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REPORTER'S RECORD

VOLUME 8 OF 12 VOLUMES

COURT OF APPEALS NO. 13-24-00525-CV

TRIAL COURT CAUSE NO. DC-C202300105

| | | |
|-----------------------------|---|-------------------------|
| NICHOLAS JOHNSON |) | IN THE DISTRICT COURT |
| |) | |
| VS. |) | JOHNSON COUNTY, TEXAS |
| |) | |
| ENGINEERED PERFORMANCE |) | |
| RACING, AND MITCHELL WILSON |) | 413TH JUDICIAL DISTRICT |

JURY TRIAL

On JUNE 7, 2024, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable John E. Neill, Judge presiding, held in Cleburne, Johnson County, Texas:

Proceedings reported by Machine Shorthand.

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EXHIBITS

PLAINTIFF'S
EXHIBIT

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1 P R O C E E D I N G

2 THE COURT: Are y'all ready?

3 MR. MATOUKA: Yes, sir.

4 MR. HURLEY: Yes.

5 THE COURT: Go ahead and bring them in.

6 THE BAILIFF: Yes, sir.

7 (Jury present.)

8 THE COURT: Good morning. All right. You
9 can be seated.

10 This is C202300105, Johnson versus Engineered
11 Performance Racing and Mitchell.

12 Is the Plaintiff ready to continue this
13 morning?

14 MR. MATOUKA: Yes, Your Honor.

15 THE COURT: All right. Defense ready as
16 well?

17 MR. HURLEY: Yes, Your Honor.

18 THE COURT: All right. I think when we last
19 left, you had 10 minutes remaining on recross. Go ahead,
20 Counsel.

21 CROSS-EXAMINATION

22 BY MR. MATOUKA:

23 Q. Mr. Wilson, yesterday I think you were talking to
24 Mr. Hurley about the rod bearings.

25 A. I believe so, yes.

1 Q. And do you remember --

2 THE COURT: Can you pull the mic --

3 THE WITNESS: Sorry.

4 Q. We showed you a photograph or a text between you
5 and Mr. Johnson around the time of the failure where you
6 said the rod bearings looked okay.

7 A. I remember you saying that, yes.

8 Q. Were you talking about all the rod bearings or
9 just that one?

10 A. Just that particular one set I was looking at.

11 Q. Did he send you pictures of the other rod
12 bearings at that time?

13 A. I don't recall at that particular time, but I did
14 receive images of other ones, yes.

15 MR. MATOUKA: May I approach, Your Honor?

16 THE COURT: You may.

17 Q. I've handed you what appears to be a message
18 between you and Mr. Johnson. Does that appear to be a
19 continuation or like the first part of that other text
20 that we showed you yesterday?

21 A. This would be a continuation, yes.

22 Q. And so that was all of -- was that all the rod
23 bearings?

24 A. I believe so.

25 Q. Okay. So when you were talking about the rod

1 bearings look okay, were you talking about all of them?

2 A. At first when I was only given the one and then
3 I -- shows here that I stated for the type of failure you
4 had, the rod bearings aren't that bad. Definitely
5 replace.

6 Q. But not that bad, right?

7 A. From the pictures that were given to me.

8 Q. Okay. And the -- and so he did send you all the
9 pictures?

10 A. Yes, these here.

11 MR. MATOUKA: Plaintiffs would move to admit
12 this as 21.

13 MR. HURLEY: Again, Your Honor, this is about
14 the seventh exhibit that he has not listed on the exhibit
15 list that he brings up the first time, and I don't believe
16 this is in rebuttal to anything. This should have been
17 included in the original exhibit list. We'll object on
18 that basis.

19 THE COURT: Response.

20 MR. MATOUKA: This is in response to --
21 these are his text messages we used to refresh his memory.
22 He says that, yes, it does refresh his memory in terms of
23 what the other text message that was admitted, and it is
24 in response to him discussing the rod bearings.

25 THE COURT: It was not provided during

1 discovery though?

2 MR. MATOUKA: Oh, it was. It was not
3 identified --

4 THE COURT: Not identified as an exhibit?

5 MR. MATOUKA: Yes, Your Honor.

6 MR. HURLEY: And, Your Honor, you can use a
7 document to refresh someone's recollection, doesn't have
8 to be an exhibit.

9 THE COURT: I'm going to sustain the
10 objection.

11 MR. MATOUKA: Yes, Your Honor.

12 Q. (BY MR. MATOUKA) So you were talking about how
13 many engines you work on at any given time, correct?

14 A. I believe so, yes.

15 Q. 20, 25, somewhere about there?

16 A. We have at least that many in the shop at one
17 time.

18 Q. And do you remember what you do on every single
19 engine?

20 A. Primarily, yes.

21 Q. So you have a very good memory?

22 A. I would like to think so, yes.

23 Q. Okay. But you didn't remember making multiple
24 videos in response to the person who alleged you caused an
25 engine failure.

1 A. I don't understand your question.

2 Q. Yes, sir. You testified that you had made
3 multiple videos in response to the YouTube video alleging
4 that you had caused an engine failure, correct?

5 A. Oh, regarding the document that you brought me
6 yesterday, yes.

7 Q. But you didn't remember that at the time?

8 A. I didn't remember what at the time?

9 Q. Yesterday when I asked you the question.

10 A. Can you -- Can you ask the question what you've
11 asked?

12 Q. Yesterday you said you didn't remember if anyone
13 else had alleged a failure of an engine due to your
14 machining, finishing or anything like that, correct?

15 A. Okay. Yes.

16 Q. And then after I showed you the text, you said
17 you did remember.

18 A. The -- that, yeah, that brought back the memory.
19 I mean, it's been many, many years ago.

20 Q. You produced multiple YouTube videos on that?

21 A. We did.

22 Q. And you worked on Mr. Johnson's engine multiple
23 years ago, correct?

24 A. Much sooner in time span than that particular
25 engine, yes.

1 Q. Okay. But you specifically remember everything
2 about Mr. Johnson's engine?

3 A. Yes.

4 Q. Yesterday, Mr. Hurley asked you about what would
5 happen if you cut corners, right?

6 A. Correct.

7 Q. And I think you've said something, there would be
8 a slew of issues. Would that slew of issues potentially
9 involve bent valves, extra valve spring seats, missing
10 coolant plugs, blocked turbos, misaligned pulleys, and oil
11 leaks?

12 A. No, I wouldn't say so because those things
13 were -- I don't consider those really an oversight outside
14 the fact of the valve spring issue itself with the spring
15 seat shim. Everything else I would consider no because --

16 Q. So what type of issues can happen if you cut
17 corners?

18 A. I'm looking at things like if I didn't properly
19 clean the engine block out, we missed a step in cleaning,
20 that would be something that would cause a catastrophic
21 failure.

22 Q. Maybe not doing your measurements accurately?

23 A. Incomplete measurements, I would be able to
24 rectify anything if I was measuring something that didn't
25 look correct. At that point, I would be able to rectify

1 it.

2 Q. Right, but if you didn't make complete
3 measurements or you maybe did some math and you did it
4 incorrectly, could those be the result of cutting corners?

5 A. Well, my processes on checking bearing clearances
6 are very standard. They're the same process every time.
7 And we never use arithmetic to calculate our bearing
8 clearances.

9 Q. Do you have that written down?

10 A. What written down?

11 Q. That process.

12 A. No.

13 Q. Do you have any of your processes written down?

14 A. No.

15 Q. And then one last thing. You've talked about
16 spinning the crankshaft, right? And you said -- I think
17 you said if it was too tight, you can't do that?

18 A. Correct.

19 Q. Can you spin the crankshaft in a stock engine
20 with stock oil clearances?

21 A. It would have much more resistance to it.

22 Q. But you would still be able to do it?

23 A. Not with my fingertips, no.

24 Q. And have you done that before?

25 A. On a stock engine?

1 Q. Yes.

2 A. We have put stock engines together before, but,
3 no, I would never, never do that on a stock engine.

4 MR. MATOUKA: Nothing further, Your Honor.

5 MR. HURLEY: Nothing further, Your Honor.

6 THE COURT: All right. Thank you, sir. You
7 can step down.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness.

10 MR. HURLEY: Your Honor, in the interest of
11 time, I think we are going to forego our last witness and
12 we will close our evidence.

13 THE COURT: Okay. Thank you.

14 All right. Ladies and gentlemen, all of the
15 evidence is now before you, however, you have not received
16 the Court's Charge nor have you heard closing argument of
17 counsel. It's going to take us a little bit to prepare
18 the Charge. Then once that Charge is prepared, I'll bring
19 you back in the courtroom, I'll read the Charge to you,
20 and then you'll hear closing argument of counsel, and
21 after that time, you'll begin your deliberations on this
22 case.

23 We're going to take a recess to allow me to
24 continue to prepare the charge. All of the instructions
25 you've been given during the course of this trial are

1 still applicable. Please do not discuss this matter with
2 anyone, including each other. Do not remain within the
3 hearing of anyone who is discussing this matter. Y'all
4 have a good break. We'll bring you back in, hopefully, by
5 9:00. I think it will take us about 45 minutes, maybe a
6 little earlier. We'll try for 9:00. We'll see you in a
7 few minutes.

8 (Jury not present.)

9 THE COURT: I haven't looked at Plaintiff's
10 yet, Defendant's looks like something we can work with.
11 Let's look at Plaintiff's as well.

12 MR. HURLEY: Your Honor, can I have two
13 minutes to reurge my directed verdict?

14 THE COURT: Yeah. Give me -- y'all take a
15 break and give me just a few minutes, let me look through
16 this, then we'll take that up.

17 (Off the record.)

