form,
14 predicate.

15 THE WITNESS: Yes.
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16 MR. BUCHHOLZ: Can you mark this one?

17 MR. YAFFA: I wasn't going to.

18 MR. BUCHHOLZ: Since you referenced

19 it --

20 MR. YAFFA: Okay.

21 MR. BUCHHOLZ: -- ask him --

22 MR. YAFFA: All right. Let's mark

23 that as Plaintiff's Exhibit 25.

24 (Thereupon, the above referred-to

25 document was marked as Plaintiff's

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1 Exhibit No. 25 for identification.)

2 MR. BUCHHOLZ: Are you going to

3 identify it for the record?

4 MR. YAFFA: I am going to see if

5 he's able to.

6 MR. BUCHHOLZ: Okay.

7 BY MR. YAFFA:

8 Q. Are you able to determine, as you

9 sit here today, whether you contributed to

10 that article?

11 A. No, I didn't.

12 Q. And what's the article called?

13 A. Driver Response in Accidents.

14 Q. Do you know what publication it

15 would have been in?

16 A. Yeah, it looks like Limpert's book.

17 Q. Okay. The authoritative book that

18 you were talking about earlier?

19 A. I didn't say it. You used the word
20 authoritative.

21 Q. Yes, I did.

22 A. I corrected you on that.

23 It's out of his book, yeah. I know
24 because I'm familiar with the alcohol charts
25 in it.

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1 Q. Well, most of the work you've done
2 in your teachings involve the use of alcohol
3 with driving accidents, correct?

4 A. Oh, a lot of it is, absolutely.

5 Q. The majority is?

6 A. No, I wouldn't say majority. A lot
7 of it is, yes.

8 Q. All the seminars that you talk at,
9 aren't those all involving the evaluation of
10 an accident involving DU -- DUI?

11 A. Oh, a lot of them are, but you said
12 the majority.

13 Q. I'm going to say that again.

14 A. Seminars.

15 Q. Wouldn't you agree that the vast
16 majority of seminars that you've attended over
17 the years have been involving alcohol or
18 drug-involved accidents and fatalities?

19 MR. BUCHHOLZ: Objection to form,
20 predicate.

21 THE WITNESS: I assume you mean that
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22 I've spoken at, the answer would be yes.

23 BY MR. YAFFA:

24 Q. Can you think --

25 A. Seminars.

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1 Q. Yes, seminars.

2 A. Yeah, not -- not teaching but
3 seminars, yes.

4 Q. Is there one seminar you've spoken
5 at that didn't involve DUI or any other type
6 of -- of intoxication issue or breathalyzer
7 test?

8 A. Oh, yeah, I've spoken for all kinds
9 of prosecuting agencies, and I've spoken for
10 civil.

11 I've spoken for the American Trial
12 Lawyers Association and --

13 Q. Listen to my question carefully.

14 Can you identify a seminar that
15 you've talked at that did not involve DUI or
16 breathalyzer testing or some type of
17 intoxication with a traffic accident?

18 A. I'd have to look at the seminar
19 list.

20 You're talking only seminars, right?

21 Q. That's what I asked you.

22 A. I was trying to clarify, sorry.

23 Yeah, there's Accident

24 Reconstruction and Intoxilyzer, March 30 of
Page 37

25 2000.

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1 I didn't speak on the intoxilyzer,
2 another guy did. I did Accident
3 Reconstruction on March 31st, 2000. I didn't
4 speak on the intoxilyzer, somebody else did.

5 Q. Any of the seminars that you're
6 identifying not involve intoxilyzer?

7 A. Now you're changing the question.

8 Q. I am asking that question.

9 A. Well, I'm just giving you the ones I
10 found immediately, these three involving the
11 intoxilyzer, but I didn't speak on it.

12 Q. No, I want to clarify again my
13 question because we can go back and forth on
14 this and it's needless.

15 My question is simply, have you
16 talked at any seminar that did not involve
17 driving under the influence of some type of
18 alcohol and/or drug involved with the
19 accident?

20 And I believe each of those seminars
21 that you have talked at involve DUI or some
22 other type of breathalyzer, intoxilyzer
23 mechanism for testing the degree of
24 inebriation of a driver?

25 A. No. There's a seminar right here

1 that I talked at that had nothing to do with
2 DUI or the intoxilyzer.

3 Q. And that's what I want you to
4 identify for me.

5 A. Okay. Drive to Stay -- Drive to
6 Stay Alive, Traffic Safety Council.

7 Q. And when was that?

8 A. February '97.

9 Q. Okay. Any others?

10 A. I don't know. They're not all on
11 here. So, you know, I mean, the ones that are
12 on here, most of them are related to DUI.

13 Q. 99 percent of them are related to
14 DUI?

15 A. I don't know what the percentage is.

16 Q. Well, if only one out of all of them
17 is not involving DUI, that would make it 99
18 percent, wouldn't it?

19 MR. BUCHHOLZ: Objection to form.

20 THE WITNESS: Well, I don't know if
21 that's correct or not.

22 BY MR. YAFFA:

23 Q. My math stands.

24 A. I'd have to go through all these, I
25 don't know.

1 Q. Okay.

2 A. I'd have to see what each one of
3 these were.

4 Q. I do want you to get you on your
5 flight, so if you want to go through it
6 quickly, that's fine. If you want to -- if
7 you can think of any as you're sitting here
8 just off the top of your head, any others that
9 you spoke at that didn't involve DUI, you can
10 just yell them out to me.

11 A. Well, I did seminars with Davis
12 Training and Development and Southern Police
13 Institute.

14 Southern Police Institute, I had
15 nothing to do with DUI. Those were all death
16 investigations, traffic homicide, but they had
17 nothing to do with DUI or breath testing,
18 anything.

19 Davis Training and Development,
20 nothing with that.

21 Q. When was that?

22 A. I don't know. There's no dates on
23 here.

24 Q. Are these under seminars or are
25 these under teachings?

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1 A. Both. I taught -- I taught those
2 classes, and I did seminars in those classes.

3 Q. But you have a section of your CV
4 that's seminars, and then you've got teaching,

5 don't you?

6 A. Yes.

7 Q. So under seminars, are you under
8 seminars or you under teaching?

9 A. I'm under teaching.

10 Q. Okay. I want to know seminars.

11 A. But they are seminars, too. In
12 other words, they're -- they're together.

13 Q. Well, why don't you call them
14 seminars?

15 A. I don't know. You want to do my CV
16 for me? I don't know.

17 Q. I don't want to get anywhere near
18 that CV.

19 A. Oh, okay. Well, you know, I don't
20 know. I, I -- That's just the way that
21 they're listed on here because they're prob --
22 they're dual.

23 Q. Okay.

24 A. You know, a lot of them are
25 seminars, and some of them are teaching where

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1 I teach and give certifications, and some are
2 both.

3 Q. Are you a teacher?

4 A. Yes.

5 Q. Are you a professor?

6 A. No.

7 Q. Have you been hired by any

8 university to teach?
9 A. Yes.
10 Q. Who?
11 A. University of North Florida.
12 Broward County Community College. University
13 of Louisville Emory University.
14 Q. And what are you paid?
15 A. Usually a daily fee.
16 Q. To teach?
17 A. Yes.
18 Q. Are you considered a professor?
19 A. No.
20 Q. Are you on staff?
21 A. No. Adjunct staff.
22 Q. What did you teach at Emory?
23 A. I'm trying to look to see when I was
24 at Emory.
25 I was there in -- August 18th to the

1 20th, '95. I taught field sobriety testing
2 there.
3 Q. 18th through the 20th?
4 A. Yes.
5 Q. So that was a two-day course?
6 A. Three-day course.
7 Q. And where was it held?
8 A. Emory University.
9 Q. Was it in the law school, was it in
10 the, you know, business school, or was it on

11 the campus someplace?
12 A. It was on the campus we teach.
13 Q. Was it sponsored through Emory?
14 A. Well, everything is sponsored
15 through the school.
16 Q. So the check you received was -- was
17 on a Emory school-based paycheck?
18 A. I don't understand what you mean by
19 check I received.
20 Q. Were you paid by the school?
21 You said you were paid on an hourly
22 basis. Were you paid by the school?
23 A. I don't know who paid the check, no.
24 Q. Were you paid by one of the sponsors
25 of the program?

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1 A. I don't know.
2 Q. Who sponsors most of the programs
3 that you speak at?
4 A. Well, it depends on what program it
5 is.
6 Q. Would you say the vast majority of
7 the programs you've talked to have been
8 sponsored by one of the DUI attorneys or firms
9 that you work with?
10 A. No, I don't think so, no. I have --
11 Q. Bubba Head. Who's he?
12 A. He's an attorney in Atlanta.
13 Q. That you've spent a lot of time

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14 working for, correct?
15 A. I don't understand. What's a lot of
16 time?
17 Q. Well, do you --
18 A. You're going to have to tell me what
19 a lot of time is.
20 Q. Do you work with Mr. Bubba Head?
21 A. I haven't worked for him in ten
22 years.
23 Q. Do you speak for Mr. Bubba Head?
24 A. No.
25 Q. Do you go to seminars sponsored by

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1 Mr. Bubba Head?
2 A. He is one of the board of directors
3 of a company that would retain myself and
4 other services --
5 Q. And the company is called?
6 MR. BUCHHOLZ: Let him finish. You
7 ask him a question and --
8 MR. YAFFA: You're right, I'm
9 sorry.
10 THE WITNESS: And other instructors
11 would -- would be hired by a company,
12 yes.
13 BY MR. YAFFA:
14 Q. The company is who?
15 A. I don't know what the company was.
16 Q. Do you know what the company's name

17 is?

18 A. Maybe it's on here.

19 Q. Is there a company Headliners and --

20 A. No. Headliners? No.

21 Q. I'm thinking of names, I can't

22 remember.

23 A. No. I don't know what the -- there

24 was a couple of different company names, if I

25 recall correctly over the years.

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1 Q. And the company sponsors seminars
2 that you speak at?

3 A. I don't know what the company does.

4 I know that they would retain me to come in

5 and either do a certification class or to

6 speak at a seminar they were holding.

7 Q. Certification class for what?

8 A. It depends. It could be --

9 Q. Intoxilyzer?

10 A. Intoxilyzer, it could be

11 standardized field sobriety testing, could be

12 maintenance on breath machines, those types of

13 things.

14 Q. These are things that you're doing

15 at the seminars where you're -- they're

16 sponsored by these companies that you're

17 talking about?

18 A. Well, yes and no. They're sponsored

19 somewhat by the companies, but you have to

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20 provide an outline because all the attorneys
21 that attend want to get whatever they call it,
22 C. L. E. hours or whatever it's called.
23 Q. Right.
24 A. So you have to submit that, and then
25 the -- whoever the -- runs the C. L. E.

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1 committee for whatever state it is have to
2 approve your course outline.
3 Q. Right.
4 A. And then it has to be marketed and
5 they get X number of hours if they attend, so
6 you have to prepare an outline and you have to
7 speak on each one of those individual subjects
8 or topics or whatever.
9 So a lot of them are -- are
10 sponsored by that particular state Bar, and
11 then they're done through a company.
12 Q. Well, the company puts on the
13 seminar, and then the curriculum is submitted
14 to the state Bar to see if it passes muster
15 for C. L. E. credits, correct?
16 A. I don't know, I'm not a lawyer.
17 Q. Well --
18 A. You'll have to check that out with
19 them.
20 Q. The vast majority of the seminars
21 you've talked to involve DUI.
22 A. A lot of them do, yes.

23 Q. Yes. Such as, you know,
24 standardized sobriety testing, correct?
25 A. Yes.

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1 Q. Field sobriety tests, correct?
2 A. Yes.
3 Q. Standardized Field Sobriety Testing.
4 Field Sobriety and the Intoxilyzer.
5 Trial Tactics in DUI Cases, correct?
6 A. Yes.
7 Q. Accident Reconstruction in DUI,
8 correct?
9 A. Yes.
10 Q. DUI Trial Tactics, correct?
11 A. Yes. There was --
12 Q. Scientific Evidence in DUI Cases,
13 correct?
14 MR. BUCHHOLZ: What are you asking?
15 BY MR. YAFFA:
16 Q. The point, these are -- these are
17 seminars that you have been a part of,
18 speaking at, correct?
19 A. Yes.
20 Q. And the vast majority of your
21 involvement with these seminars involves how
22 to get around the DUI charge, correct?
23 MR. BUCHHOLZ: Objection.
24 THE WITNESS: No. Is your client DUI
25 in this case? I didn't read -- I didn't

1 notice that.

2 BY MR. YAFFA:

3 Q. Is he?

4 A. I don't know. I -- I -- maybe
5 you're telling me something I don't know.

6 Q. Is there any evidence on the scene
7 about my client being under the influence at
8 the time of this accident?

9 A. I don't know. You keep asking these
10 questions related to alcohol. I'm figuring
11 maybe you have something I don't know about
12 yet.

13 Q. I --

14 MR. BUCHHOLZ: Go to your next
15 question.

16 BY MR. YAFFA:

17 Q. My question simply is, many of the
18 speaking engagements you've been involved with
19 have been through defense-oriented foundations
20 and corporations in criminal cases, correct?

21 A. No. I don't know that.

22 Q. Is William Bubba Head a defense
23 attorney?

24 A. You have to ask him.

25 Q. You don't know that?

1 A. I don't know what he does as far as
2 what his personal occupation is. I know that
3 he's a lawyer, I know that he does criminal
4 and he does civil.

5 I don't go to him and say -- I
6 haven't asked Mr. Buchholz what he does. I
7 haven't asked you what you do. I mean, I know
8 that they're a lawyer, and I know he has made
9 publications, and he's asked me to speak for
10 him.

11 What he does criminal wise or civil
12 wise, I don't know. It's not my business.

13 Q. All right. You've also written
14 papers on the problems with DUI testing at the
15 fields or at the scene, correct?

16 A. I've written papers for the State,
17 and I've written papers for defense as to what
18 is wrong with breath testing or what is right
19 with breath testing.

20 Q. On ways that breath testing may not
21 be performed accurately by officers, that's
22 one of the subjects, correct?

23 MR. BUCHHOLZ: Objection, form.

24 THE WITNESS: It can be, depending
25 on what the audience is or what the

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1 particular questions are.

2 BY MR. YAFFA:

3 Q. Okay. And officers who may put
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4 information in a report that didn't actually
5 occur at the scene, that's something you've
6 written about --

7 A. Sure.

8 Q. -- correct?

9 A. Absolutely.

10 Q. Okay. I got sidetracked.

11 What -- what other calculations,
12 time distance calculations are we dealing with
13 here?

14 A. I think that's it. As far as --
15 yeah, that's it.

16 Q. All right. Now, in your perception
17 reaction time, you were calculating the length
18 of time that it would take Mr. Cowen to brake
19 to the various speeds that you just
20 identified, I believe, 20, 15, and to stop,
21 correct?

22 A. That's right.

23 Q. Did you also compute in your
24 perception reaction time the amount of time it
25 would take Mr. Cowen to initiate a steering

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1 maneuver and a brake?

2 A. No. I mentally did that but I
3 didn't need to do that.

4 Q. Would that slow down the process
5 and -- and make the distance longer that it
6 would take for Mr. Cowen to actually

7 decelerate?

8 A. I don't know what you mean by

9 longer, no.

10 Q. Would the initiation of a steering

11 maneuver essentially slow down the reaction

12 time so that the braking isn't occurring

13 within the 1.5 reaction time that you've

14 anticipated?

15 A. No, because a steering maneuver

16 would most likely be less than that. I mean,

17 there's no -- the action is the actual

18 maneuver, it's not the braking, so if you

19 actually steer, that's part of your perception

20 reaction.

21 That would be your initial reaction

22 would be to proceed, whatever the hazard is,

23 and you would steer, so you would add time on

24 to your actual braking or stopping distance.

25 Q. Which would add distance?

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1 A. Yes.

2 Q. And I wanted to know if you tried to

3 compute a steering maneuver within the

4 calculations that you performed.

5 A. No, there was no need to from my

6 point.

7 Q. All right. Well, you did identify

8 that the impact occurred at an angle, correct?

9 A. Right.

10 Q. And that angle is consistent with
11 someone attempting to steer away from the
12 vehicle if that vehicle is coming from right
13 to left?

14 A. Right.

15 Q. And that, you would agree with me
16 here and now, would suggest that Mr. Cowen did
17 make an evasive maneuver once perceiving the
18 danger?

19 MR. BUCHHOLZ: Objection to form.

20 THE WITNESS: It --

21 MR. BUCHHOLZ: Predicate.

22 THE WITNESS: It appears he did.

23 I -- I -- I don't know for sure, but it
24 appears he did.

25 BY MR. YAFFA:

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1 Q. In your opinion, within a reasonable
2 degree of reconstructive probability, you
3 would say he was making an evasive maneuver at
4 the time that the motorcycle impacted the back
5 of the vehicle?

6 A. It appears to be, yes, sir.

7 Q. And that would be an appropriate
8 thing for him to have done?

9 A. Yes.

10 Q. What distance was he from the Toyota
11 when he initiated that evasive maneuver?

12 A. Well, again, that depends on the

13 speed. We don't know, as I indicated several
14 times, we don't know what his speed is.

15 Q. Assuming it's 45.

16 A. If he's going from 45 to hitting the
17 car at 15, it would be 3.01 seconds.

18 Q. What would be 3.1 seconds?

19 A. I thought your question was what the
20 time would be --

21 Q. I thought it was --

22 A. -- when he initiated the swerve.

23 Q. I'm sorry, I thought I said the
24 distance. What distance was he from the
25 vehicle when he initiated the swerve?

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1 A. The distance would be -- at 45 miles
2 an hour?

3 Q. Yes.

4 A. 198 feet. I think you asked that
5 before.

6 Q. And that would have been in order
7 for him to miss the vehicle or striking the
8 vehicle if you're anticipating the strike or
9 impact being at between two and 15 miles per
10 hour?

11 MR. BUCHHOLZ: Objection, form,
12 predicate.

13 THE WITNESS: That would be him
14 striking the vehicle, but based on that
15 time, I would say he should miss the

16 vehicle.

17 In other words, if he swerved during
18 that time frame, he should be able to
19 miss the car.

20 BY MR. YAFFA:

21 Q. If he was that distance from the --
22 from the car?

23 A. Well, right, because I'm just going
24 from 45 down to 15.

25 Q. Right.

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1 A. And, I mean, that's what I have the
2 impact at, roughly. So, I mean, that's the
3 basis I'm going on, and I'm using his
4 testimony to say he's going 45.

5 Q. Right.

6 A. So if he's going 45 and he hits the
7 back of the car at about 15, he's got 3.1
8 seconds of total time to do that.

9 Q. And that is swerve and apply the
10 brakes?

11 A. That's right.

12 Q. Okay.

13 A. Or simultaneously he does both. I
14 think his testimony is roughly he does all of
15 it at once.

16 Q. However, you believe that a good
17 motorcycle rider should be able to have
18 avoided it all?

19 MR. BUCHHOLZ: Objection, form,
20 predicate.

21 THE WITNESS: Absolutely.

22 BY MR. YAFFA:

23 Q. Okay. And that's regardless of the
24 actions of Mr. Iannacone, correct?

25 MR. BUCHHOLZ: Objection, form.

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1 Predicate, mischaracterizes his
2 testimony.

3 THE WITNESS: Regardless of the
4 actions that we've spoken of. I can't
5 say you'll come up with some hypothetical
6 other than that, but --

7 MR. YAFFA: I'm creative.

8 BY MR. YAFFA:

9 Q. But assuming that Mr. Iannacone
10 improperly stopped at 150 feet west of the
11 stop bar on a green light, is that component
12 calculated within these numbers?

13 MR. BUCHHOLZ: Objection to form.

14 THE WITNESS: No, because I gave
15 that to you in other figures, how long it
16 takes, because if he's -- if he is in the
17 third lane and he stops, we have --

18 BY MR. YAFFA:

19 Q. On a green light?

20 A. On a green light -- we have to
21 assume that Mr. Iannacone was going some speed

22 before he hits the brakes or slows down.

23 Q. Correct.

24 A. Whether it's five miles an hour or

25 25 miles an hour, we have to assume that

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1 there's some distance it takes him to come to
2 a stop.

3 Q. Okay.

4 A. So if it takes him two to three
5 seconds to come to a stop, that means that
6 he's in the lane.

7 Again, we're assuming he come over
8 to that third lane.

9 Q. Right.

10 A. And so the -- so as I indicated to
11 you, what's the cycle doing the time that it
12 takes Mr. Iannacone to come to a stop. If he
13 is braking, the brake lights have to be on, so
14 whether he's 150 feet back or 500 feet back,
15 the motorcyclist has got to see the brake
16 lights, again assuming the brake lights are on
17 and working.

18 Q. Right.

19 A. All right. If that's the case, then
20 the deceleration time of Mr. Iannacone's
21 vehicle is more than adequate to warn the bike
22 of something occurring.

23 That's what I'm saying on that time
24 frame. And again, assuming he's stopping in

25 the third lane.

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1 Q. And you base that evaluation on
2 there being enough room for Mr. Cowen to have
3 avoided the accident on what?

4 A. On Mr. Cowen's speed that he said he
5 was going.

6 Q. 45?

7 A. Right.

8 Q. Can we agree before you answer --
9 finish the rest of that answer --

10 A. Sorry.

11 Q. There's nothing wrong with him going
12 45 miles an hour on this roadway?

13 MR. BUCHHOLZ: Objection, form.

14 THE WITNESS: No, I never said there
15 was.

16 BY MR. YAFFA:

17 Q. Okay. So you have no problem with
18 his speed?

19 A. No.

20 Q. No. Okay. Then go ahead, I'm
21 sorry.

22 A. I have no problem. If he's -- if
23 he's decelerating, as I indicated, then we
24 have to assume that Mr. Iannacone is in his
25 lane, and the other factor which I was getting

1 into was, there's a difference between a car
2 going 40 and 45 and one going two miles an
3 hour or five miles an hour. I would think
4 that -- so if he's going two miles an hour or
5 stops and goes two, whatever --

6 Q. Two to 15, let's use your range.

7 A. Right, whatever -- whatever it is.

8 The motorcycle rider should be able to see
9 that this car is in front of him going at five
10 miles an hour. I mean, there's a big
11 difference regardless of what color the light
12 is.

13 If you're approaching an object on a
14 road and you're going 45 miles an hour, you're
15 coming up pretty darn fast on that car. I
16 mean, you're coming fast.

17 And if Iannacone is stopping or
18 slowing down, he's got to have his brake
19 lights on. So if you see a combination of
20 brake lights and you see speeds of five or 10
21 miles an hour, or whatever speed you want to
22 use, that would be a good warning to the
23 motorcyclist that something's going on. So --
24 and he's got plenty of time if that's the
25 speed he's going.

1 Q. Well, what's the safe distance where

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2 Mr. Cowen is approaching Mr. Iannacone's
3 vehicle and you think it is appropriate to
4 have that distance between the vehicles and
5 then Mr. Iannacone stops his vehicle where it
6 is unexpected and where it should not occur,
7 is there ever a situation in that scenario
8 where you believe the accident can't be
9 avoided?

10 MR. BUCHHOLZ: Objection, form,
11 predicate.

12 THE WITNESS: Yes. If Mr. Iannacone
13 comes from the right lane and cuts over
14 as fast as he can in front of the
15 motorcyclist and doesn't signal, just
16 moves directly over that 24 feet lateral
17 distance as fast as he can, as quick as
18 he can and slams on the brake, if that
19 occurs, then the motorcyclist cannot
20 avoid him.

21 BY MR. YAFFA:

22 Q. But the motorcyclist still should be
23 able to appreciate Mr. Iannacone on the
24 right-hand side, whether it's at the shopping
25 complex or in Lane 1 before attempting that

1 maneuver?

2 A. Well, he should be, but I'm
3 assuming -- you asked me for an example.

4 Q. No, correct.

5 A. So if he comes out of the shopping
6 center and just bolts over to the third
7 lane --

8 Q. Right.

9 A. -- and no signals, no brake lights,
10 no nothing --

11 Q. Okay.

12 A. -- and slams on his brake and stops,
13 then I agree with you, there's no way for the
14 cyclist to avoid it.

15 Q. In this situation, at the scene of
16 this accident, you are aware that there is an
17 intersection not too far east of the Lucerne
18 Lakes Boulevard intersection, correct?

19 A. Yes.

20 Q. And there was nothing that stopped
21 Mr. Iannacone from proceeding to that
22 intersection before attempting to maneuver
23 over to the turn lane to make the U-turn? And
24 that was a very bad question, okay, let me
25 just go back.

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1 There was nothing that prevented
2 Mr. Iannacone from negotiating his merge from
3 Lane 1 to Lane 2, Lane 2 to Lane 3, and then
4 into an eventual turn lane, at a different
5 intersection farther east, was there?

6 MR. BUCHHOLZ: Objection, form,
7 speculative, those words.

8 THE WITNESS: That's correct.
9 BY MR. YAFFA:
10 Q. Okay. Correct that it was worse, or
11 correct that I'm right?
12 A. That you were right.
13 Q. Okay. It was a bad question.
14 A. He could go further east, yes.
15 Q. It would have been a better decision
16 for Mr. Iannacone to have taken more time and
17 not attempted to maneuver in such a short
18 distance in order to make his U-turn to head
19 west on Lake Worth Boulevard, correct?
20 MR. BUCHHOLZ: Objection to form,
21 predicate, speculative.
22 THE WITNESS: Well, I think now we
23 could say it's -- would have been a
24 better decision, but then I don't see
25 anything that he did improper.

265

1 BY MR. YAFFA:
2 Q. Well, that's also depending upon how
3 he did change those lanes. So let's just use
4 your example that he did come out of the
5 shopping complex and he spent a little more
6 time in Lane 1 than you're calculating for two
7 seconds.
8 A. Okay.
9 Q. Okay? Can we assume that?
10 A. Sure.

11 Q. And then as he was proceeding
12 eastbound in Lane 1, instead of changing lanes
13 as quickly as, maybe, or as slowly as you
14 anticipate that he did, he swerved across
15 these lanes of travel in an attempt to get
16 over to that turn lane before he got to the
17 intersection; that would change your
18 equations, wouldn't it?

19 MR. BUCHHOLZ: Objection to form,
20 predicate.

21 THE WITNESS: It would certainly
22 change the times and possibly even the
23 speed.

24 I'd have to look at that, but, yeah,
25 it would change certainly the times, yes.

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1 BY MR. YAFFA:

2 Q. And if, in fact, he was attempting
3 to rush over to that turn lane, realizing he
4 was about to go through an intersection, it's
5 very possible that he could be the sole cause
6 of an accident like that, correct?

7 MR. BUCHHOLZ: Objection to form,
8 predicate.

9 THE WITNESS: I'm not going to use
10 the word sole cause, because it is a
11 rear-end accident and I still think that,
12 you know, there would be a probability
13 the bike could avoid, he certainly would

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14 be more of a contribution if he comes
15 over in the manner you stated.

16 BY MR. YAFFA:

17 Q. You have no evidence as to how he
18 moved over into the third lane where we
19 believe his vehicle was at the time of impact?

20 MR. BUCHHOLZ: Objection, form,
21 mischaracterizes his testimony.

22 Go ahead.

23 THE WITNESS: I have no physical
24 evidence. I do have his, you know,
25 testimony helping me do it at the scene.

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1 BY MR. YAFFA:

2 Q. You have his after-the-fact
3 testimony as to how he is telling you, the
4 expert for the defense, he did it, after the
5 impact had already occurred?

6 MR. BUCHHOLZ: Objection, form and
7 deposition testimony.

8 Go ahead.

9 THE WITNESS: Yes, I'm hoping he's
10 truthful to me.

11 BY MR. YAFFA:

12 Q. If Mr. Iannacone had left his
13 vehicle where it was impacted, that would have
14 assisted the police officers, don't you think?

15 MR. BUCHHOLZ: Objection, form,
16 predicate.

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17 THE WITNESS: I'm certain it would
18 have given them some information to put
19 into the report or jog their memory as to
20 where it was and what happened, sure.
21 BY MR. YAFFA:
22 Q. That would have also helped you out
23 with your reconstruction, correct?
24 A. Yes, if I knew --
25 MR. BUCHHOLZ: Objection, form,

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1 predicate.
2 THE WITNESS: If I knew exactly
3 where the car was, yes, it would help me.
4 BY MR. YAFFA:
5 Q. By moving his vehicle completely off
6 of where this accident had occurred over to
7 the bank parking lot, Mr. Iannacone removed
8 evidence that was valuable to the
9 investigation in this case, don't you think?
10 MR. BUCHHOLZ: Objection, form,
11 predicate.
12 THE WITNESS: Yes. There could have
13 been evidence that the officers could
14 have gathered, yes.
15 BY MR. YAFFA:
16 Q. And that evidence could have been
17 very useful for you here today at the time of
18 your accident reconstruction deposition,
19 correct?

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20 MR. BUCHHOLZ: Objection, form.
21 THE WITNESS: Yes. Sorry, I was
22 waiting.
23 BY MR. YAFFA:
24 Q. What lane of travel was Michael
25 Cowen in at the time that Mr. Iannacone pulled

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1 into Lane 3?
2 A. Lane 3. Well, at least the
3 testimony is Lane 3.
4 Q. Any reason for you to disbelieve
5 that?
6 A. No.
7 Q. Was there any evidence of
8 deceleration prior to impact?
9 A. No.
10 You say was there evidence?
11 Q. Yes.
12 A. No.
13 Q. Did you believe -- do you believe
14 there would be deceleration prior to impact?
15 A. Yes.
16 Q. Being on both Mr. Iannacone's
17 vehicle and Mr. Cowen's vehicle?
18 A. Yeah, I believe that they both --
19 there was deceleration, yes.
20 Q. Okay. Are you able to determine the
21 length of time that it took for Mr. Cowen's
22 vehicle to decelerate from the point that he

23 appreciated the danger to the impact?
24 A. I gave you that on these figures.
25 Q. Based upon your assumption of his

270

1 location at the time, the speed, speed that he
2 impacted the back of the car, whether it was
3 15, whether it was 20, that type of thing?

4 A. Yes, I gave you those numbers --

5 Q. Okay.

6 A. -- right.

7 Q. What direction was Mr. Cowen's
8 motorcycle traveling at the time that Mr.
9 Iannacone's vehicle pulled into his lane?

10 A. Eastbound.

11 Q. And when Mr. Cowen attempted an
12 evasive maneuver, would you agree that he
13 attempted to move his vehicle almost in a
14 northernly fashion, in a northernly direction?

15 MR. BUCHHOLZ: Objection to form,
16 predicate.

17 THE WITNESS: He angled it to the
18 left, yes.

19 BY MR. YAFFA:

20 Q. That -- which would be the north,
21 correct?

22 A. Yes.

23 Q. I mean, that's his intent, to avoid
24 the vehicle that's merging into his lane in
25 front of him, correct?

1 A. His intent, I assume, was to avoid
2 the car.

3 Q. And based upon the angle of impact,
4 you agree with that?

5 A. Yes.

6 Q. You're telling me you found -- I'm
7 sorry?

8 MR. YAFFA: Just change it.

9 (Whereupon, a recess was had in the
10 proceedings, after which the following
11 proceedings were had:)

12 THE TECHNICIAN: Tape 5. Back on
13 the video.

14 BY MR. YAFFA:

15 Q. All right. Did we go through all of
16 the time distance measurements?

17 A. Yes.

18 Q. And the diagram, have we gone
19 through all the diagrams that you've created?

20 A. Yes. The only other one is the same
21 one like this, but it's blank.

22 Q. Without the writing?

23 A. Right.

24 Q. Okay. And who was it that prepared
25 the diagrams?

1 A. Bruce Buffa, B-U-F-F-A.

2 Q. And how long has Mr. Buffa been with
3 you?

4 A. 16, 17 years.

5 Q. And what are Mr. Buffa's
6 qualifications for rendering diagrams like
7 these?

8 A. He does site surveys, and he's
9 qualified to use total station equipment.

10 Q. Okay. Anyone else assist?

11 A. I think he has an associate that
12 helps him hold the dumb end of the stick, it's
13 called. You know, dumb end of the tape, so to
14 speak.

15 It's a total station, so he takes
16 all the measurements, but some guy actually
17 holds the stick, and they have to move it
18 around to all the different sites.