18 THE COURT: All right. If y'all are ready,
19 we can go on the record. And let's start with Mr. Hurley.
20 You had a motion you wanted to make.

21 MR. HURLEY: Yes, Your Honor. We want to
22 reurge our directed verdict that we also provided -- moved
23 for at the end of the close of Plaintiff's evidence. We
24 believe that as to the warranty based claim, the testimony
25 of Mr. Johnson is pretty clear that he has never sought to

1 have the engine repaired by Mr. Wilson or EPR, therefore,
2 he has not made a warranty claim. I think that's borne
3 out by the fact that the damages they're seeking is return
4 of all of the money paid for the engine, which means it's
5 not the cost of the repair and not the cost of remedying
6 it; they want their entire consideration back.

7 There is pretty ample case law out there that
8 says when you're claiming a complete failure of
9 consideration, meaning "I got nothing of value and I want
10 all my money back," that is always a breach of contract
11 action. It cannot be a breach of warranty action. So,
12 therefore, we think that clearly what he has asserted and
13 what he has tried to put on proof of is a breach of
14 contract and not a breach of warranty. And, also, his
15 testimony shows that he did not seek to ever actually have
16 a warranty claim made the second time. He used that term,
17 but he never tendered the engine nor actually asked for
18 specific repairs.

19 That was issue number one.

20 Issue number two is if you -- if you don't
21 agree with us on the warranty issue, at a minimum, there's
22 clearly been no evidence of the knowing or intentional
23 requirement for treble damages under D.T.P.A. Throughout
24 the entire trial, there has never been any evidence that
25 suggests that Mr. Wilson knew that he was intentionally

1 denying the second warranty claim and refused to do it on
2 nothing more than his intentional bad acts. Instead, it
3 was honest disagreement, I think, and I believe Mr. Wilson
4 was right, but I don't think you can get to the
5 intentional or knowing requirement when there's a bona
6 fide dispute as to whether or not something is
7 warrantable, because otherwise, every denial of warranty
8 that falls into this category would lead to treble damage,
9 which clearly is not the intent of the D.T.P.A.

10 THE COURT: So help me out. Still struggling
11 with the breach of warranty and alleged failure to present
12 the engine back to get repaired when I didn't hear the
13 testimony. I'm struggling to make that connection.

14 MR. HURLEY: What Mr. Johnson said was, "I
15 thought about sending it back, but that didn't make
16 economic sense, so I just issued a money demand to him."
17 And he referred to it as buying out the warranty, but he
18 never said, "I want to send this engine back to you for
19 repair," which is the only real remedy under the warranty.
20 Mr. Wilson actually offered to take parts of the engine
21 back and fix them, and Mr. Johnson said, "No, I don't want
22 to do that. I want -- I just want money," which now, as
23 they've pled their case and the way they listed their
24 damages, what he is seeking back is the entire
25 consideration under the contract, every dollar he paid,

1 which means he's not claiming that it's a failure to
2 repair and remedy under the warranty. He's saying that
3 the entire engine had no value and that's a pure breach of
4 contract.

5 THE COURT: Okay.

6 MR. MATOUKA: So --

7 THE COURT: Response.

8 MR. MATOUKA: -- my first response is when we
9 look at the Jury Charge as proposed by Plaintiff, that --
10 and I'm looking at question No. 6, "The difference, if
11 any, in the value of the engine as it was received and/or
12 the value it would have been as it was represented and/or
13 warranted. The difference of value, if any, shall be
14 determined at the time and place the deed was done."
15 Although, that's obviously a typo there.

16 So as to his claims regarding damages that
17 we're seeking, he's wrong. This issue about whether it
18 was tendered for warranty, there are absolutely text
19 messages saying, you know, we should be considering
20 shipping for a warranty. And, now, I want to be clear
21 that Mr. Hurley's kind of being a little bit loose with
22 what the testimony has been. Because after -- That was
23 when everyone thought it was a bearing failure. Right.
24 So there was a phone call conversation. There's testimony
25 to this about, "Oh, parts are not covered under the

1 warranty." All right. And Mr. Wilson's offer wasn't,
2 "Hey, I'm going to fix this stuff under warranty." No,
3 no, no. It was, "You send it back to me, pay for it, and
4 I'll fix it." Right. So this is not an issue where, oh,
5 he offered some sort of warranty claim and Mr. Johnson
6 refused.

7 Subsequently, as the evidence came out, as
8 Mr. Johnson conducted his investigation and provided
9 Mr. Wilson with every piece of it, including the evidence
10 that demonstrated that it was not a bearing or that it
11 wasn't like a manufacturing bearing failure, the main
12 housing bores had been improperly machined, all of this
13 evidence, Mr. Wilson never stepped back from his position
14 that, "Oh, this is not a warranty claim." So Mr. Johnson
15 had no choice in that matter.

16 And when we get to intentionally and
17 knowingly, you heard Mr. Wilson's testimony yesterday, he
18 didn't give the King report to his experts because he
19 didn't think it was relevant. He didn't give the
20 measurements of the main housing bores because he didn't
21 think it was relevant. He didn't give the information on
22 the wide band O2 sensor because he didn't think it was
23 relevant, even though he's asking these people to give him
24 an opinion on the tuning. He knew what he was doing. And
25 the reason he did it is because he had already put so much

1 money into this engine and made so many mistakes that he
2 thought Mr. Johnson wasn't going to come back and do
3 anything about it because he lived on the other side of
4 the world. I think a reasonable Jury can very easily find
5 that.

6 THE COURT: Okay.

7 MR. HURLEY: Very briefly. What opposing
8 counsel just said is, "Well, because Mr. Wilson denied the
9 warranty, he didn't have to tender it for repairs." It's
10 still his obligation to, under the warranty, say, "I
11 believe this is a warranty claim. I want to send it to
12 you and you repair it." And what he said repeatedly was,
13 "I decided that didn't make any sense. I didn't want to
14 do that. I just wanted money."

15 And so under the terms of the warranty, he
16 never, never tendered it for repair. So you -- that is
17 clearly a step that he has to take, and there has to be a
18 offer of that and a demand for the repair. All he ever
19 demanded was money.

20 Secondly, while they have included this in
21 their Jury Charge, every piece of evidence they put on
22 from opening statements all the way through was how much
23 did you pay for this, how much did you pay for this. And
24 as a matter of fact, Mr. Johnson said, you know, we had a
25 debate about was it 17,000, and he said, "No, it was

1 closer to 30,000." There's been no evidence of the cost
2 of repair, and so that is not what they're seeking.
3 They're seeking the full amount that they paid, and so
4 there's no evidence to show that cost of repair, and they
5 haven't even listed it as -- they haven't even presented
6 it as a damage theory.

7 On the knowing and intentionally issue, the
8 fact that Mr. Wilson disagrees with something doesn't mean
9 it's knowing and intentional. Obviously, again, if that
10 was the standard, then every time somebody disagreed with
11 someone, you'd get treble damages. That, obviously, is
12 not the law. The law is you have to show a higher level
13 of knowledge or intentionality, which they have produced
14 no evidence of.

15 THE COURT: Okay. Last word.

16 MR. MATOUKA: He -- so it's not just that he
17 disagreed. He withheld information from his experts who
18 he said he was relying on. And in terms of, you know,
19 cost of repair, I don't recall if -- maybe Mr. Hurley
20 doesn't remember, but he did ask Mr. Johnson if he had
21 gotten any estimates for repairs, and Mr. Johnson
22 testified that, yes, he had, in the excess of \$10,000. So
23 unfortunately for Mr. Hurley, there is evidence of that in
24 the record, unrebutted. Well, no, his expert testified 35
25 to \$4,000, but he couldn't be sure. So we do have

1 significant testimony as to the cost of repair in this
2 matter.

3 And Mr. Johnson did tender it for repair.
4 The problem is he's not going to ship it across the --
5 across the ocean if Mr. Wilson is saying, "No, I'm not
6 going to repair this under warranty. You're going to have
7 to pay for it out of pocket." At that point, you know,
8 Mr. Johnson doesn't really have an option because it cost
9 \$1500 to ship this thing.

10 THE COURT: All right. Thank you, gentleman.
11 Unfortunately, or fortunately, depending on how you look
12 at it, I still run into the same problem of making this
13 decision; I wasn't here for the first day of testimony, so
14 the Motion for Directed Verdict with regards to the
15 warranty is denied. I'm granting the motion with regards
16 to intentionally and knowingly, and so we will not include
17 intentionally and knowingly in the Charge.

18 Let's take up one other issue, and that is
19 piercing the corporate veil request. Tell me about that,
20 Counsel.

21 MR. MATOUKA: Your Honor, I think the
22 testimony is pretty clear that they -- Mr. Wilson and EPR
23 have a single bank account. He makes all the decisions
24 for it. He engages in all the contracts. He has a
25 business partner, but his business partner has quit and he

1 has continued functioning. For all intents and purposes,
2 EPR is Mitchell Wilson, and I don't think there's any real
3 question as to that.

4 THE COURT: May be. What I think the
5 question -- the issue yesterday, was it properly pled.

6 MR. HURLEY: And there's nothing in his
7 pleadings about that.

8 MR. MATOUKA: Your Honor, I'd have to refer
9 back to the original petition, but at that time, yes, I
10 don't believe we specifically pled piercing the corporate
11 veil. We did allege that both of them breached the
12 contract, both Defendant Wilson and EPR, so we were
13 seeking to --

14 THE COURT: That's a little different, you
15 understand. I mean, that's -- I mean, that's exactly why
16 you have a piercing the corporate veil in case they came
17 back and said it was EPR instead of Wilson, but typically
18 you don't get an issue, a special issue unless it's
19 properly pled. And I don't know of -- I'm trying to think
20 if there would be an exception to that general rule in
21 this particular case.