19 Q. I'm not going to tell that person --

20 A. No.

21 Q. All right. Any other diagrams that
22 you haven't showed me that you've -- that
23 you've created or had Mr. Buffa create?

24 A. No.

25 Q. Okay. The computer program and

1 stopping distance, were those part of the time
2 distance equations we've already gone through?

3 A. Yes.

4 Q. Okay. What I'm doing is going
5 through the list that you gave me that was the
6 contents of Exhibit No. 3, I believe.

7 A. Right.

8 Q. Signal pattern, we've already
9 touched on the signal pattern; is that
10 correct?

11 A. Yes. I have a copy here of the same
12 one you have.

13 Q. And the -- and I think you just
14 stuck my exhibit in there, but I'll give you
15 one if you want one.

16 A. Sorry. Is this yours?

17 Q. Yes.

18 A. Okay. There must be one around here
19 somewhere.

20 Q. Okay. Yes. That's yours.

21 A. Okay.

22 Q. Does that accurately reflect the
23 signal timing as you evaluated it on the day
24 or days that you performed your evaluation of
25 the scene?

1 A. I believe it does, yes.

2 Q. Did you actually look at it to make
3 sure that it did show exactly what the signal
4 timing sheet and your scene evaluation
5 revealed? That stunk.

6 Did you just evaluate the signal

7 timing to confirm that it matched the signal
8 timing sheet?

9 A. Yes.

10 Q. And did it?

11 A. Yes.

12 Q. Okay. Is there a gap time, as you
13 described it, on the signal timing sheet?

14 A. Yes.

15 Q. All right. So it goes from green
16 arrow to yellow arrow for left turn, if that's
17 been triggered --

18 A. Right.

19 Q. -- to all red?

20 A. Yes.

21 Q. Are you sure about that?

22 A. I'm positive. 100 percent, thousand
23 percent positive.

24 Q. Okay. And that's how it was that
25 day?

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1 A. Yes. According to the signal timing
2 sheet, yes. If this -- if this is the one
3 that was in effect. Which is presumed to be.
4 It's 3/23 of 06, the timing was installed.

5 This accident was February of '07.
6 So I didn't see any -- I don't think there's
7 any timing sheets different from that point
8 on.

9 Q. And when you evaluated the scene,
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10 though, you were able to appreciate the gap?

11 A. Yeah, absolutely.

12 Q. Did you -- did you photograph it?

13 A. I don't recall photographing it, no.

14 Q. Videotape it, anything like that?

15 MR. BUCHHOLZ: You mean the gap

16 light?

17 MR. YAFFA: Yes.

18 MR. BUCHHOLZ: Okay.

19 MR. YAFFA: I know where your mind

20 is going.

21 THE WITNESS: No, you can -- you can

22 see clearly by just looking at the light

23 that it goes all red once the yellow goes

24 off.

25

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1 BY MR. YAFFA:

2 Q. So it goes green arrow, yellow

3 arrow, all red for just two seconds?

4 A. That's right.

5 Q. And then it goes to all green?

6 A. That's right. Absolutely. It's a

7 gap time.

8 Q. Then you have the motorcycle

9 specifications that are in there. Have we

10 gone through all the -- I mean, have you

11 relied upon those motorcycle specifications?

12 A. Well, yeah, I mean, to identify the

13 bike, but other than that, no.

14 Q. All right. Did -- did the
15 motorcycle specifications, other than
16 identifying the bike, assist you with your
17 calculations in this case?

18 A. No.

19 Q. All right. Your stopping distances,
20 your deceleration, your coefficient of
21 friction, you were able to do that not needing
22 those specifications?

23 A. Right, by knowing what type of bike
24 it is, yes.

25 Q. Okay.

277

1 A. That's all I needed to know.

2 Q. Okay. And if I'm not mistaken, you
3 have traffic laws that you brought with you?

4 A. Yes, I do, right here.

5 Q. What laws did you bring with me --
6 bring to me here at the deposition?

7 A. I brought 316.192, which is reckless
8 driving. I brought 316.209, operating
9 motorcycles on roadways, lanes for traffic.
10 And 316.0895, following too closely.

11 Q. You are not an officer with any law
12 enforcement office, correct?

13 A. No.

14 Q. And Mr. Cowen did not receive any
15 citations for his driving on the day of

16 February 13th, 2007, correct?

17 A. Correct, because he was injured and
18 the officer felt bad for him so he didn't cite
19 him.

20 Q. The officer didn't see the way
21 Mr. Iannacone was driving, did he?

22 A. The officer didn't need to see.
23 Officer Narranjo could have signed the ticket
24 for reckless operation right there on the
25 scene.

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1 Q. Did Officer Narranjo put on his
2 lights or signals at any point in time prior
3 to this accident occurring?

4 A. No, he couldn't.

5 Q. Was he in his patrol car?

6 A. Yes, but he was outside of his
7 jurisdiction.

8 Q. And he couldn't put a signal on?

9 A. No.

10 Q. You can't signal a horn, a light or
11 anything like that to let someone know that
12 they may be doing something wrong?

13 A. If you want your supervisor, if
14 somebody calls in and complains, and then
15 possibly suspend and take your car, I know
16 exactly how police work, done it 20 years. I
17 know exactly what they do, and if you do
18 something outside your jurisdiction, you could

19 I lose your take-home car.

20 Q. What is the -- really, what is the
21 job of a police officer?

22 MR. BUCHHOLZ: Objection to form.

23 THE WITNESS: In your jurisdiction,
24 it's to police laws within your
25 jurisdiction. You can certainly make --

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1 but you have no further power outside
2 your jurisdiction than you or I do.

3 BY MR. YAFFA:

4 Q. Is a police officer a public
5 servant?

6 A. In his jurisdiction, yes.

7 Q. Is a police officer's job to protect
8 the public?

9 A. In his jurisdiction, yes.

10 Q. There are things that Officer
11 Narranjo could have done if he felt that there
12 was something dangerous going on with regard
13 to Mr. Cowen's driving, isn't there?

14 A. No.

15 MR. BUCHHOLZ: Objection, form.

16 BY MR. YAFFA:

17 Q. He couldn't have called on his -- on
18 his radio to dispatch?

19 A. No. Why?

20 Q. To let them know that there's a
21 motorcyclist that may be doing something

22 dangerous and maybe a patrolman in the
23 jurisdiction could respond to?

24 A. No, because by the time that gets
25 through dispatch -- first of all, you have to

280

1 go through West Palm Beach, that's number one.

2 Q. How long does that take?

3 A. It could take anywhere from a minute
4 to two minutes.

5 Q. Perception reaction time, Officer
6 Narranjo sees a driver on a - motorcyclist
7 that he thinks is driving recklessly --
8 perception reaction time. Officer Narranjo
9 sees a situation, he sees a motorcyclist
10 driving that he believes is dangerous; how
11 long does it take for him to pick up his CB,
12 or his radio, his communication device?

13 MR. BUCHHOLZ: Objection, form.

14 THE WITNESS: Now you changed the
15 question.

16 MR. BUCHHOLZ: Which one you want to
17 answer those five questions?

18 THE WITNESS: The question is how
19 long does it take him to pick up his
20 radio, he could probably pick it up in an
21 instant.

22 How long does it take to get ahold
23 of dispatch, now you're talking a whole
24 other story.

25 BY MR. YAFFA:

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1 Q. Okay. So he could have attempted to
2 call in to dispatch that there was someone who
3 was driving a motorcycle dangerously, had he
4 felt that at the time?

5 A. He explained why he didn't do that.
6 And he -- he could have done anything. He
7 could have probably, you know, chartered a
8 helicopter and waited for it to land and then
9 filed in and then called another agency. He
10 could have done all kinds of things.

11 Q. Okay.

12 A. You don't do that you because you're
13 outside your jurisdiction, and if you start
14 calling in on every reckless, careless driver
15 that you see, you'd be on the radio every day.

16 Q. But a reckless driver is someone
17 that you believe presents a danger not only to
18 themselves but to others, right?

19 A. He was a danger to himself as we saw
20 in this accident.

21 Q. That wasn't my question. I
22 appreciate --

23 A. That was the answer.

24 MR. BUCHHOLZ: Wait until he
25 finishes his answer before you start your

1 second question, your follow-up question.

2 BY MR. YAFFA:

3 Q. The question was, that Officer
4 Narranjo could have perceived Michael Cowen to
5 be a danger to himself and others if he felt
6 he was a reckless driver, correct?

7 A. He could have done anything.

8 Q. Okay. Well, how far was Officer
9 Narranjo from impact at the time it occurred?

10 A. Probably a very short distance,
11 maybe four or 500 -- there's no -- there's no
12 way I can give you an impact. But he came
13 upon it very quickly.

14 Q. How quickly?

15 A. Well, nobody else was there stopped.
16 So he came up to it, pulled up behind the --
17 Mr. Cowen and blocked the roadway with his
18 lights and signals and got out to assist.
19 Nobody else was there, according to his
20 testimony.

21 Q. According to Ms. Eusted's testimony,
22 she was there when he showed up. So let's
23 assume for a second that she was there when he
24 showed up.

25 A. Right.

1 Q. Where was Officer Narranjo at

2 impact?

3 A. I don't know.

4 Q. What was the distance that he was
5 from impact?

6 MR. BUCHHOLZ: Objection, asked and
7 answered.

8 THE WITNESS: I -- no one knows
9 that.

10 BY MR. YAFFA:

11 Q. How fast was he traveling eastbound
12 on Lake Worth Road at the time of impact?

13 MR. BUCHHOLZ: Officer Narranjo or
14 the motorcyclist?

15 BY MR. YAFFA:

16 Q. Officer Narranjo.

17 A. I didn't ask him how fast he was
18 going at the time of impact. I asked how fast
19 he was going before that, Narranjo, he said
20 45.

21 Q. So just prior to -- just prior to
22 the impact, he was going 45 or he just told
23 you he was going 45?

24 A. He told me he was going 45.

25 I didn't ask him to identify, was it

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1 a second before impact or five seconds, I
2 didn't ask him to identify that.

3 Q. But you do know in his deposition he
4 testified he wasn't going 45 when he was stuck

5 in traffic, when he watched Mr. Cowen, who he
6 believes, come through between the third and
7 the fourth lane, I'm sorry, between the second
8 and the third lane?

9 A. At that --

10 MR. BUCHHOLZ: Wait, wait, wait,
11 wait, wait.

12 MR. YAFFA: Okay. Let me --

13 MR. BUCHHOLZ: What's the question?

14 BY MR. YAFFA:

15 Q. Let me clear up the question.

16 It is your understanding, based upon
17 Officer Narranjo's sworn testimony, that
18 Officer Narranjo was not traveling at 45 miles
19 per hour when he was stuck in traffic and
20 observed Mr. Cowen, who he believed to be Mr.
21 Cowen, approaching him from the west and
22 passing him between Lanes 2 and 3?

23 MR. BUCHHOLZ: Objection, form.

24 THE WITNESS: At that point, yes.

25

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1 BY MR. YAFFA:

2 Q. Okay. And you're also aware in his
3 deposition that at no point where he observed
4 Michael Cowen, had he been able to get out of
5 that traffic and accelerate to 45 miles per
6 hour?

7 A. I believe he said that, yes.

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8 Q. That he had never gotten out of that
9 traffic when he was able to appreciate Mr.
10 Cowen, correct?

11 MR. BUCHHOLZ: Objection, form,
12 predicate.

13 THE WITNESS: I think --

14 MR. YAFFA: Let me --

15 THE WITNESS: -- up to that point,
16 yes.

17 BY MR. YAFFA:

18 Q. Okay. Well, let me -- let me just
19 try to clear it up.

20 It is your understanding that at the
21 last point that Officer Narranjo was able to
22 see Michael Cowen, Officer Narranjo was still
23 stuck in that traffic where he was unable to
24 drive the speed limit of 45 miles an hour?

25 A. I know he was in traffic. I don't

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1 recall his exact words, but I know that he was
2 in traffic the last time he saw him, yes.

3 Q. He actually testified, and correct
4 me if I'm wrong, that -- that he was in the
5 second lane and he wanted to get into the
6 third lane because the second lane was almost
7 stopped, the third lane seemed to be moving a
8 bit; is that correct?

9 A. Yes.

10 MR. BUCHHOLZ: Objection to form.

11 BY MR. YAFFA:

12 Q. And when he attempted to move into
13 that third lane was when he looked in his rear
14 view mirror and he saw what he believed to be
15 a motorcyclist or Mr. Cowen coming between
16 Lane 2 and Lane 3, correct?

17 MR. BUCHHOLZ: Objection, form,
18 predicate, mischaracterizes Officer
19 Narranjo's testimony.

20 Go ahead.

21 BY MR. YAFFA:

22 Q. You can go ahead and answer.

23 A. I know Narranjo said he saw the bike
24 coming up on him, and that's why he didn't
25 change lanes.

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1 Q. He wanted to get to the lane where
2 there was some more movement, it seemed to be
3 moving more in the third lane than in the
4 second lane, correct?

5 MR. BUCHHOLZ: Objection, form.

6 THE WITNESS: Right. And that's when
7 he saw the bike weaving in and out of
8 traffic behind him.

9 BY MR. YAFFA:

10 Q. Behind him?

11 A. Right.

12 Q. All right. You don't know where
13 this was in relationship to the location of

14 impact, do you?

15 A. Well, yeah, it was west of the
16 turnpike at that point.

17 Q. Okay. And when Michael Cowen went
18 by Officer Narranjo, it was still west of the
19 turnpike, wasn't it?

20 A. Yes.

21 Q. And at no point east of the turnpike
22 did Officer Narranjo visualize Michael Cowen,
23 did he?

24 MR. BUCHHOLZ: Objection, form,
25 predicate.

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1 THE WITNESS: I'm not sure on that
2 one. I thought he said he saw him east
3 of the -- or -- east of the turnpike, but
4 I have to look that up.

5 He said he saw the cycle after the
6 turnpike, east of.

7 BY MR. YAFFA:

8 Q. Where?

9 A. I think on Line 11.

10 Q. No. Where after the turnpike?

11 A. He just said east of.

12 Q. Okay. So if he --

13 A. He says he came up to the turnpike,
14 he saw him, lost him at some point after that,
15 but he didn't say where.

16 Q. Okay. So it says they came up to

17 the turnpike --

18 A. Right.

19 Q. -- from west to east, and that's
20 where Officer Narranjo lost Mr. Cowen?

21 MR. BUCHHOLZ: Objection, form.

22 BY MR. YAFFA:

23 Q. Is that correct?

24 A. Right, after the turnpike.

25 Q. So technically, if we're looking at

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1 the distances, there's an approximate distance
2 of three-quarters of a mile that Michael Cowen
3 may have traveled that Officer Narranjo had no
4 visualization of him with, correct?

5 MR. BUCHHOLZ: Objection to form.

6 THE WITNESS: Whatever the distance
7 is from the turnpike to the POC, I don't
8 know.

9 BY MR. YAFFA:

10 Q. If we assume that it's three-fourths
11 of a mile from turnpike to the point of
12 collision --

13 A. Okay.

14 Q. -- then you would agree with me that
15 there's up to three-quarters of a mile that
16 Mr. Cowen may have traveled without Officer
17 Narranjo having any visualization of him,
18 correct?

19 A. Well, that could be true. I don't

20 know how far east of the turnpike that he lost
21 sight of him, but if it was right there at the
22 turnpike, then I'd agree with you, it's
23 three-quarters of a mile.

24 Q. If it's a half mile, that's still a
25 significant distance that could be covered by

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1 Mr. Cowen if he's traveling at 45 miles an
2 hour, without Officer Narranjo having any
3 visualization on him, correct?

4 A. It can be, sure.

5 Q. Okay. And -- and there's no way for
6 you to speculate as to how Mr. Cowen was
7 driving during that window of time where
8 Officer Narranjo had no visualization on him,
9 is there?

10 A. Well, up to the impact point, no.

11 Q. So --

12 A. I can at impact, but not -- not
13 between --

14 Q. Okay.

15 A. -- Narranjo and impact.

16 Q. So from the point that Officer
17 Narranjo loses any visualization of Mr. Cowen,
18 to the point of just before impact --

19 A. Right.

20 Q. -- you have no opinion as to how Mr.
21 Cowen was driving?

22 A. I have nothing that I can put a

23 physical hand on, no.

24 Q. Okay. You do have a witness who you
25 may not believe was there, who testified he

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1 was right in front of her in Lane 3, the
2 through lane, traveling at about 45 miles an
3 hour, correct?

4 A. Correct.

5 Q. And there's nothing you've seen that
6 would make you disbelieve that for this period
7 of time between Narranjo losing visualization
8 and just prior to impact, correct?

9 A. No. Not -- not physically that I
10 could see, no.

11 Q. Okay. And --

12 A. There's no testimony.

13 Q. -- so you agree with me?

14 A. Well, I don't agree with you that's
15 the way he was driving. I'm just saying I
16 don't have anything from the time he got east
17 of the turnpike until right before impact. I
18 didn't say I agreed with you, I just said I
19 have nothing I can base that on.

20 Q. Well, that's what I'm saying. My
21 question was, you would agree with me there is
22 no evidence you can rely on that would give
23 you an indication as to how Mr. Cowen was
24 driving from the point that -- east of the
25 turnpike to the point of just prior to impact?

1 A. That's right.

2 Q. Okay. All you have to rely on is a
3 witness who you're not sure was actually
4 there?

5 A. I'm saying I have no information
6 other than her testimony --

7 Q. Okay.

8 A. -- from any of the officers to
9 indicate that she was there.

10 Q. What information did you have from
11 any of the officers that they personally spoke
12 with Officer Narranjo?

13 A. I don't understand what you mean by
14 that.

15 Q. What officer did you talk to spoke
16 directly with Officer Narranjo?

17 A. I don't think anybody. I don't
18 think Burt spoke with him.

19 Q. He didn't?

20 A. No, I don't think Burt spoke with
21 him. I spoke with Burt, he knew that -- he
22 knew Narranjo's name. I don't know how he
23 knew that, but, no, I haven't spoken with
24 anybody, other than Narranjo indicating in his
25 deposition what he saw and Burt indicating

1 what he did, no.

2 Q. Okay. Well, if you believe
3 Ms. Eusted, she was first on the scene with
4 Michael Cowen as she watched the impact occur,
5 correct?

6 A. Yes.

7 Q. Okay. And she had her child with
8 her in her vehicle, if you believe her
9 testimony, correct?

10 A. Yes.

11 Q. Her child was going to school nearby
12 just east of where this accident occurred,
13 correct?

14 A. Yes.

15 Q. And once the first officer
16 arrived -- you would assume that that would be
17 Officer Narranjo, correct?

18 A. I'm assuming it was Narranjo.

19 Q. And Narranjo was off duty, correct?

20 A. Yes.

21 Q. Narranjo would not be performing an
22 accident investigation on this case, correct?

23 A. Correct.

24 Q. So if Officer Narranjo arrived and
25 never asked this woman who she was or what she

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1 saw, would you find that to be something
2 derelict in the duties of Officer Narranjo?

3 A. No.

4 MR. BUCHHOLZ: Objection.

5 BY MR. YAFFA:

6 Q. Okay. If Officer Narranjo --

7 MR. BUCHHOLZ: Objection, form.

8 BY MR. YAFFA:

9 Q. Officer Narranjo agreed that he was
10 intending to get to class that morning,
11 correct?

12 A. Correct.

13 Q. And he actually left the accident
14 scene as soon as he was relieved by the
15 officers who were arriving on to the scene,
16 correct?

17 A. Yes.

18 Q. He didn't wait for the fire station
19 to get there to deal with the injuries,
20 correct?

21 MR. BUCHHOLZ: Objection, form.

22 THE WITNESS: Right.

23 BY MR. YAFFA:

24 Q. And he didn't report to Officer Burt
25 that there was someone else there previously

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1 on the scene, correct?

2 A. Correct.

3 Q. All right. Would it be reasonable
4 for Ms. Eusted to leave to take her daughter
5 to school once she was relieved by a police
6 officer, meaning Officer Narranjo?

7 MR. BUCHHOLZ: Objection, form,
8 predicate.

9 THE WITNESS: Yes. After she's --
10 gave her name and stuff, sure.

11 BY MR. YAFFA:

12 Q. Well, who was she supposed to give
13 her name to?

14 A. I'm sure Narranjo would have taken
15 the name if she would have offered it, or if
16 he would have seen her.

17 Q. Well, was it his job to ask her what
18 her name was?

19 A. If there was a witness around, I
20 would think that he would take the name down,
21 as a trained police officer, sure.

22 Q. But he wasn't there investigating
23 this accident, was he?

24 A. He didn't have to be there
25 investigating the accident. If you're a

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1 witness to a collision, I mean, I -- I've done
2 it several times. If I witnessed a collision,
3 I give the name to an investigating officer,
4 whether he's off duty, on duty or what. If
5 he's in a patrol car, I'll give him the name.

6 Q. If Officer Narranjo didn't ask
7 Ms. Eusted for her name or information about
8 what she saw, would you hold it against
9 Ms. Eusted for not staying longer to speak to

10 a different officer?

11 MR. BUCHHOLZ: Objection, form,
12 predicate.

13 THE WITNESS: I wouldn't hold it one
14 way or another.

15 BY MR. YAFFA:

16 Q. What I am asking is, do you think
17 she did something wrong by leaving after she
18 was relieved by an officer if the officer
19 didn't ask her for her name or any contact
20 information?

21 A. I don't know. I would just find it
22 strange that somebody would -- would go to the
23 trouble of parking, blocking off traffic,
24 assisting somebody and not thinking that you
25 would leave your name or give your name to

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1 anybody. I, I just find that very strange.

2 Q. Didn't you read in her deposition
3 testimony where she thought it was strange too
4 that the officer didn't ask her for any
5 information?

6 MR. BUCHHOLZ: Objection, form.

7 THE WITNESS: I guess if they were
8 there and seen her, they probably would
9 have asked for it, so I find that highly
10 unusual that an officer would not get
11 that information.

12 BY MR. YAFFA:

13 Q. But again, the officer, had he
14 received that information, had Officer
15 Narranjo asked Ms. Eusted for her information,
16 would that have resulted in him having to
17 relay that to another officer on the scene at
18 the time of the interrogation or -- or
19 statement?

20 A. If she was there, yes. I mean, I
21 don't know. If there's nobody there to ask,
22 why -- why would he ask somebody who's not
23 there? Why would he be -- why should he be
24 expected to ask a person who he does not see
25 on the scene and whose car is not there and

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1 who's not with the victim.

2 Q. You don't believe she was there, do
3 you?

4 A. I didn't say that. I'm saying
5 Officer Narranjo told me that he did not see
6 any car parked in front of Mr. Cowen. He
7 didn't see anybody with Mr. Cowen, and he was
8 the first one there. And I find it highly
9 unusual, as I indicated, that if she's four or
10 five car lengths behind Mr. Cowen, that she
11 didn't run over him, and I find it highly
12 unusual that if she's behind him and -- and
13 would have been within that range, that she --
14 I don't understand why she would have stopped
15 her car in front of him.

16 If you want to block traffic, I
17 don't drive over the person or around them,
18 because traffic's coming up behind me.

19 Q. Do you expect her to be a trained
20 police officer and understand these things?

21 A. I don't really know if I have to be
22 trained to look for traffic when I'm crossing
23 the roadway. I don't know if I need to be
24 trained that coffee is hot if I spill it on
25 me. I think if there is somebody laying in

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1 the road in front of you, I don't drive around
2 them and block traffic, you know, the opposite
3 way.

4 Q. You interpreted her deposition to
5 mean that she went past him and blocked him
6 from being hit from someone coming in the
7 westbound direction?

8 A. No. Her testimony was she parked in
9 front of him. She went around to the
10 crosswalk or the stop bar and parked over
11 there. She didn't park in back of him.
12 Traffic is coming from her rear.

13 What I'm saying is, if you want to
14 protect somebody, why would you turn around
15 and park in front of them. The traffic is
16 coming from the back.

17 Q. I guess my question is, do you
18 believe she was there or not?

19 MR. BUCHHOLZ: Objection, form,
20 asked and answered, speculative.

21 THE WITNESS: It's not for me to
22 believe one way or the other. I'm just
23 saying that there's no evidence from the
24 police officers on the scene, and her
25 testimony does not correlate with any of

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1 the other evidence in this case or any of
2 the other testimony from anybody in this
3 case that she was there. That's up to
4 the jury to determine, not me.

5 BY MR. YAFFA:

6 Q. If Officer Narranjo was to see her
7 and say I'm mistaken, she was there, would
8 that change your opinion as to whether she was
9 there?

10 MR. BUCHHOLZ: Objection form,
11 predicate.

12 THE WITNESS: I don't know what
13 Narranjo is going to say.

14 BY MR. YAFFA:

15 Q. That's not my question.

16 A. I don't know.

17 Q. If -- if Officer Narranjo said, I
18 saw her at the scene, would that change your
19 opinion as to whether or not she was there?

20 MR. BUCHHOLZ: Objection, form,
21 predicate. He hasn't offered opinion as

22 to whether she --

23 MR. YAFFA: I didn't ask that
24 questi on.

25 MR. BUCHHOLZ: Well, you're

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1 mi scharacteri zi ng hi s testi mony.

2 MR. YAFFA: No.

3 MR. BUCHHOLZ: You sai d change your
4 opi ni on. He di dn' t offer an opi ni on
5 whether she was there or not. So you're
6 aski ng the questi on change your opi ni on
7 about when he hasn' t gi ven one.

8 BY MR. YAFFA:

9 Q. Okay. Do you have an opi ni on as to
10 whether she was there?

11 A. No.

12 Q. All right. If you assume she was
13 there and wi tnessi ng thi s acci dent, then woul d
14 you bel i eve that Mi chael Cowen remained i n
15 Lane 3 from the turnpi ke through i mpact of
16 thi s acci dent?

17 A. Yes.

18 Q. Okay. What evi dence have you seen
19 that woul d make you bel i eve Mi chael Cowen l eft
20 Lane 3 at any poi nt from the ti me he passed
21 the turnpi ke headi ng east to the poi nt of
22 i mpact?

23 A. I haven' t seen any evi dence one way
24 or the other, nor have I commented on that.

25 Q. Well, you do believe he was in Lane

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1 3 just prior to the impact, don't you?

2 A. I believe he was in Lane 3 prior to
3 impact.

4 Q. Okay.

5 A. Whether the impact was in 3 or 4, I
6 couldn't tell you.

7 Q. All right. You do believe that he
8 attempted an evasive maneuver to turn left to
9 avoid the accident, correct?

10 A. I believe there was a slight
11 maneuver, as I indicated.

12 Q. What about Michael Cowen's driving
13 do you find fault with just prior to impact?

14 A. Well, with his driving and
15 operation, I find that Fault No. 1 is that
16 he's passing a police car right before the
17 accident.

18 Q. Let me clarify. I'm sorry. You can
19 get this out on direct all day with
20 Mr. Buchholz.

21 My question is, and I'll be
22 specific: From the point of turnpike east --

23 A. Okay.

24 Q. -- to impact --

25 A. Okay.

1 Q. -- what are your criticisms of
2 Michael Cowen's driving?

3 A. He drove into the back of an
4 automobile when he clearly should have seen
5 the automobile pull out of the shopping
6 center. He was reckless, he was careless. He
7 failed to use due care, and he did not have
8 his bike under control when he ran into the
9 back of the car.

10 Q. What was reckless about his driving?

11 A. Willful and wanton.

12 Q. What was willful and wanton about
13 his driving from the point of turnpike to
14 point of impact?

15 A. He did not pay attention to the
16 traffic conditions around him. He was not
17 able to avoid the accident. He apparently
18 could not maintain control of the motorcycle.
19 That's reckless. The reckless operation in
20 and of itself.

21 Failure to perceive and react in
22 time. Failure to see Mr. Iannacone pull out of
23 the shopping center.

24 Q. Wait, wait.

25 A. Sorry.

1 Q. Go ahead.

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A. That's about it.

Q. You've come -- with all of those --
I'm sorry -- all of those violations in your
mind just based upon the fact that he was
unable to avoid this accident?

MR. BUCHHOLZ: Objection, form,
predicate, mischaracterizes his
testimony.

THE WITNESS: No, I think I gave you
all the reasons for that. In other
words, I believe that there was plenty of
time.

In fact, he could have stopped the
bike two to three times.

Had Mr. Iannacone came out of the
shopping center -- again, I'm going by
the testimony in the case. Had he come
out of the shopping center and moved
over, there was more than sufficient and
adequate time for Mr. Iannacone to avoid
the accident, observe what was occurring
to him, and take action. He had more
than sufficient time.

1 BY MR. YAFFA:

2 Q. But that's only if you're using your
3 calculations based upon Mr. Iannacone's
4 post-accident description with you as to the

5 lane changes?

6 MR. BUCHHOLZ: Objection, form,
7 predicate, mischaracterizes his
8 testimony.

9 THE WITNESS: I think it's also
10 Iannacone's sworn testimony as to that's
11 what he did.

12 BY MR. YAFFA:

13 Q. Okay. Even his sworn testimony.

14 A. Right. I think that's his sworn
15 testimony, and there's no -- there's certainly
16 no testimony that Mr. Iannacone was driving
17 recklessly, appeared out of nowhere. Neither
18 the witness nor Mr. Iannacone saw him until he
19 was either coming into the third lane, or was
20 mostly into the third lane when they saw him.

21 And certainly we know if he did come
22 from a shopping center, and, you know, maybe
23 he didn't, but if he came from the shopping
24 center and he made that turn, he's certainly
25 not invisible.

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1 So he's -- and he covers a good
2 amount of distance, and there's a good amount
3 of time for him to get over to that third
4 lane.

5 So whether the impact's in the third
6 lane or the fourth lane, there's plenty of
7 time for the motorcycle to take action.

8 Q. Mr. Iannacone could have swerved
9 directly across traffic and made this an
10 accident that Mr. Cowen could not have
11 avoided; isn't that correct?

12 MR. BUCHHOLZ: Objection to form.

13 THE WITNESS: Well, yes, but I don't
14 believe the physical evidence covers
15 that. And what I mean by that is, is
16 that assuming that he swerved directly
17 out into the third lane of traffic,
18 number one is the impact would be much
19 further back to the west.

20 BY MR. YAFFA:

21 Q. That's only if you're determining
22 that he did this at the point of leaving the
23 shopping center?

24 A. Right. I mean, now if he comes from
25 the right lane and swerves all the way over

307

1 two lanes and hits the brakes, let's say as an
2 example, then that would be certainly careless
3 on Mr. Iannacone's part.

4 But if a vehicle is doing something
5 erratic like that, it's certainly more apt to
6 attract the attention of oncoming motorists
7 than it is somebody who's just trying to slide
8 over a lane at a time.

9 In other words, if you see a car
10 recklessly doing something like coming out of

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11 the shopping center at 50, or coming across
12 passing, weaving in and out of traffic, those
13 things calls your attention quicker than
14 somebody who's just moseying along doing
15 something on the roadway.

16 There was none of that from Mr.
17 Iannacone or from Ms. Eusted about this
18 occurring. So apparently I surmised that
19 there's nothing wrong with what Mr. Iannacone
20 did leaving the shopping center because
21 there's nothing that drew their attention to
22 him.

23 Q. What did Mr. Iannacone do that was
24 wrong?

25 A. I don't know what he did that's

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1 wrong.

2 Q. Think about it. Is there anything
3 you can think of as you sit here right now as
4 a paid expert for the defense that you have to
5 admit that Mr. Iannacone failed to do?

6 MR. BUCHHOLZ: Objection, form,
7 predicate.

8 THE WITNESS: Well, I think I
9 covered that. In other words, if Mr.
10 Iannacone stopped or went two miles an
11 hour in the left through lane on a green
12 light, he would be a contributing cause.

13 BY MR. YAFFA:

14 Q. And you do believe that's what he
15 did?

16 A. I don't know that that's what he
17 did. I don't know exactly, as I told you,
18 what lane the impact occurred in. I surmise
19 from the witness statement and Mr. Cowen's
20 statement that the impact occurred in Lane 3.

21 But I don't know that. I don't know
22 if he was all in Lane 3, partially in Lane 4,
23 half of him in Lane 4. I don't know that.