22 MR. MATOUKA: Your Honor, may I make a motion
23 to conform the petition to the testimony here?

24 THE COURT: You can.

25 Response.

1 MR. HURLEY: Your Honor, obviously, this is
2 very late in the game to do that, A. B, he says that he
3 elicited testimony that they had the same bank account but
4 that's the only testimony that they talked about that had
5 anything to do with --

6 (Clarification by Court Reporter.)

7 MR. HURLEY: -- an overlap of the two. And
8 so without the pleadings to have a trial by ambush and say
9 that singular question entitles them to a trial by consent
10 makes absolutely no sense. Because he was asking that
11 question in the context of how do you maintain your
12 business, and he said, "Do you have a single bank
13 account?" The answer was yes, and he moved on. There was
14 no other development of the idea of this, that they were
15 alter egos or there should be the veil pierced. So I
16 don't think that allowing a very late trial amendment to
17 amend the pleadings makes any sense. And I think that
18 they have had plenty of time to allege that in their
19 petition if they wanted to.

20 MR. MATOUKA: I do believe there are other
21 questions as to whether the -- who was in control, who
22 organized the business. Defendants got this in the -- we
23 did send this as part of our original Jury Charges that
24 Defendant saw prior to trial that we were seeking to
25 pierce the corporate veil. We spoke to them beginning of

1 trial, so this isn't a surprise at this point. We've
2 also, at various points, learned that there's only a
3 single bank account, but because Defendant Wilson is
4 really poor about responding to discovery requests, we did
5 not get a lot of information that I think we should have.

6 So at this point, I think there is cause on
7 the basis of discovery abuses, and I know Mr. Hurley
8 argued the other day that, oh, yes, we lost both of our
9 motions to compel. What he failed to tell you is the
10 reason we lost those is he would produce something the day
11 before the hearing saying that it was the complete record
12 and, therefore, we'd show up, flying down, and he would
13 say, "Well, I produced it," and that would be the end of
14 the story. And we would consistently be told that was
15 everything.

16 THE COURT: All right. Thank you. The
17 request for the piercing the corporate veil instruction is
18 denied.

19 So in essence today, we're going to include
20 the warranty --

21 MR. MATOUKA: Your Honor --

22 THE COURT: -- cause of action. We're not
23 going to include the intentionally and knowingly, and
24 we're not going to include the piercing the corporate
25 veil.

1 Yes, sir.

2 MR. MATOUKA: May I make a motion as to the
3 dual breaches? I don't think -- I think --

4 MR. HURLEY: Mine actually splits it up into
5 where there's a question for breach on Mitchell, there's a
6 question for breach on EPR.

7 MR. MATOUKA: Okay.

8 THE COURT: Yeah.

9 MR. MATOUKA: And I prefer that. I meant as
10 to Mr. Johnson, because I think that there's been an
11 allegation that Mr. Johnson failed to comply with his
12 obligations under the break-in procedures which would void
13 the warranty; however, the problem for the Defendant is
14 that Mr. Wilson on the stand yesterday testified that
15 Mr. Johnson did what he needed to do. So I think at this
16 point it is not -- there's no way a reasonable Jury could
17 find that Mr. Johnson breached the contract. And for that
18 reason, I would ask for that not to be included in the
19 Jury instructions.

20 THE COURT: Okay.

21 MR. HURLEY: Your Honor, obviously, our other
22 major issue about him not complying with the contract is
23 the fact that he never properly tendered a warranty claim.
24 That's -- I won't bore you with the same thing I just
25 said, but that in and of itself, if he failed to do that

1 is a breach of his obligations, therefore, he should be
2 asked to be held accountable for that, and it's not just
3 about the break-in.

4 THE COURT: We're going to include that.

5 What else before -- and what I'm going to do
6 is I'm going to ask you to conform yours to what I've just
7 ruled, and then you can make your objections once we get
8 back on the record with the proposed Charge. You can make
9 your objections when we get the proposed Charge.

10 Yes, sir.

11 MR. HURLEY: I believe everything in there is
12 already --

13 THE COURT: Is it basically --

14 MR. HURLEY: I think so, I mean.

15 THE COURT: Double check. I did notice, you
16 know, one of the places where there's "Don Davis" instead
17 of the Defendant.

18 MR. HURLEY: I'm sorry.

19 THE COURT: That's all right. And then on
20 Question 6, just to clean it up, you have No. 1 on
21 Question 6. Just delete that.

22 MR. HURLEY: Okay.

23 THE COURT: Since there's not a No. 2.

24 On Question 7, should that read "was the
25 failure, if any, of Wilson and/or E-R-P" or it's just

1 E-R-P?

2 MR. HURLEY: Your Honor, our position is that
3 the only parties to the warranty were E-R-P and Johnson.

4 MR. MATOUKA: EPR?

5 MR. HURLEY: EPR. I'm sorry. You're right.
6 That's EPR, not E-R-P. I'm sorry. So that should read
7 EPR, not E-R-P. I'm sorry.

8 THE COURT: And that's the same one that has
9 "Davis" further on down.

10 MR. HURLEY: Oh, I'm sorry.

11 I literally just wrote down E-R-P again.
12 EPR.

13 THE COURT: All right. Y'all, if you
14 don't mind cleaning that up, and then we'll come back,
15 make objections and any objections to the proposed
16 Charge.

17 I've got a divorce I'm going to take care
18 of real quick, and then we'll get started back on this.

19 (Recess taken.)

20 THE COURT: Before we bring the Jury in, I
21 want to give both sides the opportunity to make
22 objections.

23 So, for the record, the proposed Charge has
24 been prepared and submitted to both sides.

25 Plaintiff, any objections?

1 MR. MATOUKA: Yes, Your Honor. Plaintiff
2 objects to the admission of intentionally and knowingly
3 under the Deceptive Trade Practices Act as well as the
4 charge related to piercing the corporate veil, and the
5 inclusion of questions as to whether the Plaintiff
6 breached the contract, and to the extent that those
7 questions are included, failing to provide -- to
8 incorporate a waiver and anticipatory repudiation element.

9 THE COURT: All right. Thank you.

10 I know your response. I don't think your
11 response was ever made on the record, so if you'll go
12 ahead and respond to each of those three objections.

13 MR. HURLEY: Your Honor, per our directed
14 verdict, we believe that knowing and intentional elements
15 of the D.T.P.A. are required for treble damages. There
16 was no evidence presented of those, therefore, it would be
17 inappropriate to include in the Charge.

18 I'm sorry. What were the other ones?

19 THE COURT: Piercing the corporate veil.

20 MR. HURLEY: For the purpose of piercing the
21 corporate veil, we do not believe any adequate evidence
22 was put on, and in addition, there was no pleadings to
23 support that claim; therefore, it would be inappropriate
24 to include in the Charge.

25 And again, Your Honor, we believe that we

1 have shown that Mr. Johnson's actions in the way he never,
2 never presented the engine for repair for -- to Mr. Wilson
3 and made demand therefore means that he is, in fact, in
4 breach.

5 In addition, we believe that his failure to
6 comply with the terms of the warranty mean that there was
7 a -- that he voided it by his own actions, which would
8 have been a first material breach.

9 THE COURT: All right. Thank you.

10 The Plaintiff's objections are overruled.
11 Defendant have any objections?

12 MR. HURLEY: One, Your Honor, we object to
13 Question No. 7 regarding the submission of a warranty
14 claim in this matter because we believe there is no
15 evidence of -- that Plaintiff Johnson followed all the
16 appropriate steps to tender the engine for the actual
17 repair and remedy as opposed to seeking only money from
18 the Defendants; therefore, we believe he has failed to
19 comply with the warranty and a warranty claim is
20 inappropriate and there's no evidence.

21 THE COURT: All right. Thank you.

22 Counsel, I think I know your response, but I
23 don't know that it was made on the record, so go ahead and
24 respond to that.

25 MR. MATOUKA: Respectfully, we believe that

1 there was sufficient evidence of Mr. Johnson tendering his
2 engine for warranty claim, making warranty claim, and it
3 was Defendant who consistently stated no, no, no, not a
4 warranty claim. And for that reason, we believe it is
5 appropriate to keep that charge in.

6 THE COURT: All right. Thank you.
7 Defendant's objection is overruled as well.

8 All right. 15 minutes. 15 minutes. You
9 want yours 10 and 5.

10 MR. MATOUKA: Yes. Thank you, Your Honor.

11 THE COURT: I'll give you a two-minute
12 warning.

13 Same thing, two minutes.

14 Both sides ready then to bring the Jury in?

15 MR. HURLEY: Can we move the lectern over?

16 THE COURT: Absolutely.

17 (Pause in proceeding.)

18 THE COURT: All right. Let's bring them in.

19 (Jury present.)

20 THE COURT: Counsel, you can be seated.

21 At this time, ladies and gentlemen of the
22 Jury, I'm going to read to you the Charge of the Court
23 containing the law which is applicable in this case.

24 In continuing to discharge your
25 responsibilities as jurors, you will continue to observe

1 all of the instructions which have previously been given
2 to you. These instructions are given to you because your
3 conduct is subject to review the same as that of myself,
4 the parties, the witnesses, and the attorneys. If it
5 should be found that any of you have disregarded any of
6 the Court's instructions, it could be considered jury
7 misconduct which might require another trial by another
8 jury, and then our week here will have been wasted.

9 Please listen carefully as I read the Charge
10 to you. The original Charge will be placed on the table
11 in your jury room when you retire to begin your
12 deliberations. The Charge consists of a series of
13 instructions followed by a number of definitions, and then
14 a series of questions that you'll be required to answer.
15 And, again, the Charge will be left on the table in your
16 jury room when you retire to begin your deliberations.
17 The Charge is quite lengthy, and I apologize for that, but
18 listen carefully as I read it to you, if you would,
19 please.