24 Q. But you know --

25 A. Maybe all of him in Lane 4.

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1 Q. But you do know --

2 MR. BUCHHOLZ: Let him finish the
3 question, please -- answer, please.

4 BY MR. YAFFA:

5 Q. Go ahead.

6 A. Maybe all of him in Lane 4.

7 Q. Okay.

8 A. I -- I don't know that. But I do
9 know that if he came out into the roadway and
10 merged over as he indicated, and slowed for
11 the light or came to a stop and if he's in the
12 turn lane, then obviously I don't believe that
13 there's any fault on him whatsoever. If he
14 stops in the third lane, then he would be a
15 contributing cause, yes. But I don't see
16 anything erratic or anything questionable

17 about his driving.
18 There certainly is enough distance
19 pulling out of the shopping center to get over
20 to that left turn lane.
21 If it was 50 feet, then I would
22 agree with you 100 percent, he should go down
23 the road. But there is enough distance when
24 you pull out of that shopping center to move
25 over to that fourth lane.

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1 Q. Is there enough distance to pull out
2 of that shopping center and stop in the third
3 lane where he says he -- strike that. Is
4 there enough distance for Mr. Iannacone to
5 pull across into the third lane and stop the
6 way he apparently did?

7 MR. BUCHHOLZ: Objection, form,
8 predicate.

9 THE WITNESS: Sure, there's distance
10 to do that. And should he do that, no.

11 But is there distance for him to
12 pull out, get in the third lane and stop,
13 sure.

14 BY MR. YAFFA:

15 Q. The distance would create, as we
16 indicated earlier, a problem for oncoming
17 traffic, correct?

18 A. Yes.

19 Q. And you do have an opinion that he

20 did stop 150 feet west of the stop bar; you've
21 already indicated that, correct?

22 A. What I indicated is is that that's
23 where the impact occurred based on what I
24 know.

25 As to his speed, I told you several

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1 times, I don't know what his speed is.

2 Q. You can't pick and choose his
3 testimony, sir. He testified that he stopped
4 before -- or he was stopping before impact
5 occurred, didn't he?

6 MR. BUCHHOLZ: Objection, it's
7 argumentative.

8 THE WITNESS: First of all, I'm not
9 picking his testimony.

10 BY MR. YAFFA:

11 Q. But did --

12 MR. BUCHHOLZ: Wait, wait, wait,
13 wait, wait, wait, let him finish his
14 answer, Sam. You ask him a question and
15 you cut him off. Please.

16 THE WITNESS: You ask me evidence
17 wise. There's no evidence, just like
18 there's no evidence to say the
19 motorcycle's going 45, and there's no
20 evidence to say Mr. Iannacone is going
21 two.

22 I don't know what his speed was. He

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could have been going two, he could have
24 been going 15.
25

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1 BY MR. YAFFA:

2 Q. What did he say?

3 A. He said he believed he was going two
4 miles an hour or slower, I think.

5 Q. So if you believe that he was going
6 two miles an hour and that he was stopping at
7 the point where you believe he was stopping --

8 A. Right.

9 Q. -- then he contributed to this
10 accident?

11 MR. BUCHHOLZ: Objection, form.

12 THE WITNESS: If he's in the third
13 lane, yes.

14 BY MR. YAFFA:

15 Q. He couldn't have been in the other
16 lane at the location that you believe this
17 accident had occurred in, stopping; isn't that
18 correct?

19 MR. BUCHHOLZ: Objection, form,
20 predicate.

21 THE WITNESS: If it's 150 feet or
22 more, I would agree with you. If it's
23 less than 150 feet, he would be either in
24 or getting in the left through lane -- or
25 turn lane, Lane 4.

1 BY MR. YAFFA:

2 Q. Either way, if you believe his
3 testimony, he shouldn't have been stopping
4 where he was stopping?

5 MR. BUCHHOLZ: Objection to form,
6 predicate.

7 THE WITNESS: If he had a green
8 light, I would agree with you, that's
9 correct.

10 BY MR. YAFFA:

11 Q. You don't believe that Mr. Iannacone
12 did anything wrong in attempting to merge
13 without seeing the vehicles approaching?

14 MR. BUCHHOLZ: Objection, form,
15 predicate.

16 THE WITNESS: He indicated to me
17 that there were vehicles but none close,
18 and I think he said that in depo.

19 Should he have seen? Well, if the
20 vehicles were going 45, you know, or less
21 than that, and they're too close to him,
22 then, yes, he should have yielded the
23 right-of-way. But again, we don't know
24 how fast the motorcycle was going.

25

1 BY MR. YAFFA:

2 Q. Assume it was going 45. If it was
3 going 45, Mr. Iannacone should have seen the
4 vehicle?

5 A. He should have seen the motorcycle
6 if it was going 45 and it was in the third
7 lane of travel, yes.

8 Q. If it was going 47, should he have
9 seen it?

10 A. Yes.

11 Q. If it was going 50, should he have
12 seen it?

13 A. Yes.

14 Q. If he was going 60, should he have
15 seen it?

16 A. Depends on where the bike is.

17 Q. Third lane of traffic.

18 A. It's hard saying at that distance.

19 If he's 60, the farther back -- remember, the
20 farther back the bike is, the more it blends
21 into traffic.

22 So if you're back 400 feet, let's
23 say, a motorcycle generally blends into a car,
24 so it is very difficult to see.

25 I mean, sometimes it's easy to miss

315

1 the bike blended in to the car because if
2 Ms. Eusted is behind him, you know, five
3 lengths, six lengths, whatever it is, the bike

4 sometimes blends in to the car, especially
5 that type of bike because unfortunately you're
6 in the leaning position, you're kind of like
7 leaned over all the way.

8 Q. There's no evidence that he was
9 going 60 miles an hour, was there?

10 A. No. I'm just using --

11 Q. I appreciate that. I do appreciate
12 that.

13 A. There's no evidence that he was
14 going any speed.

15 Q. What evidence do you have that would
16 suggest Mr. Iannacone should not have seen Mr.
17 Cowen approaching?

18 A. Well, again, at 45, I indicated to
19 you that he should be able to see him. If the
20 bike is going the speed limit or less, he
21 should be able to see him.

22 But depending on how fast the bike
23 is going, if I'm wrong and the bike is going
24 faster, the faster it's going, the farther
25 away the bike is.

316

1 Q. I don't want to belabor the point,
2 but I'm a little confused because I asked you
3 earlier, as an expert evaluating this scene,
4 what did Mr. Iannacone do that you didn't
5 think was appropriate, and you indicated
6 nothing.

7 Okay?

8 A. Right.

9 Q. Well, there's nothing that you can
10 rely upon to suggest that this motorcycle was
11 going faster than 45 miles an hour, correct?

12 A. No.

13 Q. You've assumed that there -- you
14 said, no, it's not correct, or no, you have
15 nothing?

16 A. No, I have nothing.

17 Q. Okay.

18 A. Right.

19 Q. So all of your calculations that
20 you've offered today with regard to time and
21 distance have all assumed the speed of 45
22 miles per hour of the motorcycle, correct?

23 A. That's right.

24 Q. So if, if that's the speed that
25 you're using to make your assumptions and

317

1 calculations in this case, then you also have
2 to assume that Mr. Iannacone should have seen
3 the motorcycle, don't you?

4 A. Well, no, because, again, the bike
5 is farther away.

6 In other words, if it takes a full
7 five to seven seconds, in other words, at that
8 point -- if the bike is 461 feet away, let's
9 say as an example, at 45 miles an hour, about

10 five and a half seconds, if the bike is that
11 distance away, should he have seen him, he
12 probably should have.

13 But the car at that point would be a
14 football field and a half away. So it may not
15 be a hazard to him, he may not notice it, may
16 not pay any attention to it, so he begins to
17 pull out.

18 Now he looks back -- now he looks
19 back in his mirror on several occasions as
20 he's moving over from lane to lane.

21 So should he see the bike when it
22 gets close to him, yeah, probably should have.
23 But there's -- there's nothing I can indicate
24 to say, yeah, he should have identified that
25 motorcycle at 400 and some odd feet away.

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1 Q. 400 and some odd feet away is with
2 him pulling out of the shopping complex?

3 A. That's right.

4 Q. Well, he's still obligated to check
5 the lane as he moves from first lane to second
6 lane, isn't he?

7 A. That's right.

8 MR. BUCHHOLZ: Objection, form.

9 BY MR. YAFFA:

10 Q. And the motorcycle, assuming it's
11 going at 45 miles an hour, is closing in at
12 what, 63.3 feet per second?

13 A. That's right, or 65 I think, yeah.

14 Q. Okay. 65.5. Okay.

15 And as the motorcycle is closing in,
16 approaching, Mr. Iannacone should appreciate
17 the motorcycle before he moves from Lane 2 to
18 Lane 3; don't you agree with that?

19 A. If he sees it, right.

20 Q. But it's his responsibility to see
21 it?

22 MR. BUCHHOLZ: Objection to the
23 form, predicate.

24 THE WITNESS: Well --

25

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1 BY MR. YAFFA:

2 Q. Isn't it?

3 A. If the bike is visible and if the
4 bike is not speeding, yes, it is the
5 responsibility to see it.

6 Q. Are you telling the jury that an 82
7 or 81 year old gentleman has a different
8 responsibility with regard to appreciating
9 oncoming traffic than a 45 or a 50 year old
10 gentleman?

11 A. Where did you come up with that one?
12 I never --

13 Q. Do you believe that someone's age
14 could -- could be accounted for with their
15 appreciating oncoming traffic or responding or

16 proceeding?

17 MR. BUCHHOLZ: Objection, form.

18 THE WITNESS: I guess that would be

19 a human factors opinion, no.

20 BY MR. YAFFA:

21 Q. Have you ever expressed an opinion
22 that someone's age should be accounted for
23 when doing reaction times, perception times?

24 A. Well, in studies we have, yes, but
25 it depends on each individual person. I mean,

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1 I think that Limpert has in his book a chart
2 even that talks about response times, but no,
3 I'm not accounting for that in this case, no.

4 Q. So is it your opinion, as you sit
5 here today, using your calculations of speed
6 at 45 miles per hour, that Mr. Iannacone
7 should have seen the motorcycle approaching?

8 A. I would say at some point, he should
9 see the approach of the motorcycle. He
10 should.

11 Q. He should see the approach of the
12 motorcycle prior to his moving into Lane 3,
13 correct?

14 MR. BUCHHOLZ: Objection to form.

15 THE WITNESS: Most likely, yes, sir.

16 BY MR. YAFFA:

17 Q. And if, in fact, he appreciates the
18 motorcycle in Lane 3, as he is in Lane 2, his

19 responsibility would be not to move into Lane
20 3, correct?

21 MR. BUCHHOLZ: Objection, form,
22 predicate.

23 THE WITNESS: If the bike is close
24 enough to him where he feels that he
25 can't make the move safely, absolutely.

321

1 BY MR. YAFFA:

2 Q. Given your distance analysis, had he
3 appreciated the motorcycle, once he was in
4 Lane 2, he should have stayed in Lane 2,
5 correct?

6 MR. BUCHHOLZ: Objection, form,
7 predicate.

8 THE WITNESS: Well, obviously if he
9 appreciated the bike coming up on him.
10 If, indeed, the bike was going 45, and he
11 believed the bike was close enough to
12 constitute a hazard, I would agree with
13 you.

14 MR. BUCHHOLZ: Last objection.

15 BY MR. YAFFA:

16 Q. Where was the bike when Mr.
17 Iannacone was in Lane 2?

18 A. Well, if the bike's going 45, he's
19 probably about -- about 145 feet in back of
20 him, something like that.

21 Q. And that is visible, should be

22 visible?

23 MR. BUCHHOLZ: Object.

24 THE WITNESS: It should be visible,

25 yes.

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1 BY MR. YAFFA:

2 Q. Okay. And if, in fact -- if it is
3 visible, as it should be, that would have been
4 a reason why Mr. Iannacone should not have
5 gone into Lane 3, correct?

6 A. If the bike is that close, that's
7 correct.

8 Q. If Mr. Iannacone does not shift from
9 Lane 2 to Lane 3, this accident never occurs;
10 isn't that a fair statement?

11 MR. BUCHHOLZ: Form, predicate,
12 speculation.

13 THE WITNESS: I don't know. I don't
14 know, I can't tell you.

15 BY MR. YAFFA:

16 Q. If Mr. Cowen was in Lane 3 and
17 Mr. Iannacone stayed in Lane 2, there isn't an
18 accident between the two, is there, sir?

19 MR. BUCHHOLZ: Objection to form,
20 speculation.

21 THE WITNESS: Most likely, no, sir.

22 BY MR. YAFFA:

23 Q. Would you agree with me that the
24 movement of Mr. Iannacone's vehicle from Lane

25 2 to Lane 3 was the precipitating cause of

323

1 this accident?

2 MR. BUCHHOLZ: Objection, form,
3 predicate.

4 THE WITNESS: No.

5 BY MR. YAFFA:

6 Q. If Mr. Iannacone does not move from
7 Lane 2 to Lane 3, then there's no reason for
8 Mr. Cowen to take an evasive maneuver,
9 correct?

10 MR. BUCHHOLZ: Objection to form,
11 predicate.

12 THE WITNESS: Correct.

13 BY MR. YAFFA:

14 Q. If Mr. Iannacone does not physically
15 move his vehicle into the path of Mr. Cowen,
16 then there's no vehicle in Lane 3, assuming
17 that's where the impact occurred, for there to
18 be an accident, correct?

19 MR. BUCHHOLZ: Objection to form.

20 THE WITNESS: That's correct.

21 MR. YAFFA: Let's go off the record
22 for a second.

23 (Thereupon, discussion was held off
24 the record, after which the following
25 proceedings were had:)

1 THE TECHNICIAN: Back on the video.

2 BY MR. YAFFA:

3 Q. Mr. Swope, were you able to
4 determine whether, at the time of impact, the
5 motorcycle's headlamps were on?

6 A. My inspection of the bike indicated
7 they were. I believe there was hot shock on
8 the filaments.

9 Q. And hot shock is an indication of
10 what?

11 A. That the light was on.

12 Q. And hot shock or the lights being on
13 is for what reason during the day?

14 A. Well, the law requires that
15 motorcycles' headlights be operating at all
16 times.

17 Q. Okay. That should also aid in the
18 visualization of the motorcycle; is that a
19 fair statement?

20 A. Yes.

21 Q. That's why the lights have to be on
22 the motorcycles, because that in and of itself
23 is another optical tool for other traffic to
24 appreciate, correct?

25 MR. BUCHHOLZ: Objection, form.

1 THE WITNESS: Yes.

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BY MR. YAFFA:

Q. Are you able to determine what location within the third lane Michael Cowen's motorcycle was traveling in just prior to impact?

A. No.

Q. Whether closer to the south side or north side of Lane 3?

A. I don't know.

Q. You do believe that Mr. Iannacone crossed in front of Michael Cowen's path, correct?

A. At some point, sure.

Q. And I think you had indicated it was from right to left, correct?

A. Yes, sir.

Q. Did you consider the physical damage to the motorcycle when attempting to -- to evaluate the impact speed?

A. Yes.

Q. And what damage did you appreciate on the motorcycle that you were able to use to help with your estimate of speed at the time of impact?

A. Well, there's really no crush evaluation information available in this case that I would feel comfortable using, but my review of the bike, the only thing -- there

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5 was two things I looked at.

6 One was the vault formula, which I
7 gave you before, which indicated about 14 or
8 15 miles per hour, but looking at the
9 displacement of the forks and the damage to
10 the front, I would say the impact was much
11 higher. However, I can't mathematically prove
12 it.

13 Q. What displacement of the forks are
14 you talking about?

15 A. The front forks were displaced
16 towards the rear frame -- or towards the
17 center frame of the motorcycle.

18 Q. Did the front forks' shock absorbers
19 still work?

20 A. Well, I don't know. They could be
21 displaced back eight feet and still work, I
22 don't know. I didn't check the shock
23 absorbers, that had nothing to do with it.

24 Q. Well, the front forks, can you
25 explain what those are, for the jury?

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1 A. Yeah, they're basically what's known
2 as the triple trees. In other words,
3 there's -- the forks come down, extend off the
4 bike, and they hold the wheel in the front,
5 and they're extended out in front of the bike
6 at -- I don't know what angle this bike is, I
7 think the stats say it, and they hold the

8 wheel, the cables, the brakes, brake lines,
9 those kind of things, and they basically
10 support the front end of the bike.