20 CHARGE OF THE COURT

21 THE COURT: Ladies and gentlemen of the Jury,
22 after the closing arguments, you will go to the jury room
23 to decide the case and answer the questions that are
24 attached and reach a verdict. You may discuss the case
25 with the other jurors only when you are all together in

1 the jury room. Remember my previous instructions. Do not
2 discuss the case with anyone else either in person or by
3 any other means. Do not do any independent investigation
4 about the case or conduct any research. Do not look up
5 any words in dictionaries or on the Internet. Do not post
6 information about the case on the Internet. Do not share
7 any special knowledge or experience with other jurors.
8 And do not use your phone or any electronic device during
9 your deliberations for any reason.

10 Any notes that you may have taken are for
11 your own personal use. You may take your notes back to
12 the jury room and consult them during deliberations, but
13 do not show or read your notes to your fellow jurors
14 during your deliberations. Your notes are not evidence.
15 Each of you should rely on your independent recollection
16 of the evidence and not be influenced by the fact that
17 another juror has or has not taken notes. You must leave
18 your notes with the bailiff when you are not deliberating.
19 The bailiff will give your notes to me promptly after
20 collecting them from you. I will make sure your notes are
21 kept in a safe, secure location and not disclosed to
22 anyone.

23 After you complete your deliberations, the
24 bailiff will collect your notes. When you are released
25 from jury duty, the bailiff will promptly destroy your

1 notes so that nobody can read what you wrote.

2 Here are the instructions for answering the
3 questions.

4 No. 1. Do not let bias, prejudice or
5 sympathy play any part in your deliberations.

6 No. 2. Base your answers only on the
7 evidence admitted in court and on the law that is in these
8 instructions and questions. Do not consider or discuss
9 any evidence that was not admitted in the courtroom.

10 No. 3. You're to make up your own minds
11 about the facts. You are the sole judges of the
12 credibility of the witnesses, and the weight to be given
13 their testimony, but on matters of law, you must follow
14 all of my instructions.

15 No. 4. If my instructions use a word in a
16 way that is different from its ordinary meaning, use the
17 meaning I give you, which will be a proper, legal
18 definition.

19 No. 5. All the questions and answers are
20 important. No one should say that any question or answer
21 is not important.

22 No. 6. Answer "yes" or "no" to all questions
23 unless you're told otherwise. A "yes" answer must be
24 based on a preponderance of the evidence. Whenever a
25 question requires an answer other than "yes" or "no," your

1 answer must be based on a preponderance of the evidence.

2 The term "preponderance of the evidence"
3 means the greater weight of credible evidence presented in
4 the case. If you do not find that a preponderance of the
5 evidence supports a "yes" answer, then answer "no." A
6 preponderance of the evidence is not measured by the
7 number of witnesses or by the number of documents admitted
8 in evidence. For a fact to be proved by a preponderance
9 of the evidence, you must find that the fact is more
10 likely true than not true. A fact may be established by
11 direct evidence or by circumstantial evidence or both. A
12 fact is established by direct evidence when proved by a
13 documentary evidence or by witnesses who saw the act done
14 or heard the words spoken. A fact is established by
15 circumstantial evidence when it may be fairly or
16 reasonably inferred from other facts proved.

17 No. 7. Do not decide who you think should
18 win before you answer the questions, and then just answer
19 the questions to match your decision answer each question
20 carefully without considering who will win. Do not
21 discuss or consider the effect of your -- the effect your
22 answers will have.

23 No. 8. Do not answer questions by drawing
24 straws or by any method of chance.

25 No. 9. Some questions might ask you for a

1 dollar amount. Do not agree in advance to decide on a
2 dollar amount by adding up each juror's amount and then
3 figuring the average. In answering questions about
4 damages, answer each question separately. Do not increase
5 or reduce the amount in one answer because of your answer
6 to any other question about damages. Do not speculate
7 about what a party's ultimate recovery may or may not be.
8 Any recovery will be determined by the Court when it
9 applies the law to your answers at the time of judgment.

10 No. 11. Do not trade your answers. For
11 example, do not say, "I will answer this question your way
12 if you answer another question my way."

13 No. 12. The answers to the questions must be
14 based on the decision of at least 10 of the 12 jurors.
15 The same 10 jurors must agree on every answer. Do not
16 agree to be bound by a vote of anything less than 10
17 jurors, even if it would be a majority.

18 No. 13. If you want to communicate with me
19 at any time during your deliberations, please give a
20 written message or question to the bailiff who will bring
21 it to me. I will then respond as promptly as possible
22 either in writing or by having you brought into the
23 courtroom so that I can address you orally. I will first
24 disclose your questions and my responses to the attorneys
25 before I answer your question.

1 As I said before, if you do not follow these
2 instructions, you will be guilty of misconduct, and I may
3 have to order a new trial and start this process over
4 again. This would waste your time and the parties' money
5 and would require the taxpayers of this county to pay for
6 another trial. If a juror breaks any of these rules,
7 please tell that person to stop and report it to me
8 immediately.

9 Definitions.

10 No. 1. The term "Johnson" shall mean
11 Plaintiff Nicholas Johnson.

12 No. 2. The term "Wilson" shall mean
13 Defendant Mitchell Wilson.

14 No. 3. The term "EPR" shall mean Defendant
15 Engineering Performance Racing.

16 No. 4. The term "Defendants" shall
17 collectively mean Defendants, Engineering Performance
18 Racing and Mitchell Wilson.

19 No. 5. The term "engine" shall mean the
20 engine that was previously in the car owned by Plaintiff
21 and the Defendants and others performed work on in the
22 past.

23 And No. 6. The term "agreement" shall mean
24 the agreement between Johnson and Defendant Engineering
25 Performance Racing to rebuild the engine and deliver it in

1 working order to Plaintiff.

2 Question 1. Did Wilson fail to fulfill his
3 express and reasonable obligations as promised to
4 Plaintiff and was such failure the proximate cause of
5 monetary damages to Plaintiff that was not caused by a new
6 and independent cause?

7 You are instructed that a failure to fulfill
8 an obligation must be material. The circumstances to
9 consider in determining whether a failure to comply is
10 material include:

11 A, the extent to which the injured party will
12 be deprived of the full benefit which is reasonably
13 expected;

14 B, the extent to which the injured party will
15 be adequately compensated for the part of the benefit of
16 which it will be deprived;

17 C, the extent to which the party failing to
18 perform or to offer to perform will suffer forfeiture;

19 D, the likelihood that the party failing to
20 perform or to offer to perform can cure its failure taking
21 into consideration -- or taking into account the
22 circumstances, including any reasonable assurances and
23 offers;

24 And E, the extent to which the behavior of
25 the party failing to perform or to offer to perform

1 comports with standards of good faith and fair dealing in
2 the industry in which they are operating.

3 You're further instructed that "proximate
4 cause" means an un -- means a cause unbroken by any new
5 and independent cause that was a substantial factor in
6 bringing about an occurrence and without which cause such
7 occurrence would not have occurred.

8 "New and independent cause" means an act or
9 omission of a separate and independent agency, not
10 reasonably foreseeable, that destroys the causal
11 connection, if any, between the act or omission
12 required -- inquired about and the alleged cause in
13 question and thereby becomes an immediate cause of such
14 occurrence.

15 Answer "yes" or "no." And there's a space
16 for your answer.

17 Question 2. Did EPR fail to fulfill its
18 express and reasonable obligations as promised to
19 Plaintiff, and was such failure the proximate cause of
20 monetary damage to Plaintiff that was not caused by a new
21 and independent cause?

22 And, Counsel, I believe the remainder of that
23 question is exactly the same as the question above it, so
24 I'm not going to read that to the Jury.

25 MR. HURLEY: Yes.

1 MR. MATOUKA: Yes, Your Honor.

2 THE COURT: Thank you.

3 No. 3 -- But there is a blank space for your
4 "yes" or "no" answer. Thank you.

5 Question 3. Did Johnson fail to fulfill his
6 express and reasonable obligations as promised to either
7 Defendant?

8 You're instructed that the failure to fulfill
9 an obligation must be material, the circumstances to
10 consider in determining whether a failure to comply is
11 material include -- and it's the same circumstances that I
12 read to you just briefly, or just previously under
13 Question 1. There is a space for your answer for Question
14 3 as well.

15 Now, if you answered "yes" to Question 1 or 2
16 and Question No. 3, then answer Question No. 4.
17 Otherwise, do not answer Question No. 4.

18 Question 4. Who failed to comply with the
19 parties agreement first?

20 Answer: Johnson or Defendants. And there's
21 a space for your answer.

22 Question 5. If you answered "yes" to
23 Question No. 1 and 2 -- 1 or 2, and "Defendants" to
24 Question No. 4, then answer Question No. 5. Otherwise, do
25 not answer Question No. 5.

1 Question 5. Was the Defendant's failure to
2 comply with their obligations under the parties agreement
3 excused?

4 You are instructed that the failure to comply
5 with the parties' agreement by Defendants is excused if
6 the following circumstances occurred:

7 No. 1. Johnson, by word or conduct, made a
8 false representation or concealed material facts, and with
9 knowledge of the facts or with knowledge or information
10 that would lead a reasonable person to discover the facts
11 and with the intention that the --

12 That should be...

13 MR. HURLEY: EPR.

14 THE COURT: Sorry about that. I did not
15 catch that one. It should read E-P-R, correct?

16 MR. HURLEY: Yes.

17 THE COURT: Okay.

18 With the intention that EPR would rely on the
19 false representation or concealment in acting or deciding
20 not to act; and, No. 2, Defendants did not know and had no
21 means of knowing the real facts and relied to his
22 detriment on the false representation or concealment of
23 material facts.

24 You're further instructed that the failure to
25 comply with one agreement is excused if the parties agreed

1 that a new agreement would take its place.

2 Answer "yes" or "no."

3 If you answered "yes" to Question No. 1 or 2,
4 "Defendants" to Question No. 4, and "no" to Question
5 No. 5, then answer the following question. Otherwise, do
6 not answer Question No. 6.

7 No. 6. What sum of money, if any, if paid
8 now in cash would fairly and reasonably compensate
9 Plaintiff for his damages, if any, that proximately
10 resulted from such failure to comply?

11 Consider the following elements of damages,
12 if any, and none other. The difference, if any, between
13 the value paid for by Johnson for the goods and services
14 promised in the parties' agreement and the value of the
15 goods and services actually delivered by Defendants under
16 the agreement. The difference in value, if any, shall be
17 determined at the time and place the services were
18 performed under the parties' agreement. Damages can also
19 include incidental damages sustained, including storage
20 and cost of replacement, transportation, and other
21 incidental costs. Do not add any amount of interest on
22 damages, if any, and do not include in your answer any
23 amount that you find Plaintiff could have avoided by the
24 exercise of reasonable care.

25 Answer in -- separately in dollars and cents

1 for damages, if any.

2 Question 7. Was the failure, if any, of EPR
3 to comply with a warranty a producing cause of damages to
4 Johnson?

5 "Producing cause" means a cause that was a
6 substantial factor in bringing about the damages, if any,
7 and without which the damages would not have occurred.
8 There may be more than one producing cause.

9 "Failure to comply with warranty" means the
10 failure to comply with an express warranty. An express
11 warranty is an affirmation -- is any affirmation of fact
12 or promise made by EPR that relates to the engine.

13 Answer "yes" or "no."

14 If you answered "yes" to Question No. 7, then
15 answer the following question. Otherwise, do not answer
16 the following Question.

17 No. 8. What sum of money, if any, if paid
18 now in cash would fairly and reasonably compensate Johnson
19 for his damages, if any, that resulted from such conduct?

20 Consider the following elements of damages,
21 if any, and none other: The reasonable and necessary cost
22 to repair the engine. Damages may also include incidental
23 damages including -- incidental damages sustained
24 including storage and cost of replacement, transportation
25 and other incidental costs.

1 In answering questions about damages, answer
2 each question separately. Do not increase or reduce the
3 amount in one answer because of your answer to any other
4 question about damages. Do not speculate about what any
5 parties' ultimate recovery may or may not be. Any
6 recovery will be determined by the Court when it applies
7 the law to your answers at the time of judgment. Do not
8 add any amount of interest on damages, if any. Do not
9 include in your answer any amount that you find Johnson
10 would have -- could have avoided by the exercise of
11 reasonable care.

12 Answer in dollars and cents for damages, if
13 any, No. 1, sustained in the past, with a blank space for
14 your answer, and No. 2, that in reasonable probability
15 will be sustained in the future, with an answer -- a blank
16 space for your answer.

17 If you answered "yes" to Question 7, then
18 answer the following question. Otherwise, do not answer
19 the following question.

20 No. 9. Assign percentages of responsibility
21 to those you -- only those you found caused or contributed
22 to cause the damages you listed in Question 8. The
23 percentages you must find must total 100 percent. The
24 percentages must be expressed in whole numbers. The
25 percentages of responsibility attributable to any one is

1 not necessarily measured by the number of acts or
2 omissions found.

3 For each person you found caused or
4 contributed to cause the damages to Johnson, find the
5 percentage of responsibility attributable to each, No. 1,
6 to EPR, and No. 2, to Johnson. And the total, again, must
7 be 100 percent.

8 When you go to the jury room to answer the
9 questions, the first thing you'll need to do is choose a
10 Presiding Juror.

11 The Presiding Juror has these duties:

12 A, to have the complete Charge read aloud if
13 it would be helpful to your deliberation;

14 B, to preside over your deliberations,
15 meaning manage the discussions and see that you follow
16 these instructions;

17 C, to give written questions or comments to
18 the bailiff;

19 D, to write down the answers you agree on;

20 E, to get the signatures for the verdict
21 certificate;

22 And F, notify the bailiff that you have
23 reached a verdict.

24 You may answer the questions on a vote of 10
25 jurors. The same 10 jurors must agree on every answer in

1 the Charge. This means that you may not have a group of
2 10 jurors agree on one answer and a different group of 10
3 jurors agree on another answer. If 10 jurors agree on
4 every answer, those 10 sign the verdict. If 11 jurors
5 agree on every answer, those 11 jurors sign the verdict.
6 If all 12 of you agree on every answer, you are unanimous,
7 and only the Presiding Juror needs to sign the verdict.

8 All jurors should deliberate on every
9 question. You may end up with all 12 of you agreeing on
10 some answers while only 10 or 11 of you agree on other
11 answers. But when you sign the verdict, only those 10 or
12 11 who agree on each and every verdict -- each and every
13 answer will sign the verdict.

14 And this is -- the Charge is signed by
15 myself, John Neill. There is attached a verdict
16 certificate. There is a portion of the verdict
17 certificate, that top portion, that reads:

18 Our verdict is unanimous. All 12 of us have
19 agreed to each and every answer and the Presiding Juror
20 has signed the verdict for all 12 of us.

21 The next section: Our verdict is not
22 unanimous. 11 of us have agreed to every answer and have
23 signed the certificate below.

24 And then below that: Our verdict is not
25 unanimous. 10 of us have agreed to each answer -- each

1 and every answer and have signed the certificate below.

2 And, again, I'll leave this lengthy Charge
3 with you in your jury room when you retire to begin your
4 deliberations.

5 The Court has allowed 15 minutes per side for
6 closing. The Plaintiff has the opportunity to go first
7 and to go last.

8 Counsel, if you're ready, you may proceed.

9 MR. MATOUKA: Thank you, Your Honor.

10 Thank you very much, ladies and gentlemen of
11 the Jury. This has been a long week, I think, for
12 everyone here. And we truly appreciate you being here
13 every day and listening to the testimony given by both
14 parties. I'm going to do my best to be very brief here so
15 that you guys can begin deliberating and hopefully go
16 home.

17 The first thing I want to talk about is the
18 burden of proof. You heard the Judge say preponderance of
19 the evidence, more likely than not. The way I like to
20 think about that is if we have the scales, you know, the
21 ones that lady justice holds, you put them and they're
22 evenly balanced, and you drop a feather on one side, and
23 that side goes down slightly, that side has the
24 preponderance of the evidence. That's more likely than
25 not. So, and as I will explain, I believe that we easily

1 exceed that threshold. There's a mountain of evidence in
2 support of Mr. Johnson, and little more than speculation
3 and denials from the Defendants.

4 But I want to start with where we are in
5 terms of where this started. This contract was entered
6 into at the end of 2018. November of 2018. Mr. Johnson
7 paid \$17,000 at that time for a high performance engine.
8 It is now early June, I don't recall what day it is at
9 this point, of 2024. Mr. Johnson does not have a working
10 engine for his car. That's where we're at. Now, the
11 question is: Why doesn't Mr. Johnson have a working
12 engine for his car?

13 Well, what does the evidence show? The
14 evidence shows that the Defendants were overworked,
15 understaffed, and making consistent errors, at least with
16 Mr. Johnson's engine. We don't know anything about any of
17 their other engines except obviously Mr. Pool's engine.
18 There were bent valves on multiple occasions, missing
19 plugs, oil leaks, misaligned pulleys, turbos that were
20 allegedly blown and then it was shown that it was, oh,
21 just forgot to do something. And, obviously, the ultimate
22 cause to failure here which was the improper machining of
23 the main housing bores.

24 How do we know that? Well, I think this
25 starts with Mr. Johnson. I've been working with him for

1 years at this point, and he went through a incredibly
2 thorough investigation. He used his skills that he
3 learned on his -- on the job as a police officer to track
4 down every potential cause of the fault.

5 Now, when we're talking about the second
6 engine failure, well, the second engine failure when it
7 was in England, Mr. Johnson cut the oil filter open, he
8 got the oil analysis, and the entire time he's
9 communicating with the Defendants. He's sending them the
10 pictures of what happened. He gets a report from the
11 manufacturer, the bearing manufacturer. He has multiple
12 machine shops conduct measurements. He speaks with
13 experts. This is what leads him to his conclusion.

14 Our expert was on the stand. He talked about
15 the tune. He knew that when wide band O2 sensors was off,
16 that's why there wasn't this explosive detonation that
17 Defendants allege. Mr. Pool has extensive experience with
18 this engine, tuning this engine. And while Dylan Bradley,
19 obviously, has experience with significant engines, he
20 testified that he primarily works on GMC, Lamborghini.
21 He's never tuned a Nissan. He wasn't sure whether the
22 eddy current brake was on.

23 Mr. Pool, on the other hand, reviewed all the
24 evidence. Dylan Bradley only reviewed the data log and a
25 couple of pictures. Why was that? Well, because

1 Mr. Wilson didn't think it was relevant to send him the
2 King report, didn't think it was relevant to send him the
3 measurements, didn't think it was relevant to tell him
4 about the wide band O2 sensor, upon which Mr. Bradley
5 based a significant amount of his opinion. That makes
6 Mr. Bradley's testimony less persuasive. He's obviously
7 an expert. He knows what he's talking about, but we have
8 to look at the evidence that he's presented. And Mr. Pool
9 was provided with all of the evidence to come to his
10 conclusion.