11 Q. Now, do those triple trees or the
12 forks, are they one piece of metal, or are
13 they numerous pieces?

14 A. I think on this bike they're
15 actually molded into one piece. In other
16 words, there's -- the piece is like on -- one
17 unit. It may be screwed in separately into
18 the triple tree itself, I'm not sure, into
19 the -- in other words, there's a frame on top,
20 and the forks go into it and they screw in.
21 They could be one piece or they could be two,
22 I'm not really sure on this bike.

23 Q. Do the forks attach to the front
24 wheel?

25 A. The front wheel attaches to the

328

1 forks.

2 Q. Okay. Well, is there a, I want to
3 say a shock absorber between the wheel where
4 the attachment is to the front forks and the
5 handlebars?

6 A. Yes.

7 Q. And where is that located?

8 A. It's usually located within the --
9 within the frame. Within the fork.

10 Q. Okay.

11 A. Yeah.

12 Q. And does the degree of damage to
13 those shock absorbers assist you at all with
14 your determination of a speed-at-impact
15 analysis?

16 A. No. Not for this type of bike, no.

17 Q. Well, what about the displacement of
18 the forks?

19 A. Well, displacement of the forks tell
20 me that the forks were pushed back, but
21 there's no -- there's no mechanical
22 information on this type of bike that I can
23 rely on to say it takes X number of pounds of
24 force per square inch to push these forks
25 back. There's nothing on that.

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1 Q. What was the force per square inch
2 that these forks experienced with the impact
3 of this crash?

4 A. I don't know. There's no way I
5 would know because I have to figure out the
6 speed first. And in other words, I have a
7 speed of the vault formula, 14 miles per hour,
8 so I could run that in to find out what the
9 force energy analysis is, but I didn't do
10 that. But I don't know what it would be at
11 20, 30 or 40, I don't know.

12 Q. Did you perform a linear momentum
13 analysis?

14 A. No.
15 Q. Why not?
16 A. I don't have the -- there's nothing
17 to do a linear momentum analysis on.
18 Q. What do you need to do a linear
19 momentum analysis?
20 A. Well, it depends, you know. In
21 other words, I need to know the position of
22 the vehicles, I need to know how far the body
23 actually went after impact, I need to know how
24 far the motorcycle went after impact, I need
25 to know how far the car went after impact. I

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1 need to know if the car was moving or stopped
2 at impact. Those are inputs that I need to
3 evaluate this type of collision.

4 Was the car pushed forward by the
5 motorcycle? Did the individual have his foot
6 on the brake? I mean, I don't have any of
7 that. So it would be too many guesses.

8 Q. Do you have any estimate as to the
9 distance that Mr. Cowen's body traveled after
10 impact?

11 A. No.

12 Q. Okay. There's a piece of paper that
13 is, I believe, included within Exhibit No. 3
14 that says Opinions.

15 A. Right.

16 Q. I just want to go through that and

17 determine if we have hit each of your
18 opinions. And if you can start with 1, I'd
19 like you to read it, and then we will discuss
20 it briefly, okay, if need be.

21 A. Both vehicles were eastbound on Lake
22 Worth.

23 Q. That's your opinion?

24 A. Yes. I hope that's your opinion.

25 Q. Okay. Number 2.

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1 A. At no time did Mr. Iannacone observe
2 the cycle before impact.

3 Q. Okay.

4 A. Number 3, point of impact is
5 disputed, and no physical evidence is
6 available to clearly indicate where impact
7 took place, Lane 3 or 4, which is the left
8 turn lane, Lane 4.

9 Q. Okay.

10 A. Based on the times involved, the
11 plaintiff had a clear and unobstructed view
12 ahead of him and the duty to locate, identify,
13 and observe vehicles either slowing, entering
14 traffic, stopping or switching lanes.
15 Plaintiff did neither or any of the above.

16 Q. Okay. Number 5?

17 A. Based on an officer's trained
18 observation, the plaintiff was operating his
19 race bike in an unsafe and reckless manner.

20 A, this observation directly before the
21 accident indicates how the accident occurred,
22 i.e., the cycle running directly into the rear
23 of defendant vehicle.

24 Q. What did you mean by directly before
25 the accident?

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1 A. That directly within a minute or so
2 before the accident, this is how Officer
3 Narranjo indicated the cycle operator was
4 driving, reckless, zig-zagging, swerving in
5 and out of traffic, those kind of things.

6 Q. If you believe the witness who was
7 directly behind Mr. Cowen at the time of
8 impact, which of those things that Officer
9 Narranjo described was Mr. Cowen exhibiting or
10 doing on the motorcycle?

11 A. He ran into the back of the car for
12 no apparent reason.

13 Q. Zig-zagging, criss-crossing,
14 anything that was inappropriate?

15 A. Well, that I don't know. I mean, it
16 certainly was inappropriate to run into the
17 back of the car.

18 It certainly was inappropriate that
19 Cowen didn't see Mr. Iannacone making any kind
20 of moves, didn't see him at all before impact
21 or directly before impact. So those things
22 all go into play with his operation that

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23 Narranjo saw prior to the accident.
24 So, in other words, I guess I'm
25 saying that we have to take into account that

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1 Narranjo's swerving all over the road, passing
2 traffic, driving and zig-zagging, as the
3 officer indicated, and reckless, and all of a
4 sudden he becomes the greatest driver in the
5 world once he gets out of sight of the
6 officer.

7 I would think he'd be driving good
8 in front of the officer and bad outside the
9 officer, that's what I would think.

10 Q. You just don't want to believe an
11 eyewitness as to how he was driving?

12 MR. BUCHHOLZ: Objection, form,
13 speculative.

14 THE WITNESS: It's not my
15 determination to believe or not the
16 eyewitness. That's up to the jury.

17 BY MR. YAFFA:

18 Q. Well, then, why doesn't your opinion
19 include an analysis of your opinions if you
20 assume the eyewitness was there?

21 A. Because I think a trained police
22 officer, as I indicated to you before, made
23 good observations. He would have cited the
24 person for reckless driving. He would have
25 stopped the person if he could have, and the

1 fact that Cowen drove directly into the back
2 of the car in front of him indicates to me
3 clearly that that's most likely the way he was
4 operating his bike. He continued to operate
5 in that fashion.

6 Q. But the officer didn't see him for
7 at least anywhere between what, three-quarters
8 of a mile and a half a mile?

9 A. Well, generally most officers in an
10 arrest don't see things happen. Generally you
11 go by, you know, what -- what occurred before,
12 what was physical. In other words, you go by
13 circumstantial evidence in those kind of
14 situations.

15 Q. That's what good officers do?

16 A. Well, you don't see everything
17 happen. Most people I see in jail, they
18 didn't observe them getting their crime done.
19 You know, the cops didn't see the crime.

20 Q. But a witness helps, doesn't it?

21 A. Witness testimony can help on
22 certain occasions but --

23 Q. Sometimes it actually can hurt your
24 position, can't it?

25 A. Well, witness testimony is

1 unrel iabl e.

2 Q. All the time?

3 A. I di dn' t say all the time.

4 MR. BUCHHOLZ: Obje cti on to form.

5 BY MR. YAFFA:

6 Q. Okay. Just the ones that don' t help
7 you are unrel iabl e.

8 A. No.

9 MR. BUCHHOLZ: Obje cti on,
10 argumentati ve.

11 MR. YAFFA: Okay. You' re ri ght.

12 THE WITNESS: I di dn' t say that
13 ei ther.

14 MR. YAFFA: I t' s not a
15 di sagreement.

16 BY MR. YAFFA:

17 Q. Okay. Let' s go to No. 6.

18 A. No. 6, the defendant driver operated
19 hi s vehi cle properly. He moved from lane to
20 lane unti l slowing or stoppi ng for the signal ,
21 and was struck in the rear by the pl ai nti ff.

22 Q. What' s your next one?

23 A. No. 7, the cause of thi s accident i s
24 di rectly related to the pl ai nti ff' s reckl ess
25 and carel ess operati on of the cycl e, and the

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1 pl ai nti ff i s at faul t and caused and/or

2 contri buted to hi s i nju ri es.

3 Q. Have we covered all of your opi ni ons
Page 125

4 in the deposition today?

5 A. Well, all that you've asked. I
6 mean, I can't say what else you're going to
7 ask at trial but --

8 Q. Well, you're right, but you've been
9 retained in this case to provide opinions, and
10 you've brought a number of documents which I
11 haven't gone through with you, so I'm sitting
12 here today wanting to know what else you're
13 going to testify to when you're on the stand
14 with Mr. Buchholz.

15 A. I don't intend to testify to
16 anything other than what I've told you or I
17 have written in these documents.

18 Q. Okay.

19 A. If there's additional information
20 becomes available to me such as if I'm called
21 and Narranjo says I do identify Eusted like
22 you asked me to, or as you made a comment on,
23 or if there's other information that becomes
24 available, I'll certainly evaluate that.

25 Q. Okay.

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1 A. But I don't intend on doing anything
2 other than what I've spoken with you about
3 today.

4 Q. Are there any additions that you'd
5 like to make to your opinions now that you sit
6 here today after we've had our discussion?

7 A. No.

8 Q. Would you like to add that Mr.
9 Iannacone should have seen the motorcycle
10 approaching?

11 MR. BUCHHOLZ: Objection, form.

12 THE WITNESS: I believe --

13 MR. BUCHHOLZ: Asked and answered.

14 BY MR. YAFFA:

15 Q. I'm asking if you want to add that
16 to your written opinions.

17 A. No. I already testified to that.

18 Q. Okay. But would you like to add
19 that he shouldn't have stopped where he did?

20 MR. BUCHHOLZ: Objection, form,
21 argumentative.

22 THE WITNESS: I've already testified
23 to that.

24 BY MR. YAFFA:

25 Q. Okay. Have we marked everything

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1 that you have brought with you here today
2 other than the depositions that you said have
3 no writing on them?

4 A. With the exception of what
5 Mr. Buchholz told you, yes.

6 Q. Okay. And for the record --

7 MR. BUCHHOLZ: Can we do that off
8 the video with the court reporter.

9 MR. YAFFA: Okay. We'll do that at
Page 127

10 the end then. Just don't let me forget.

11 MR. BUCHHOLZ: I won't.

12 THE TECHNICIAN: Five minutes.

13 BY MR. YAFFA:

14 Q. How long have you been riding
15 motorcycles?

16 A. Since I have was five years old, and
17 I'm 51.

18 Q. Have you ever been a motorcycle
19 patrolman?

20 A. No. Do I look that stupid?

21 Q. This is on the record.

22 A. Yeah, right. I know all the motor
23 guys too. Do I -- no. Do I -- I'm not going
24 to ride in Florida sun at 120 degrees all day
25 in the sun when I can be in an air conditioned

339

1 car, no.

2 Q. Have you ever trained motorcycle
3 patrolmen how to ride a motorcycle?

4 A. I have been in driving classes
5 training them, yes, but not specifically just
6 for the cycle, for the cycle and for their
7 automobiles.

8 Q. When training a motorcycle patrolman
9 to maneuver a motorcycle, you do cover evasive
10 maneuvers, correct?

11 A. Sure, yes.

12 Q. Because there are occasions when
Page 128

13 someone could pull into your path and you may
14 not have the opportunity to have appreciated
15 the danger and you need to avoid an accident?

16 A. Yes, sir.

17 Q. Okay. But if an officer were to
18 appreciate a vehicle around them, then they
19 should be able to appreciate the potential
20 danger and avoid an accident pretty much at
21 all times?

22 A. Pretty much, yes.

23 Q. Okay. When was your motorcycle
24 accident?

25 A. I had one in '97, in June or July,

340

1 I'm not sure.

2 Q. Was that in Washington?

3 A. Yes, it was.

4 Q. You were on I95?

5 A. Yes, I was.

6 Q. Was that an accident where you saw a
7 vehicle that was approaching you on the
8 right-hand side?

9 A. There were two vehicles.

10 Q. Two vehicles that were going faster
11 than you were --

12 A. They were --

13 Q. -- correct?

14 A. They were racing, correct.

15 Q. They were going faster than you,

16 correct?

17 MR. BUCHHOLZ: Let him -- let him
18 finish the question -- I mean the answer
19 to your last question before you ask the
20 next question.

21 Go ahead.

22 THE WITNESS: Yes, they were going
23 much faster than I was.

24 BY MR. YAFFA:

25 Q. How fast were you going?

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1 A. I think about 70. I think I had the
2 cruise set, the cruise was set, we were
3 entering the FBI academy.

4 Q. Quantico?

5 A. Yes, somewhere around there.

6 Q. What type of motorcycle were you on?

7 A. A 1997 Honda Gole y GL 1500.

8 Q. With trailer?

9 A. With the trailer.

10 Q. How heavy was the bike?

11 A. The bike was probably about 90
12 pounds. I had my girlfriend on, I was on. We
13 had a trailer with clothes and stuff behind
14 us.

15 Q. You knew the weight of that vehicle
16 at the time you were driving?

17 A. Absolutely.

18 Q. You being a trained motorcycle

19 driver, knew the importance of appreciating
20 dangers around you?

21 A. Absolutely, yes.

22 Q. And you were able to appreciate
23 vehicles that weren't driving so safely in
24 your vicinity, correct?

25 A. Sure.

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1 Q. You perceived they could present a
2 danger, is that correct?

3 A. No.

4 Q. You saw them but didn't perceive
5 them to be a danger, correct?

6 A. I saw them coming up on me on a
7 flash.

8 Q. But then you saw them go past you,
9 correct?

10 A. They almost got by me. They just
11 got directly in front of me and hit each
12 other.

13 Q. Didn't they go past you and swerve
14 into your lane?

15 A. They tried to occupy my lane
16 together. They almost hit my front fender to the
17 bike. They were racing.

18 Q. My understanding was later, they
19 were racing and supposed to get in front of me
20 and merging into the same lane?

21 A. At that time I figured it out later,

22 but I think I figured out the tourists speed
23 around 85, 95.

24 Q. Did you have rear view mirrors on
25 this motorcycle?

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1 A. Sure.

2 Q. And the two lanes besides you as you
3 were traveling 95?

4 A. I don't know. I didn't see them
5 until a brief second before. The traffic was
6 fairly heavy.

7 Q. Where did you see them just prior?

8 A. Just when they were basically coming
9 up to the back of my motorcycle, to the right
10 and left, just almost right in back. Their
11 traffic was pretty heavy, but it was flowing.
12 Traffic was heavy but flowing.

13 I don't know where they came from.
14 Apparently they were passing all kind of
15 traffic before that point.

16 MR. YAFFA: Let's stop now, you can
17 change the tape.

18 THE TECHNICIAN: Tape 6. Back on
19 the record.

20

21

22

23

24

1 Q. Well, number one, you were unable to
2 avoid this accident, is that correct?

3 A. That's right.

4 Q. You had to lay your bike down
5 because of the fact that you didn't appreciate
6 these vehicles prior in time, correct?

7 A. No, no, that's totally, totally
8 incorrect.

9 Q. Well --

10 MR. BUCHHOLZ: Let him finish.

11 THE WITNESS: That is nowhere near
12 what happened. I explained to you what
13 happened is, these vehicles were racing,
14 they ended up getting in front of each
15 other or in front of me, coming from
16 somewhere, I don't know where, and they
17 crashed in front of each other and one
18 rolled over.

19 BY MR. YAFFA:

20 Q. I am going to show you something
21 real quick.

22 A. Fine.

23 MR. BUCHHOLZ: Can you mark that as
24 an exhibit?

25 MR. YAFFA: Yes.

1 BY MR. YAFFA:

2 Q. Can you look at that last page for
3 me?

4 A. Yes.

5 Q. Would that be your signature?

6 A. Sorry, last page.

7 Q. See up at the top.

8 A. Probably, yes.

9 Q. And that signature reflects or
10 indicates that you would have reviewed those
11 answers and approved the answers that were
12 submitted in this lawsuit that you were
13 involved in resulting from this accident?

14 A. No.

15 Q. That signature of yours there is not
16 to reflect that you reviewed these answers?

17 A. You can tell that this page is
18 completely different.

19 In other words, these were probably
20 typed up by a law office, they called me,
21 asked me what happened. I told them what
22 happened. They put it down and I sent them a
23 signature page.

24 Q. Typically what happens is the law
25 office will have you sign a document after

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1 they have been typed up.