11 Mr. Pool also purchased engines from
12 Defendants. And he talked about two engines in
13 particular, one of which he measured, everything was fine,
14 main housing bores were fine. The other one machined
15 about the same time as Mr. Johnson's engine was not. It
16 showed that it was too tight, much like the failure in
17 Mr. Johnson's engine. The Defendants tried to argue
18 around this saying, "Well, he wasn't measuring correctly.
19 Oh, in the video, he's using one hand." Well, I believe
20 you heard the testimony of Mr. Pool where he said he
21 measured multiple days and that, yes, he used one hand for
22 the video so that he could take the video. That's not how
23 he measured when he wasn't taking the video.

24 The Defendants have no answer for that. They
25 can't explain if Mr. Pool was measuring incorrectly why

1 did the other engine come out correctly. They didn't even
2 think about that. Defendant Wilson didn't even think it
3 was worth considering that maybe Mr. Pool's other engine
4 was machined improperly. Didn't think it was worth
5 thinking about because he remembers all of the errors he
6 makes, as he testified. He doesn't write anything down.
7 He doesn't have procedures, processes, checklists to make
8 sure that he does things right. It's all from the head.
9 And as he testified, he has an excellent memory, except he
10 can't remember producing multiple videos about in response
11 to someone saying he caused an engine failure because he
12 couldn't remember that there was that allegation.

13 The Defendants theory has shifted, and it's
14 somewhat unclear as to what it is. I believe their theory
15 is that there was a tuning error, obviously, that caused
16 this massive detonation that could have ripped the engine
17 apart. Now, mind you, this is one of the last dyno runs,
18 so this engine has been -- had been on the dyno in Abbey
19 Motorsports in England for a while at this point. This is
20 the last run. And, but they say yes, there was this
21 massive detonation that could have ripped the engine
22 apart. Obviously, it didn't rip it apart. But none of
23 that is evident here.

24 We have the pistons, which Defendant has
25 testified would be one of the first places that you saw

1 damage. Their entire thing is, "Oh, these piston rings
2 are a little bit allegedly deformed." But there's no
3 damage to the top of the pistons, even the exposed
4 aluminum that's not covered by the ceramic coating that is
5 intended to protect from detonation, there's nothing
6 there. So where is the evidence of this massive
7 detonation? It doesn't exist.

8 The spark plugs, there's no evidence of the
9 fuel banks having wildly different conditions, one being
10 very lean, one being very heavy. Defendant -- or
11 Mr. Bradley, I think, testified, "Oh, well, it looks like
12 it was idle." But he also said that, you know, you look
13 at that last dyno chart and, no, it went up, came down,
14 was turned off. It wasn't idled. Mr. Johnson said that
15 was the last time. Stripped it down after that. They
16 killed it after that run and that was it. But there's no
17 evidence of this wild fuel imbalance the Defendants are
18 placing their theory on.

19 They, to their credit, they came up with
20 another theory after, obviously, the bearing failure that
21 Mr. Wilson originally went with. They said, "Oh, well, it
22 was because Mr. Johnson was driving, you know, with these
23 two wide band O2 sensors working, and this short-term,
24 long-term functionality was turned on." There was no
25 testimony that it was turned on. There was testimony that

1 there was a corruption issue and that Mr. Johnson worked
2 with Haltech to get that data back in, but no one said
3 that the functionality was turned on. And Defendants
4 don't even know when that occurred. They didn't ask
5 Mr. Johnson about that because they don't want you to
6 know.

7 THE COURT: Counsel, you've used right at 8
8 minutes.

9 MR. MATOUKA: I'm going to use 13, if that's
10 okay.

11 THE COURT: That's fine.

12 MR. MATOUKA: I apologize, I talk too much.

13 In the end, all of the evidence supports that
14 the main housing bores were too narrow. Mr. Bradley
15 testified that, yes, the damage you see on the edge of the
16 piston skirts, that could be caused by insufficient oil
17 and debris. Okay. Defendant Mitchell Wilson says he
18 measured everything, did everything properly, but he's
19 talking about how many engines he's got, and he
20 specifically remembers this engine. They're overworked,
21 but he remembers everything about this engine. Yet, he
22 didn't show his experts a lot of the data.

23 And they also testified that physical
24 inspection of the parts was important. Yet, at no point
25 before or during litigation did they ever ask for any part

1 of the engine. They didn't want to know because Defendant
2 Wilson had put too much money in his own mistakes and
3 thought that Mr. Johnson, who lives across an ocean, was
4 going to walk away. That's what brought us here today.

5 So when you think about damages, Mr. Johnson
6 paid at least \$20,000 for an engine, high performance
7 engine. He's got nothing. Maybe he's got some parts that
8 he can reuse. He spent \$420 a month from September of
9 2019 till today to preserve the evidence because he didn't
10 know that they didn't care. He didn't know that they
11 wouldn't want it. He had to buy a new car. Fortunately,
12 he found a cheap one. Those are all in the invoices, and
13 you can see that.

14 And in terms of the cost of repair that
15 Mr. Bradley testified, oh, 3500 to 4500, I believe, but he
16 also admitted he didn't know because he hasn't seen the
17 engine. Mr. Johnson testified that he's gotten quotes on
18 potential repairs of at least \$10,000.

19 So what does this bring us to? At the end of
20 the day, Mr. Johnson has suffered over \$47,000 in damages
21 in terms when you look at the end -- the cost of the
22 engine versus him not having a functioning engine, and
23 \$37,000 in damages if you look, instead of the cost of the
24 engine, at the cost of repair. And based on the extensive
25 evidence that we've presented here today, we believe that

1 you should return a Charge in favor of Mr. Johnson to make
2 this right.

3 Thank you.

4 THE COURT: Thank you, Counsel. You'll have,
5 for reference, you'll have 4 minutes remaining for
6 rebuttal.

7 MR. MATOUKA: Thank you, Your Honor.

8 THE COURT: Mr. Hurley.

9 MR. HURLEY: Thank you, Your Honor.

10 Again, on behalf of myself and Mr. Wilson, I
11 appreciate you sticking with us. I feel like we took a
12 trip from Cleburne to Fort Worth and went via San Antonio
13 this week. I apologize for that. We should have gotten
14 this done much quicker, so I apologize, but I appreciate
15 you sticking with us and being here.

16 Like I said at the very beginning, you were
17 going to get a lot of technical details. And I wish I
18 could sit here and explain them to you, but I can't. I
19 don't get it. I don't understand all these technical
20 details. It goes way beyond my comprehension level, but I
21 think the good news is: You don't have to understand all
22 these technical details to get to a decision. Instead,
23 what I think you have to understand and what you all need
24 to do in making your decision is focus on the simple idea
25 that the Plaintiff has not shown you that the failure of

1 this engine had anything to do with anything Mitchell
2 Wilson did.

3 It has boiled down to the singular issue of:
4 He has said it was an oil clearance issue. So what he
5 would have had to show you was: At the time the engine
6 left Mr. Wilson's shop, it had an oil clearance problem.
7 He has not done that. Instead, the only evidence you
8 heard about that is Mitchell Wilson saying, "I measured
9 it. Not with math, not with anything. I physically
10 measured it, and the oil clearance was sufficient." No
11 other evidence has been introduced about that.

12 Now, they want to talk a lot about what
13 happened after this catastrophic failure, but -- and I
14 thought about this a long time last night. The analogy is
15 you take a log, you throw it in a fire, and after its
16 burned for a while, you pull it out and say, "Now I'm
17 going to look at this log and try to tell you what it was
18 like before it burned." It's impossible. It's been
19 altered. It's gone through a traumatic event. And so to
20 say now, oh, well, these after-the-fact measurements,
21 which, by the way, you've seen none of. You've heard
22 about them, but there's no documentary proof of it. To
23 say that that has something to do with how Mr. Wilson
24 built the car is just apples and oranges. It's not the
25 same thing.

1 So what you should look at, in my opinion, is
2 the real facts, the hard facts, not speculation, not
3 innuendo. The Plaintiffs have gone to great length to
4 say, basically, "Mr. Wilson was too busy. He had made
5 other mistakes. Maybe he even didn't like some of the
6 other customers who had complained in the past." That
7 does not prove their case. Their case is very simple and
8 straightforward. They need to prove to you that
9 Mr. Wilson did something that caused the failure of this
10 engine. And they danced around it a million different
11 ways. They've filled up the record with all sorts of
12 things that really don't matter. But what I ask you to
13 focus on is: What did they show you that proves Mitchell
14 Wilson and Engineered Performance Racing actually caused
15 this problem with the engine.

16 Now, there's some facts that they tried to
17 not discuss too much, but there's also some other hard
18 facts that I think you should consider as well. One, at
19 the time that this engine was finally delivered the second
20 time, Plaintiff put it in his car. He drove it. There's
21 even testimony that he had videos that Mr. Wilson saw
22 where he was driving it pretty fast. He said he drove it
23 for upwards of six months, over 400 miles, and nothing
24 happened. The only time there was a failure was after he
25 took the car to Abbey Motorsports and had them do the

1 tuning that we then heard extensive evidence from not one
2 but two experts really that said yes, this was a bad tune,
3 this was what led to the problems.

4 And, again, the technical details of what
5 happened in that tune, I can't explain to you. I don't
6 think they're relevant. All you need to know is experts
7 who know what they're talking about said this was a bad
8 tune and it led to the problems.

9 And so there's been these cylinders and
10 pistons presented to you. There's been all sorts of
11 testimony about measurements after this, after the fact,
12 but again, the damage to the motor is not proof of what
13 caused it. It has to be directly related back to the
14 action of Mr. Wilson and EPR that gets you to the point
15 where you can say he had something to do with it.

16 You've also seen no documentary evidence that
17 supports the Plaintiff's theory that the oil clearance was
18 insufficient. You heard about it. You heard some people
19 say, "pretty sure". We talked about it, but there's
20 nothing in front of you that's a document that shows what
21 that clearance really was. And, therefore, I think you
22 can put the proper weight to that evidence, but it's -- it
23 is suspicious that you don't have any documentary evidence
24 before you that shows that that oil clearance was
25 insufficient.

1 If you look at the expert testimony of Matt
2 Pool, I think it's important to take into account who
3 Mr. Pool is in this case. Matt Pool is not just an
4 expert. He was involved. And the last time he was
5 involved, he committed some errors. He admitted that
6 something was wrong with the way he tuned the engine when
7 it was still here in Texas that led to the failure of that
8 dyno run in Texas. He fully admitted that. So obviously,
9 he has a little bit of a bias and maybe would like to
10 cover up some mistakes that he made by saying, "Oh, well,
11 yeah, sure, it's not a tuning issue," because he also
12 tuned it. And it may very well be something he did to the
13 car that led to this problem.

14 You also have the Plaintiffs arguing that
15 because there were -- there was evidence of things that
16 they think are indicative of oil clearance, that that for
17 some reason proves that there was an oil clearance
18 problem. But what you heard was, what really happened was
19 the main bearings failed. There's no question about that.
20 There were chunks of the main bearings in the oil. We saw
21 pictures of the main bearings where they look like they're
22 stripped away. There's not a debate about that, but that
23 does not, in and of itself, prove that it was Mitchell
24 Wilson and EPR that actually caused this.

25 And so this is a good point to stop and talk

1 about the burden the Plaintiff's counsel mentioned when he
2 first got up. He said it's a feather. You can call it
3 whatever you want. It's still their burden. It's the
4 Plaintiff's burden to show you through competent evidence
5 that it was the Defendants that caused this failure. If
6 they can't do that, then obviously their entire case goes
7 away.

8 There's also been some questions I -- raised
9 that I think dealing with what Mr. Wilson -- or what
10 Mr. Johnson got that he paid for. They're asking you for
11 the entire amount that he paid. What we all know is even
12 if you think Mr. Wilson did something wrong, the fact of
13 the matter is he still got an engine. It's not expensive
14 to fix. He's got parts. He's got all sorts of stuff.
15 And so the idea that he is now asking for the entire
16 amount of that repair back is really just asking for a
17 windfall. He gets his cake and gets to eat it, too,
18 because he keeps an engine that is reparable, and gets a
19 sum of money to where he basically ends up getting it for
20 free. I think that's indicative of what the Plaintiff is
21 seeking here. I think it's indicative of how he's
22 conducted himself with Mr. Wilson. And I think you need
23 to take that into consideration.

24 The other thing that I think is very
25 important based on the breach of warranty claim is that

1 what you heard the Plaintiff say is, "No, I never really
2 let him try to fix it. I just wanted money. I told him
3 it doesn't make any sense. I don't want to send it back.
4 I don't want you to try to fix it."

5 I hope you go back and read the warranty
6 document. And that's Plaintiff's Exhibit No. 7. The
7 warranty document is pretty clear. It is an obligation by
8 EPR to repair and replace anything that has been done
9 wrong to the engine that from their work, not anybody
10 else's work, their work. And their only obligation at
11 that point is to repair it, not give money, not do
12 anything.

13 So, in fact, although Plaintiff said this is
14 a warranty case, he never followed the dictates of the
15 warranty. That is the question that you heard that says
16 that he breached the contract first. And if he did, then
17 Mr. Wilson and EPR should not be liable because he failed
18 to follow the warranty.

19 On that same issue, you heard the discussions
20 about the oil. The warranty, and again, this is the last
21 two pages of the warranty, pretty clear, this is the oil
22 you use, this is how you use it. There's been some
23 discussion that says, oh, well, Mr. Wilson waived that or
24 told him it was okay. The undeniable proof is the
25 Plaintiff used an oil called Fuchs that was not one of the

1 prescribed oils. And when he did that, he voided the
2 warranty, and that was in huge font, underlined, bolded.
3 And, therefore, he can't say he didn't know.

4 And what he did was he decided that he was
5 smarter than Mr. Wilson and he could use the oil he wanted
6 to use, when at a minimum, Mr. Wilson said make one more
7 run with break-in oil. And what you heard was, he didn't
8 do it. So he voided his own warranty. Again, that's the
9 first material breach issue.

10 And if absolutely nothing else, what you have
11 here is an absolute misstatement about what Mr. Wilson
12 agreed to provide to the Plaintiff. I think the
13 allegation here is a very kind of glossed-over fashion.
14 "You should have given me an engine that works." Well, it
15 does not take into account what the real facts are. The
16 Plaintiff touched the engine, installed it, put it in his
17 car, drove it, other people tuned it, including Matt Pool,
18 and then Abbey Motorsports. So the obligation is not, "I
19 guarantee a full engine that will work even after others
20 touch it." The only guarantee was, "When I send it to
21 you, it's in working order." And what we heard was, it
22 was. The Plaintiff drove the car around for six months,
23 put 4 or 500 miles on it. And then only after others
24 started making changes to it, tuning and other things, did
25 the problem arise. So that's important to remember.

1 THE COURT: Counsel, you've got about 2
2 minutes remaining.

3 MR. HURLEY: Thank you, Your Honor.

4 Now, I want to talk about Mr. Pool.
5 Mr. Pool's expertise was not really tuning engines. He
6 said he basically learned from watching and hearing and
7 talking to others. That's not expertise. That's just
8 somebody who listens. Also what he said clearly was: The
9 information he received was from one person and one person
10 only, Plaintiff Johnson. He didn't do any independent
11 investigation. I think that's something you should take
12 into account.

13 In contrast, Dylan Bradley, our expert, did
14 say he looked at the only thing that mattered, which was
15 the data log. The data log tells all. And he did that.
16 And as a result, he came to his conclusions. He's an
17 independent third party. He has no involvement with the
18 case, therefore, I think it's appropriate that his
19 testimony weighs much heavier than Mr. Pool's.

20 Finally, I want to talk about the Charge.
21 The Charge sometimes is overwhelming and confusing, but I
22 want you to understand that the questions you're being
23 asked are what I just described. Did Mr. Wilson and EPR
24 do anything that caused the failure of the engine. If you
25 agree with us, the answer, simply "no." That's -- that

1 is -- that is the word you need to use on these questions
2 to ensure that if you agree that Mr. Wilson and EPR did
3 nothing wrong, that is what the appropriate answer is.

4 Now, all of this being said, everything else
5 you've heard about Mr. Wilson's complaining, his problems
6 with other customers, everything related to that has
7 absolutely nothing to do with this case. The primary
8 issue is: Did Mitchell Wilson and EPR do something to
9 this engine that caused it to fail. The only theory is
10 the oil clearance. What I think is very, very clear is
11 that they have not proven to you that when it left
12 Mitchell Wilson's shop, the oil clearance was incorrect.

13 Again, thank you for your time. We
14 appreciate you sticking with us, and we look forward to
15 your verdict. Thank you.

16 THE COURT: Thank you, Counsel.

17 Mr. Matouka, you have 4 minutes remaining.

18 MR. MATOUKA: All right. I just want to say
19 I apologize that we didn't come up with multiple theories
20 on what they did wrong. You know, we followed the
21 evidence. There was a single theory. So next time I'll
22 come up with additional ones.

23 First thing I want to say is you can rely on
24 expert testimony such as that of Mr. Pool. He testified
25 he's tuned hundreds of engines. He's worked specifically

1 on this engine for an incredibly long time. He talked
2 about the measurements that, yes, you haven't seen. He
3 talked about the report that, yes, you haven't seen. He
4 said that those were relevant and consistent with his
5 conclusions, and the measurements were consistent with
6 those that he found in his own engine.

7 Now, there's no evidence of significant
8 damage that could deform the super powered billets that
9 this man makes. So they're asking you to believe that
10 there was this incredibly powerful detonation that
11 destroyed his super powered billets, but none of that
12 damage is there.

13 Mr. Wilson doesn't like to admit to his
14 mistakes. I think that's what the whole thing about the
15 other customers is. He doesn't like to own up to it
16 because his reputation is important to him.

17 And I want to touch on this warranty claim
18 issue. Mr. Johnson said he thought it was a warranty
19 issue but tried to work it out with Defendant Wilson.
20 Defendant Wilson didn't want to have any of that. He said
21 it was a part failure, and he offered, yes, to take the
22 engine back, not under warranty, but to fix it on
23 Mr. Johnson's dime. That's not a warranty claim. And
24 even after Mr. Johnson produced evidence demonstrating
25 that it was not just the part failure, something led to

1 that failure, specifically, insufficient oil clearance,
2 Mr. Wilson didn't want to hear it.

3 Both Mr. Hurley and Mr. Wilson keep talking
4 about this oil, this oil issue. They keep omitting -- You
5 saw this in Mr. Wilson's testimony. He really didn't want
6 to read the words "or similar, 15w50". Well, that's
7 Fuchs. And he told Mr. Johnson that the engine was broken
8 in. He testified on the stand that the engine was broken
9 in. And you saw the text message that he said run it
10 on -- do another break-in on conventional or the break-in
11 or conventional. Once again, that's something they like
12 to ignore.

13 They also imply for some reason that Mr. Pool
14 or Mr. Johnson damaged the engine. Yeah, Mr. Johnson was
15 able to drive it, because as we've heard, the oil
16 clearance was okay for a stock engine. If you're not
17 going for a high performance setting, he probably could
18 have driven it for a while until that extra valve spring
19 seat flew out and destroyed his engine at that point. So
20 that is not evidence that he had the appropriate oil
21 clearances for what was actually contracted for, which was
22 a high performance engine, not a stock engine.
23 Mr. Johnson didn't buy one off the shelf from Nissan.
24 Mr. Pool, as I said, tuned hundreds of Nissans, hundreds
25 of engines.