2 Now, sometimes you will fax over a
3 confirmation that you reviewed it and that is
4 accurate.

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5 I guess my question is, are you
6 telling me that you signed an attestation,
7 form, for responses to interrogatories about
8 your motorcycle accident, that really weren't
9 accurate and correct?
10 A. I don't know what I'm telling you,
11 it happened 10 years ago, I don't know.
12 Q. But those are your responses to the
13 interrogatories?
14 A. No. They are not my responses, they
15 are an attorney response. In my 30 years of
16 doing this business, attorneys prepare
17 interrogatories based on what you tell them.
18 They put a description in or legal description
19 to answer interrogatory answers, you sign them
20 and you send them in.
21 Q. So you approved these responses?
22 A. I don't know if I did or not. I
23 probably told them what happened.
24 Q. So the law firm that submitted these
25 on your behalf committed perjury?

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1 A. You have to ask them, not me. I
2 don't know. Ask them.
3 MR. BUCHHOLZ: You want to mark
4 that, that is exhibit.
5 MR. YAFFA: 26.
6 (Thereupon, the above referred to
7 document was marked as Plaintiff's

8 (vol 2) rick swope 121907
Exhibit No. For identification.)

9 BY MR. YAFFA:

10 Q. Were there any other motorcycle
11 accidents that you've been involved in over
12 the course of your lifetime?

13 A. No, not that I'm aware of. No, I
14 don't think so.

15 I mean other than -- no. Riding
16 trail bikes and flipping off road, those kind
17 of things but I don't think there are any
18 other on the road accidents that I can think
19 of, no.

20 Q. If you didn't lay your bike down,
21 what would you have done in that accident?

22 A. Because the car rolled over in front
23 of me, I would probably T-bone the car.

24 Q. You would have struck the car in
25 front of you that stopped?

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1 A. He didn't stop.

2 Q. That rolled over?

3 A. Directly in front of me, so my
4 closing distance went from 20 cars in front of
5 me to a half a car, that's the difference. So
6 there was no, you know, there was no time to
7 change my following distance or anything like
8 that, because they became into my lane.

9 Q. And you don't know where they came
10 from?

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11 MR. BUCHHOLZ: Objection, form.
12 THE WITNESS: No, I think the police
13 report --
14 BY MR. YAFFA:
15 Q. Not asking. You don't know where
16 they came from?
17 A. No, I don't know.
18 Q. The first time you saw them is when
19 they were right on top of you?
20 A. Just right to the right and left of
21 me, yes, was the first flash I got. I may
22 have seen them a few feet before that. I
23 don't recall.
24 Q. Were you wearing a helmet?
25 A. Yes.

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1 Q. Were you paying attention to your
2 surroundings?
3 A. Always.
4 Q. Were they souped up vehicles with
5 loud engines?
6 A. No.
7 Q. Other than being able to or not
8 being able to avoid that accident, have you
9 been involved in any other motor vehicle
10 accidents other than motorcycle?
11 A. Yes, over the years, I have been
12 involved in motor vehicle accidents, yes.
13 Q. I forgot to ask you, with regard to

14 the motorcycle accident, did you lay your bike
15 down, or get involved in that accident,
16 because of your inexperience?

17 A. No.

18 Q. Did you get in that accident because
19 of your inattention?

20 A. No.

21 Q. Were you involved in that accident
22 because of your reckless driving?

23 A. No.

24 Q. Were you involved in that accident
25 because of a wilton or wanton act of your own?

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1 A. No.

2 Q. Were you involved in that accident
3 because of your failure to perceive and react?

4 A. No.

5 Q. Were you involved in that accident
6 because of your failure to see these vehicles
7 approaching?

8 A. No.

9 Q. If you were traveling 80 and you
10 were on 95 shouldn't you have been able to see
11 them, if they're in the lanes next to you?

12 A. I don't know how fast they were
13 traveling before they got involved in the
14 impact. They could have been going 130, for
15 all I know. The only thing I did and I did it
16 off the top of my head based on the distance

17 that the car rolled from impact or from where
18 it rolled until rest and I just did it in my
19 head. I didn't go out and do a drag factor
20 and figure anything out. I think I came up
21 with 88, whatever it was at the time I
22 testified to.

23 Q. Is it fair to say, sir, the other
24 vehicles involved with an accident, they can
25 impact the ability of the motorcycle drivers

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1 -- I want to say ability to avoid an accident?

2 A. Oh, sure, absolutely.

3 Q. And different things that Mr.
4 Iannacone may have done, that you weren't
5 aware of at the time of the accident, may have
6 also eliminated Mr. Cowen's ability to avoid
7 this accident?

8 MR. BUCHHOLZ: Objection, form,
9 predicate.

10 THE WITNESS: Again, if there's
11 something we are not aware of or
12 something totally different than any of
13 the testimony has been, that's great.

14 BY MR. YAFFA:

15 Q. I think the corporation that we were
16 looking for earlier that may have retained
17 your services, in these seminars is Headlines
18 and Marketing; does that sound familiar?

19 A. Probably, I don't recall what his --

20 I know his name is Head, so headline might be
21 one of his marketing firms. I know he had
22 several over the years so maybe that is one of
23 the names, possibly.

24 Q. You say his and last name Head, we
25 are talking about William Head from Atlanta.

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1 A. That is who I thought you were
2 referring to.

3 Q. The record may not assume the same
4 thing?

5 A. Oh, yes.

6 Q. Headlines and Marketing has paid you
7 for a number of seminars you have provided
8 instruction at that time, is that correct?

9 A. I don't know how many seminars
10 they've actually paid for or provided. I know
11 probably two or three, four, I don't know,
12 over the years.

13 Q. Do you ever claim to be a teacher at
14 Harvard University?

15 A. No, I have lecture at Harvard
16 University.

17 Q. You have lectured at a location on
18 campus?

19 A. Right, and there were students from
20 the summer law school, I think that attended a
21 five day seminar or five day class that was 40
22 or 45 hours. I taught accident reconstruction

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23 and I also assisted in questioning.

24 I played the role of a police
25 officer that had arrested a subject and those

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1 kind of things, that's what I did. I taught
2 accident reconstruction.

3 Q. Based upon DUI accusation or claims?

4 A. No, I did strictly accident
5 reconstruction, but I did then play the role
6 of a police officer. That had arrested a DUI
7 subject but had had crossed an attorney and I
8 believe some guys in law school, what do they
9 call them.

10 Q. Law students?

11 A. Yes, I can't think of the name.

12 Q. You were playing the role of a
13 police officer was to help instruct for the
14 cross examination of an officer arresting a
15 subject for a suspected DUI motor vehicle
16 accident, is that correct?

17 A. I think it was probably for both.
18 For prosecutors that were there as well.

19 Q. That was a seminar sponsored by
20 Headlines and Marketing, was it not?

21 A. I don't know.

22 Q. You weren't paid by Harvard, were
23 you?

24 A. I don't know. I don't recall who I
25 got paid by. That was when that occurred, how

1 many years ago that was.

2 Q. You are aware that Harvard has
3 denied any knowledge of you participating in
4 any seminar that they sponsored?

5 MR. BUCHHOLZ: Objection, form,
6 predicate.

7 BY MR. YAFFA:

8 Q. Correct?

9 A. I don't know. I got a certificate
10 from them.

11 Q. You got a certificate from Harvard
12 from this?

13 A. It says Harvard seminar at Harvard
14 law school. I don't know where they sign it
15 or got it. My understanding was that Harvard
16 law school students were there on summer break
17 and there taking the course.

18 I don't know if it's a course they
19 got credit for, if they came in on their own
20 free will. I don't know who paid us. It was
21 on campus for a week and used all their
22 facilities for one week's time. I don't think
23 I dreamed that I was there for a whole week.

24 Q. If I walked in to Harvard and sat
25 down on any of the locations at Harvard around

1 taught somebody to drink a beer. Can I claim
2 that I have taught at Harvard?

3 A. I don't know you will have to ask
4 them. I didn't drink a beer on campus, so I
5 don't know.

6 Q. The seminar, you have been asked
7 these questions before, haven't you, sir?

8 A. Some questions like that.

9 Q. These are questions you are aware
10 of. There is a document that Harvard issued
11 that denies knowledge of your participating in
12 any seminar on their campus?

13 A. No.

14 Q. You are unaware of that?

15 A. I am unaware of that and never been
16 made aware of that to this date. That is
17 totally not true, because you can start
18 looking at the people that attended the
19 seminar there, and everyone will say I will
20 was there?

21 Q. Is it not true that there's a
22 document or the content of the document?

23 MR. BUCHHOLZ: Objection to the
24 form.

25 THE WITNESS: Now I don't what you

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1 mean by that.

2 BY MR. YAFFA:

3 Q. You said that's untrue?

4 A. It's untrue, I taught at that
5 location and I was there for five days.

6 Q. What I am saying is, Harvard Law
7 School or undergraduate school did not sponsor
8 or pay you for your involvement with that
9 seminar?

10 A. For the third time I will tell you
11 again, I don't know who paid for the seminar.
12 When I teach at BCC or the University of North
13 Florida. I don't know who pays the bill,
14 where it comes from.

15 I know it's held on campus. I don't
16 think so that you could walk on the campus at
17 Harvard and start teaching a course for a
18 week. I would assume you have to have
19 Harvard's approval. I don't think they just
20 let you open the classroom and you start go to
21 teach.

22 Q. You never held a faculty appointment
23 at Harvard?

24 A. No, I've testified that I did. I
25 didn't say that ever. I said I taught a

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1 course at Harvard Law School in the summer.
2 That's what I did, a one-week course.

3 MR. BUCHHOLZ: You want to show him
4 the document.

5 BY MR. YAFFA:

6 Q. I have a copy here which I will show
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7 you dated June 7th, 2002, and it says from
8 Robert S. Carroll. Do you know Robert
9 Carroll.

10 A. No.

11 Q. He is Associate Director of
12 Financial Operations of Harvard Law School.

13 And it says: I am writing to you in
14 regards to Rick A. Swope. I have no record of
15 Mr. Swope teaching or participating in a
16 seminar at the law school in the summer of
17 1995. Also I have no record of any payments
18 to Mr. Swope. I have no record of Harvard Law
19 School sponsoring a seminar entitled Accident
20 Reconstruction and DUI during that time
21 period.

22 If you require additional
23 information, please let me know.

24 MR. BUCHHOLZ: Are you going to ask
25 him a question?

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1 MR. YAFFA: Since you wanted me to
2 mark that I want the record to reflect.

3 MR. BUCHHOLZ: Wait, wait.

4 BY MR. YAFFA:

5 Q. Have you ever heard those statements
6 from any questioning attorney with this letter
7 before?

8 A. Never.

9 MR. BUCHHOLZ: Objection to form.
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10 You are going to mark this as 27.

11 THE WITNESS: No, never saw this
12 before ever.

13 (Thereupon, the above-referred to
14 document was marked as Plaintiff's
15 Exhibit No. 27 for identification.)

16 (Whereupon, a discussion was had off
17 the record, after which the following
18 proceedings were had:)

19 BY MR. YAFFA:

20 Q. You indicated when you teach at BCC?

21 A. Right.

22 Q. You don't know who you are getting
23 paid by?

24 A. No.

25 Q. When is the last time you taught at

360

1 BCC?

2 A. The last time I taught a certified
3 course at BCC was probably maybe 1998/1999,
4 I'm not sure.

5 Q. You haven't been invited back to
6 teach there since then, right?

7 A. What do you mean invited back? I
8 was never invited there. I taught for
9 different organizations on campus and I taught
10 for the police academy as well.

11 Q. When's the last time you provided
12 any teaching or instruction through the

13 criminal justice world?

14 A. I don't know. Probably maybe
15 1997/1998, somewhere in there, I'm not sure.

16 Q. Were you ever told you weren't
17 welcome back?

18 A. No.

19 Q. Were you aware of anyone ever
20 issuing a letter that you would not be invited
21 back to teach at BCC again?

22 A. No.

23 Q. Did you have any problems with the
24 other faculty at BCC?

25 A. Myself and other people left because

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1 we were upset with the director at the end.

2 Q. Go ahead.

3 A. We will just upset with the fact
4 they were passing everybody at the academy,
5 letting anybody get through. So we were
6 pretty upset about that, myself, Scott
7 Barksdale, Denney Davis. There were a lot of
8 good instructors that I thought left during
9 that period.

10 Q. You are aware Mr. Mann offered a
11 letter indicating you would never be invited
12 back to teach at that facility again, around
13 you?

14 MR. BUCHHOLZ: Form, argumentative.
15 Go ahead.

16 THE WITNESS: I sent him a very
17 nasty letter but I'm not aware of any
18 letter that I'm aware of. I mean, a
19 letter that he wrote me.

20 . BY MR. YAFFA:

21 Q. Not to you. That a letter has been
22 authored by Mr. Mann that you would not be
23 invited back to teach at that facility again.
24 You never heard of that before 124?

25 A. I don't remember if there's been a

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1 letter on that or not. I know I had some
2 obviously words with him, as did other people,
3 but I'm not aware of a letter.

4 Q. When did you first become a police
5 officer?

6 A. 1974.

7 Q. Where was that?

8 A. In the military, Fort Arlington,
9 Kansas.

10 Q. How long were you there?

11 A. Three years.

12 Q. You went to what location?

13 A. Monroe City Police Department.

14 Q. How long were you at Monroe City
15 Police Department?

16 A. January of '79 until July of '84.

17 Q. Is there a probationary period that
18 you have to abide by when first joining that

19 police force?

20 A. Yes, a one year probationary period.

21 Q. It's not a six month probationary
22 period?

23 A. It's six months if you have prior
24 law experience. In other words, everybody
25 does. If you're a sworn police officer when

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1 you got hired -- well, at that time I don't
2 know if it is now -- you get hired by the
3 Monroe City Police Department, you are
4 generally allowed to terminate your probation
5 after six months.

6 If you are a new hiree or go through
7 various boards, if it's every three months,
8 I'm not sure what it is. If you eventually
9 reach all the specifications they have for
10 you, they can terminate your probation for six
11 months or a year. It depends on how good you
12 are evaluating, how long it takes you to get
13 in.

14 Everybody has a one year.

15 Q. Meaning you, your probationary
16 period was extended longer than you felt it
17 should have been?

18 MR. BUCHHOLZ: Which department?

19 THE WITNESS: Monroe.

20 BY MR. YAFFA:

21 Q. Monroe?

22 A. It was a year.

23 Q. You anticipated giving your military
24 experience that your probationary period was
25 going to be six months?

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1 A. Yes, I did. I felt I would be able
2 to pass but they didn't see it that way.

3 Q. You were notified your probationary
4 period was going to be extended that six
5 months?

6 A. It was not an unusual thing, not a
7 bad thing.

8 You had a year period and if I
9 probably would have probably been sharper I
10 would have probably got done in six months.

11 Q. Then you went from there to Broward
12 Sheriff's office as a deputy?

13 A. Yes.

14 Q. In what year?

15 A. As soon as I left the Monroe Police
16 Department.

17 Q. Was when?

18 A. I think July of or August of '84.

19 Q. So at this point you are already
20 providing accident reconstruction evaluations
21 as of '85? Well, for police agencies?

22 A. Yes.

23 Q. You are also testifying based upon
24 your accident reconstruction investigations

25 that you are performing?

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1 A. Yes.

2 Q. Were you also testi fyi ng as a
3 pri vate acci dent reconstructi onist at that
4 ti me?

5 A. No.

6 Q. You were just performi ng them?

7 A. No.

8 Q. You were performi ng acci dent
9 reconstructi ons for your i nvesti gati ng
10 agenci es you worked for?

11 A. Yes.

12 Q. You were quali fyi ng to do i t?

13 A. Yes.

14 Q. You were wi th the Broward Sheri ff' s
15 Offi ce for how l ong?

16 A. I bel i eve, July or August of ' 84
17 unti l July of 1990, that' s correct.

18 Q. You had some probl ems i n the Broward
19 Sheri ff' s al so, as wel l , di dn' t you?

20 A. No.

21 MR. BUCHHOLZ: Obje cti on, form,
22 predi cate. Go ahead.

23 BY MR. YAFFA:

24 Q. You actual l y were provi di ng servi ces
25 as an expert consul tant, acci dent

1 reconstructionist while you were with the
2 Broward Sheriff's Department, correct?