1 At the end of the day, we provided a
2 consistent theory that followed the facts. Defendants
3 have denied, obfuscated, and attempted to just throw
4 spaghetti at the wall and hope something sticks. That's
5 their right, but that's why we have a single theory
6 because that's where the evidence leads.

7 I thank you again, and have a wonderful
8 afternoon.

9 THE COURT: Thank you, Counsel.

10 Let me see both counsel at the bench real
11 quick.

12 (At the bench.)

13 THE COURT: All of the exhibits are going to
14 go back with them with the exception of, I guess, the
15 pistons and spark plugs.

16 MR. MATOUKA: I would like to send those
17 back.

18 THE COURT: We can. It just takes a little
19 more.

20 MR. MATOUKA: If that's okay, I would like
21 to.

22 THE COURT: We should send them all back. Is
23 there anything else that we need before?

24 MR. HURLEY: Everything that has been put in
25 Defendant's notebook is admitted, so that notebook is...

1 THE COURT: Once the Jury goes back, I'm
2 going to get you and the Court Reporter together and
3 y'all get all that stuff together and send it back to
4 them.

5 All right. Very good. Thank you.

6 (In open court.)

7 THE COURT: All right. Ladies and gentlemen
8 of the Jury, all of the evidence, the Court's Charge, and
9 the closing argument are now before you. I'm going to
10 hand to the Deputy the Charge of the Court that contains
11 the questions to be answered. That will be placed on the
12 table in your jury room when you retire to begin your
13 deliberations.

14 I'm also, once you go back, the attorneys and
15 Court Reporter are going to get together and get all the
16 exhibits that were admitted during the course of the trial
17 together. We're going to send those back to you so you
18 don't have to request each exhibit when you want to see
19 it. We'll have all those exhibits that have been admitted
20 sent back to you as well.

21 Once all of the members of the Jury are
22 present and assembled in the jury room, this case is
23 formally submitted to you, and at that time, you may begin
24 your deliberations. If you'll please step down from the
25 jury box, follow the Deputy to the jury room, we'll stand

1 in recess until the Jury has reached a verdict.

2 (Jury deliberations.)

3 (Jury not present.)

4 THE COURT: I'll show you the notes and show
5 you the proposed responses.

6 (Pause in proceeding.)

7 THE COURT: Let's go on the record. The
8 first note says -- Y'all can come on up.

9 "Can we get a copy --"

10 I'm just going to read it directly what it
11 says. "Can we get a copy, Johnson, total damages being
12 requested?" I think it says "prosecution."

13 "Can we get a copy of prosecution, in
14 parenthesis, Johnson, total damages being requested?"

15 The proposed response is: You have all the
16 evidence before you. Please continue with your
17 deliberations.

18 Agreed?

19 MR. MATOUKA: Yeah.

20 MR. HURLEY: Agreed.

21 THE COURT: All right. The second note,
22 again, I'm going to read directly.

23 It says, "Exhibit 9, speed diagnostics oil
24 analysis test results," colon, "viscosity at 100 C 15.3
25 CST, the test value was flagged. Is this value acceptable

1 for use simply implying a degradation and need to change?"
2 In parenthesis, "Plaintiff testified engine was run
3 approximately 5 to 600 miles," close parenthesis. In
4 parenthesis, "Is there a value range where oil health
5 becomes an issue?" close parenthesis.

6 The proposed response is: The Court, under
7 the law, is not permitted to answer the specific question
8 you have presented. Please consider the instructions that
9 have been given to you and continue your deliberations."

10 MR. HURLEY: Agreed.

11 THE COURT: All right. Very good.

12 (Off the record.)

13 THE COURT: We've received a note that says,
14 "Can we get a copy of Nick Johnson's transcript while
15 testifying?"

16 Court intends to respond as follows: If the
17 Jury disagrees as to the statement of any witness, they
18 may, upon applying to the Court, have read to them from
19 the Court Reporter's notes that part of such witness's
20 testimony on the particular point in dispute and only on
21 that point in dispute. Accordingly, if the Jury wishes to
22 have the testimony read, it must certify a point in
23 dispute and you will request that point in dispute and
24 only that point in dispute."

25 Any objection?

1 MR. HURLEY: No.

2 MR. MATOUKA: Agreed.

3 THE COURT: Thank you.

4 (Off the record.)

5 (Jury present.)

6 THE COURT: All right. You can be seated.

7 We received indication from the Jury that the
8 Jury has reached a decision in this case.

9 Is that correct, Mister Presiding Juror?

10 PRESIDING JUROR: Yes, Your Honor.

11 THE COURT: Will you please hand to the
12 Deputy the Charge of the Court.

13 (Presiding Juror complied.)

14 THE COURT: Let me do this. Deputy, will you
15 take the Jury back for just a few minutes.

16 THE BAILIFF: Yes, sir.

17 THE COURT: We'll call you back in in just a
18 second.

19 (Jury not present.)

20 (Off-the-record discussion.)

21 THE COURT: Let's go on the record then. We
22 are outside the presence of the Jury. The Jury has come
23 back with a verdict on each of the issues. Question 5 was
24 not answered and Question 6 was not answered. There was
25 an instruction at the top of 5 that was probably incorrect

1 that led them not to answer that.

2 I've talked with the attorneys, and it's my
3 understanding that the attorneys are willing to accept the
4 decision of the Jury as it stands as to all nine questions
5 and not send them back and instruct them to answer
6 Question 5 and 6.

7 Did I get that correct?

8 MR. MATOUKA: Yes, Your Honor.

9 THE COURT: You agree with that?

10 MR. MATOUKA: Yes, Your Honor.

11 THE COURT: You agree with that?

12 MR. HURLEY: Yes, Your Honor.

13 THE COURT: All right. Let's go ahead and
14 bring them back in.

15 And I'm not going to read the answers in
16 front of the Jury. I'm just going to tell them that I've
17 received and accepted their verdict and they're dismissed
18 from any further obligation on this panel.

19 (Jury present.)

20 THE COURT: All right. Ladies and gentlemen
21 of the Jury, thank you for your patience with us. I have
22 shown the Charge of the Court -- Y'all can be seated.
23 I've shown the -- your responses, your decision to the
24 attorneys. The Court receives and accepts your verdict in
25 this case as the verdict of the Jury. With that, I'm

1 going to release you from any further obligation on this
2 case. I appreciate the time that you spent on this case.
3 I appreciate the deliberations that you gave this case. I
4 know it was unusual to have two different judges. I
5 appreciate your patience with me as I tried to wade
6 through this case myself. I know the attorneys and the
7 parties appreciate your patience as well.

8 Deputy, you've got excuses?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. For those of you who
11 need excuses to tell your boss where you've been this
12 week, we've got those before you leave. It doesn't say
13 you were discharged at 1:25. It just says that you were
14 here today. All right. So take that however you want to
15 take that. But it does not -- I don't think it says they
16 left at 1:20, does it? Good deal.

17 All right. Again, thank you so much. You're
18 released from any further obligation in this case. Please
19 follow the Deputy out.

20 (Jury not present.)

21 THE COURT: All right. Y'all can be seated.
22 What else do we need to take up?

23 MR. MATOUKA: Your Honor, there is just the
24 matter of substituting photographs for Exhibit 13.

25 THE COURT: Okay. And we talked about that

1 yesterday. Have they already made photographs?

2 (Off-the-record discussion.)

3 MR. MATOUKA: All right.

4 THE COURT: We're good there then. What
5 else?

6 MR. HURLEY: Can we also get a copy of the
7 verdict form?

8 THE COURT: Yes, sir, we'll make sure you get
9 that.

10 MR. MATOUKA: The last thing is the parties
11 are going to be -- we stipulated to submitting issue of
12 attorneys fees to the Court.

13 THE COURT: Okay.

14 MR. MATOUKA: And is there a specific
15 briefing schedule you would like on that?

16 THE COURT: Nah, just what would be a
17 reasonable time for you to get that stuff to me?

18 MR. MATOUKA: Your Honor, I believe that we
19 should be able to have something to you by next Friday,
20 and then obviously Mr. Hurley will have a response.

21 MR. HURLEY: After that.

22 THE COURT: That works for me. So Friday
23 week you'll get me your request.

24 Two weeks you'll get me your response.

25 What else?

1 MR. HURLEY: I believe that's it.

2 THE COURT: All right. Gentleman, I
3 appreciate it.

4 MR. MATOUKA: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. HURLEY: Thank you very much.

7 THE COURT: Thank you your patience with me
8 as I tried to wade through this. All right. We're
9 adjourned.

10 (Court adjourned.)

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1 THE STATE OF TEXAS)

2 COUNTY OF JOHNSON)

3 I, Pamela K. Waits, Official Court Reporter
4 in and for the 413th District Court of Johnson County,
5 State of Texas, do hereby certify that the foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested in writing by
8 counsel for the parties to be included in the volume of
9 the Reporter's Record, in the above-styled and numbered
10 cause, all of which occurred in open court or in chambers
11 and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted, tendered in an offer of proof
15 or offered into evidence.

16 WITNESS MY OFFICIAL HAND this the 30th day of
17 November, 2024.

18 /s/ Pamela Waits
19 Pamela K. Waits, TCRR, TMR, CSR #4991
20 Expiration Date: 01/31/26
21 Official Court Reporter
22 413th Judicial District
23 Johnson County, Texas
24 204 S. Buffalo Avenue
25 Cleburne, Texas 76033
(817) 556-6041