3 A. Yes, I was authorized to do that,
4 that's correct.

5 Q. You submitted a document to get
6 approval to do this?

7 A. That's right.

8 Q. And that document to get approval
9 had specific requirements you had to abide by
10 in order to provide these services as an
11 expert accident reconstructionist outside of
12 the Broward Sheriff's Office?

13 A. Correct.

14 Q. That's right. And one of the
15 contingencies or conditions of the agreement
16 was you could not provide assert services for
17 a Broward case?

18 A. That's right.

19 For a criminal case in Broward,
20 that's correct.

21 Q. Okay.

22 A. Not civil but for criminal case.

23 Q. You were actually found to have
24 violated the provision of this agreement,
25 didn't you?

1 A. No, I was found but it was

2 overturned.

3 Q. You were --

4 A. If you look at the personnel file it
5 will indicate to you it was overturned.

6 Q. You are aware that there was an
7 affidavit of termination that was filed in the
8 Broward Sheriff's Office pertaining to you, in
9 August of 1990, correct?

10 A. That's right.

11 But that was overturned and it was
12 dismissed from my file and if those documents
13 exist, I would like to know the person that
14 has them, because a Judge has sealed those and
15 I would love to know if anybody has a document
16 like that, because that will be the next depo
17 I will go to.

18 Q. You were once retained by the law
19 offices of Esson and Esson?

20 A. When?

21 Q. Were you on a retainer?

22 A. Never.

23 Q. On a retainer because any accident
24 that happens he steps in, jumps on, and gets a
25 salary potentially?

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1 A. Esson and Esson does not do
2 accidents.

3 Q. What about criminal?

4 A. Criminal.

5 Q. DUI defense?
6 A. Yes, they do.
7 Q. Similar to William Bubba Head?
8 A. I don't know if it is similar, you
9 have to ask them.
10 Q. Have you ever been a member of ACTAR
11 A-C-T-A-R. ?
12 A. No.
13 Q. Have you ever applied to be a member
14 of ACTAR?
15 A. No reason.
16 Q. What does ACTAR stand for?
17 A. Some association started by police
18 officers. I think it's the accreditation
19 commission for transfer reconstruction or
20 something. I don't even know. It's not
21 something that I care to be a member of.
22 Q. You are a member of the Maryland
23 Association of Traffic Investigators?
24 A. That is only because they were
25 absorbed by the National Association of

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1 Accident Reconstructi onist's. I became a
2 member of that as a police officer. I kept my
3 membership because I get the manuals. They
4 were actually absorbed into that organizations
5 for 10 or 15 years.
6 Q. Whether it was the Maryland
7 Association of Traffic Investigators or

8 National Association of Traffic
9 Reconstructionists, you didn't have to take a
10 test to become a member of that organization
11 at all?

12 A. Yes, initially you did. Not for
13 Maryland, but you had to for the national
14 association. You had to submit. I am trying
15 to think what year it was. Maybe '88 or '90.
16 I'm not sure what year it was. But you had to
17 submit like two or three cases where you
18 testified and you had to provide materials to
19 them so that they would accept you as a
20 reconstructionist.

21 Q. So that's not a test you have to
22 take to determine that you qualified, is it?

23 A. It's not an exam.

24 A. Oh, an exam. You mean to get in?

25 Q. Yes.

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1 A. No, there is no organization -- I
2 shouldn't say there is no organization. There
3 is really no qualifications for that, other
4 than what I told you.

5 Q. What percentage of your income is
6 earned from testifying as an expert or working
7 as an expert in accident cases?

8 A. Virtually all of it.

9 Q. In 2001 is it true that you earned
10 over \$700,000, in cases of motor vehicle

11 accidents or motor vehicle accidents with
12 alcohol involved?

13 A. I'm not answering that. It's not
14 your business what my income is, only what
15 relates to this case.

16 Q. How much have you charged to date?

17 A. I have that right here in your
18 exhibit folder.

19 Q. How many cases do you review on a
20 yearly basis?

21 A. Probably about 500.

22 Q. And of those 500 cases what's your
23 approximate typical retainer and fee that is
24 generated?

25 A. It depends on the case.

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1 Q. I know that we don't have the
2 ability now to go through every case, I guess,
3 because I want you to go to Las Vegas.

4 My question is, if you had to give
5 me an approximate fee that you earned on an
6 average case, you have those that may take a
7 year and a half, two years, those that may
8 take a month; can you give me an approximate
9 average that you earn on a case?

10 MR. BUCHHOLZ: Objection to form.

11 THE WITNESS: I don't know.

12 BY MR. YAFFA:

13 Q. Do you perform the same type

14 evaluation on all the cases that you performed

15 on this case?

16 A. I don't know.

17 Q. Was this considered a detailed

18 evaluation or a minimal evaluation?

19 A. I would say it is detailed.

20 Q. Detailed because you are doing it,

21 but in relationship to your other cases, can

22 you tell me whether this case would fall

23 within the more detailed where you charged the

24 upper limits or lower limits or average?

25 A. I would say it is -- Well, it's hard

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1 to say.

2 For this type of case it is probably

3 average.

4 Q. What other types of cases do you

5 work on?

6 A. I work on a variety of cases mostly

7 trucking. I work on a variety of those cases.

8 This is a typical accident scenario that I

9 work on.

10 Q. If you had to say to a client that

11 is calling up, Mr. Swope, I know every

12 accident is different, but can you just give

13 me an estimate, a range of what I can expect

14 to be billed by you for your accident

15 reconstructionist from soup to nuts on this

16 trucking case involving a fatality, no

17 alcohol?

18 MR. BUCHHOLZ: Form, speculation.

19 A. Probably 3,500 to 5,000, I don't
20 know.

21 Q. That would be total, beginning to
22 end?

23 A. Again, it depends. I mean, there
24 are so many things that factor in, I mean a
25 lot of times I will just get a retainer on the

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1 file which is 1750. I may not be able to help
2 them on a case. Other times then there's a
3 lot. That is involved. In trucking cases
4 sometimes get very involved. Like Wal-Mart or
5 Publix or something like that.

6 Q. Since 2001 has your income risen or
7 gone down with regard to your yearly income
8 from these types of cases?

9 A. I'm not answering that.

10 Q. I'm not asking the number. I am
11 just asking if it's gone up or down?

12 A. I'm not answering that.

13 Q. What percentage of the cases do you
14 represent the plaintiff as opposed to the
15 defendant here?

16 A. 55 percent are plaintiff.

17 Q. Some of the charges levied against
18 you while a Broward Sheriff Deputy was
19 unlawful compensation and theft, is that

20 correct?

21 MR. BUCHHOLZ: Objection, form,
22 predicate.

23 THE WITNESS: Yes, but those charges
24 were never authored by the Sheriff's
25 office, per se. Those individuals that

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1 authored charges against me and others
2 were terminated and when you pull my
3 personnel file as you can go down and
4 guess you see all those charges were
5 overturned dismissed and sealed.

6 BY MR. YAFFA:

7 Q. Weren't --

8 MR. BUCHHOLZ: Let him finish.

9 BY MR. YAFFA:

10 Q. Go ahead.

11 A. It would be the same if I charged
12 you with attacking a little girl on the
13 street. That might go in your bar file, but
14 as soon as they found out there basis for it,
15 it was not true and a lie, that would be taken
16 out of your file.

17 Q. After the charge was brought wasn't
18 there an internal investigation?

19 A. Yes, and that's why eventually those
20 individuals were fired. Those individuals
21 were terminated because they put stuff in
22 records. All you will see those dates

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23 correspond well after I left the Sheriff's
24 office.
25 In other words, they trumped up

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1 charges against he and probably 15 or 18 other
2 people that left under Nick Navarro and then a
3 board came in and determined that all of those
4 were unfounded not sustained and the record
5 was sealed and the files were terminated.

6 Q. Are you telling me that all those
7 charges were found non-sustained?

8 A. That's right. I just looked at my
9 file last week.

10 Q. Wasn't there, in fact, documentation
11 that reflected that these charges were
12 sustained?

13 A. No.

14 Q. Are you telling me --

15 MR. BUCHHOLZ: Just.

16 BY MR. YAFFA:

17 Q. I want to get the question.

18 A. Okay.

19 Q. Are you telling me they were never
20 sustained or that they were sustained and then
21 later overturned?

22 MR. BUCHHOLZ: Note my objection to
23 the form of the question. The words
24 charge. Go ahead.

25 BY MR. YAFFA:

1 Q. Okay.

2 A. The people that were fired sustain
3 them.

4 Q. I understand now.

5 A. It is like a criminal saying, I
6 sustain -- I am found not guilty but he never
7 goes to trial.

8 As soon as the proper people got the
9 forms and looked at it, it was all unfounded.

10 Q. For the purposes of clarifying an
11 objection, the term used is the charges,
12 correct, there were specific charges that were
13 levied against you.

14 They identified a code, a violation,
15 called a charge?

16 A. That's right.

17 Q. And the charges, as I said, unlawful
18 compensation and theft; those were charges,
19 correct?

20 A. Those were charges that were made.

21 Q. Just the officers, your superiors
22 who did sustain those charges after
23 "investigation," you're saying were terminated
24 and those charges were eventually reversed the
25 sustainment was reversed?

1 A. I'm not saying that. The Sheriff's
2 office is saying that and Patricia Winnamaker
3 is in charge of the commander of personnel is
4 the one that said that and she's the one that
5 can provide you with that information.

6 Q. There was a time you were ordered
7 from your sergeant to reported to internal
8 affairs, to turn in your badge and your ID,
9 correct?

10 A. Yes, a month after I was gone,
11 right.

12 Q. July of 1990 was a month after you
13 were gone?

14 A. If you look at the documents that
15 were in file, initially ended up being August.
16 That date is wrong. I was already long gone.

17 Q. On July 27, 1990, you never received
18 an order from Sergeant Robert Vi egler to
19 report to internal affairs to be suspended?

20 A. No, he was the one fired, by the
21 way, so those were Nick's boys who were all
22 fired and probably digging ditches somewhere.

23 Q. There were cases where you were
24 identified as billing an attorney for private
25 work that you performed as an officer, weren't

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1 there?

2 A. Yes, but that was never proven or
3 never true.

4 Q. The attorney who hired you
5 specifically told you that he didn't want to
6 pay you, his client should not have to pay you
7 what you were charging because what you did in
8 that case was part of your general duties as a
9 deputy?

10 MR. BUCHHOLZ: Objection to form.

11 THE WITNESS: No, that's not true.

12 The attorney did not hire me. It was for
13 a deposition and it was on another case.

14 It had nothing to do with my employment
15 at the Sheriff's Office.

16 BY MR. YAFFA:

17 Q. You had no involvement with the
18 investigation of that case?

19 A. No. Well, not that case, no.

20 I believe if I recall correctly,
21 that's why I don't have a partner today. My
22 partner took that case while I was working at
23 the Sheriff's office. If I recall that case
24 correctly.

25 Q. Is it Linker; does that name ring a

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1 bell?

2 A. No. I had a partner for about a
3 year and a half, and I believe he took a case
4 that I eventually had worked in the Sheriff's
5 Office unbeknownst to me which is why I have
6 no further partners since 1990, I guess.

7 Q. Last question.

8 At any time prior to your testimony
9 here today, did you meet with Mr. Buchholz?

10 A. Yes.

11 Q. Was this case the first time you had
12 met Mr. Buchholz?

13 A. Yes. As far as I'm aware, yes.

14 Q. At any point in time during your
15 discussions with Mr. Buchholz, did you inform
16 him you had been arrested previously for
17 purgery?

18 A. No, and that's not true.

19 Q. You have not been arrested?

20 A. No, my record has been sealed.

21 Q. Have you been arrested?

22 A. My record has been sealed.

23 MR. BUCHHOLZ: Note my objection to
24 the question of arrest post conviction.

25 BY MR. YAFFA:

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1 Q. Were you ever convicted for purgery?

2 A. No, and I was never arrested for
3 purgery. Thank you.

4 Q. What were you arrested for?

5 MR. BUCHHOLZ: Standing objection to
6 the arrest questions, just as to the
7 form.

8 MR. YAFFA: Got you.

9 MR. BUCHHOLZ: Is that a yes?

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10 MR. YAFFA: No.
11 MR. BUCHHOLZ: Note my objecti on.
12 MR. YAFFA: I have no further
13 questi ons.
14 MR. BUCHHOLZ: I don' t have any
15 questi ons. He is going to Reed.
16 THE WITNESS: Ri ght.
17 MR. BUCHHOLZ: Are you orderi ng?
18 MR. YAFFA: Yes.
19 MR. BUCHHOLZ: We' re off.
20 Mi ni and E-trans.
21 MR. YAFFA: Go on the record.
22 Number one, there was a deposi ti on
23 transcript, it is a two-part transcript
24 and I sai d deposi ti on.
25 It is trial testimony. The case is

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1 State of Florida V. Allison
2 P-I-R-0-Z-Z-0-L-0.
3 And the trial testimony is February
4 8th and February 9, 2006.
5 Those will be marked.
6 MR. BUCHHOLZ: Composi te. Thi s is
7 the one you marked that.
8 The Harvard letter will be marked if
9 it has not already been, the Harvard
10 letter you gave it 27, but we did not put
11 a sticker.
12 (Thereupon, the above-referred to
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13 document was marked as Plaintiff's
14 Exhibit No. 28 for identification.)

15 MR. YAFFA: 28 of the composite of
16 the two depositions.

17 (Thereupon, the above-referred to
18 document was marked as Plaintiff's
19 Exhibit No. 29 for identification.)

20 MR. BUCHHOLZ: I have a statement
21 that was given by Fred Cohen.

22 It consists -- it was taken by an
23 adjuster from Hartford insurance company,
24 consists of 11 pages.

25 We will mark that as Defendant's

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1 Exhibit No. 1 and I will, with agreement
2 with Mr. Yaffa, I will retain possession
3 of this document, although we will mark
4 it as an exhibit to the deposition I will
5 retain a copy of it.

6 MR. YAFFA: I object to his
7 retaining possession.

8 MR. BUCHHOLZ: Mr. Swope, as far as
9 concerning the statement that was sent to
10 you by Hartford Insurance Company, did
11 you rely on this document in terms of
12 formulating your opinions?

13 THE WITNESS: No.

14 DIRECT EXAMINATION

15 BY MR. BUCHHOLZ:

16 Q. Did you read it when you in part or
17 in total when with you first received it?

18 A. Yes.

19 Q. Did you read it again, at any time
20 after you started to receive documents which
21 is the sworn testimony?

22 A. No. I don't have anything for him
23 on that.

24 Okay. Mark that for me. I will
25 take that.

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1

2 (Thereupon, the above-referred to
3 document was marked as Defendant's Exhibit No.
4 1 for identification.)

5

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7 (Thereupon, the above proceedings
8 were concluded.)

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Deponent

Sworn to and subscribed before me

this day of , 2008.

Notary Public,
State of Florida at Large

22

23 My Commi ssi on Expi res:

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25

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1 C E R T I F I C A T E O F O A T H

2

3

4 STATE OF FLORIDA

5

6 COUNTY OF BROWARD

7

8

9 I, DEBRA STARK, certi fy that the said
10 RICK SWOPE, personal ly appeared before me and
11 was duly sworn.

12 WITNESS my hand and offici al seal thi s
13 2nd day of January, 2008.

14

15

16

17 DEBRA STARK, R. P. R.

18 Regi stered Professi onal

19 Reporter and Notary Publ ic,

20 State of Fl ori da

21

22 My Commi ssi on Expi res:

23 March 28, 2009

24

In RE:

THE MATTER OF:

COWEN

January 2nd, 2008

Rick Swope,
c/o

JOHN BUCHHOLZ
CLINTON D. FLAGG
1320 S. Dixie Highway
Suite 1180
Coral Gables Florida 33146

Dear MR. SWOPE:

Your deposition is now ready for reading and signing in the above styled cause. You may come to our office at 888 Southeast Third Avenue, Fort Lauderdale, Florida, between 9 and 5, Monday through Friday (954) 463-2933; or accommodations can be made for the attorney to provide you with a copy of your deposition.

Please read and sign it within thirty days of the above date, or your signature will be waived pursuant to the Rules of Civil Procedure.

Debbi Stark R. P. R.

Registered

Professional

Reporter

