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REPORTER'S RECORD

VOLUME 5 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 4, 2024, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable William C. Bosworth, Jr., Judge presiding, held in Cleburne, Johnson County, Texas:

Proceedings reported by Machine Shorthand.

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I N D E X

VOLUME 5

JURY TRIAL

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EXHIBITS

PLAINTIFF'S					
EXHIBIT					
NO.	DESCRIPTION	OFFER	ADMIT	VOL.	
1	Invoice		5	5	
2	Letter/Text Message		5	5	
3	Photographs		5	5	
4	Text Messages		5	5	
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7	Warranty		5	5	
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1	DEFENDANT'S				
2	EXHIBIT				
3	NO.	DESCRIPTION	OFFER	ADMIT	VOL.
3	1	EPR Invoices		8	5
4	2	Photographs		8	5
5	3	Photographs		8	5
6	4	Photographs		8	5
7	5	Photographs		8	5
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13	12	Photographs		8	5
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18	20	Dyno test data		8	5
19	21	Chat transcript		8	5
20	22	Video on USB		8	5
21	23	Oil Analysis Report		8	5
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23					
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25					

1 P R O C E E D I N G

2 (Jury not present.)

3 THE COURT: Are there exhibits to admit by
4 agreement?

5 MR. HURLEY: Yes, Your Honor, I think we've
6 come to an agreement on all but a few on each side.

7 THE COURT: Okay.

8 MR. HURLEY: So I will announce what we've
9 agreed to from Plaintiff, then I'll, as the Defendant, do
10 the same that way.

11 THE COURT: Okay. Sounds fine.

12 MR. HURLEY: The Defendants have agreed to
13 admission of Plaintiff's Exhibits 1 through 5, 7, 9, 11,
14 and 13.

15 MR. MATOUKA: Plaintiffs have agreed to
16 admission of Defendant's Exhibits 1 through 12, although I
17 believe Exhibit 7 has been withdrawn.

18 MR. HURLEY: Yes. There is no Exhibit 7.

19 MR. MATOUKA: And then 15 through 23.

20 THE COURT: All right. I'll approve the
21 agreement.

22 (Plaintiff's Exhibit Nos. 1 through 5,
23 7, 9, 11, and 13 admitted.)

24 THE COURT: The exhibits that are admitted,
25 if you'll -- do you have a -- have them in physical form?

1 MR. MATOUKA: Your Honor, those will be
2 coming in a physical form here soon. Alyson is out.
3 She's been getting copies made, so they should be here
4 by --

5 MR. HURLEY: And mine are in the notebooks
6 that I left with your clerk yesterday, so one for you, one
7 for the witness, and then I gave --

8 THE COURT: Just put like the official copy
9 on that. The witness copy can just live right there on
10 that shelf, and then the Court Reporter will take the
11 exhibits that have been admitted and have to be left with
12 the -- they have to be left with the court.

13 Okay. Anything else?

14 MR. HURLEY: No, Your Honor.

15 MR. MATOUKA: No, Your Honor. If it's okay,
16 I'd like to prep for using the electronics over here.

17 THE COURT: Okay. What -- just tell me what
18 you mean by that.

19 MR. MATOUKA: Hooking my computer up so I can
20 share the exhibits with the Jury.

21 THE COURT: Okay. I'm fine with that. There
22 is an HDMI cord on the back.

23 MR. MATOUKA: You already have one?

24 THE COURT: It should be on there on the back
25 of the switch, but the thing is not to unplug anything.

1 MR. MATOUKA: Okay.

2 THE COURT: You should be able to take that
3 HDMI cord, connect it to your laptop and put your laptop
4 on the podium and operate it that way.

5 MR. MATOUKA: Okay.

6 THE COURT: If it looks like you need to
7 unplug something, then ask first because otherwise
8 sometimes people go in there and unplug everything and
9 then nothing works and I've got to get the guy back out
10 here to fix the whole thing.

11 MR. MATOUKA: Okay.

12 THE COURT: If you'll give it a try.

13 (Off the record.)

14 THE COURT: The Jury is all here. Plaintiff
15 ready?

16 MR. MATOUKA: Pardon me?

17 THE COURT: Are you ready?

18 MR. MATOUKA: The Plaintiff just went out to
19 grab the physical copies from Alyson. They're coming in
20 now, so if...

21 THE COURT: That's fine.

22 (Off the record.)

23 THE COURT: Back on the record. Will the
24 attorneys clarify their admissions.

25 MR. MATOUKA: Your Honor, I made a mistake, a

1 misstatement when we were stipulating to the exhibits that
2 Plaintiff had stipulated to admit. We have stipulated to
3 admit all of their exhibits except 13, 14, and 15.

4 MR. HURLEY: And there is no Exhibit 7. It's
5 withdrawn.

6 THE COURT: Thank you. All right. I'll
7 approve the amendment.

8 (Defendant's Exhibit Nos. 1 - 6, 8 - 12,
9 and 16 - 23 admitted.)

10 MR. MATOUKA: Thank you, Your Honor.

11 THE COURT: Plaintiff ready?

12 MR. MATOUKA: Plaintiff is ready.

13 THE COURT: Defense ready?

14 MR. HURLEY: Defendants are ready, Your
15 Honor.

16 (Jury present.)

17 THE COURT: Thank you. You may be seated.
18 Please call your first witness.

19 MR. MATOUKA: Plaintiff calls Nicholas
20 Johnson.

21 THE COURT: Just kind of go all the way
22 around.

23 Raise your right hand for me.

24 (Witness sworn.)

25 THE COURT: Please have a seat.

1 THE WITNESS: Thank you.

2 THE COURT: Just kind of talk right into the
3 end of it.

4 THE WITNESS: Yes, sir.

5 THE COURT: Point it at your mouth. Say
6 "hello". I'll test the --

7 THE WITNESS: Good morning.

8 THE COURT: Try again.

9 THE WITNESS: Good morning.

10 THE COURT: All right.

11 MR. MATOUKA: Good morning.

12 THE WITNESS: Morning.

13 MR. MATOUKA: Morning, ladies and gentlemen
14 of the Jury.

15 NICHOLAS JOHNSON,

16 Having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MATOUKA:

19 Q. Could you please give us your name.

20 A. My name is Nicholas Johnson, but I go by Nick.

21 Q. And what do you do for work currently?

22 A. I'm a servant police officer in the Metropolitan
23 Police Service in London, in the U.K., and I'm based out
24 of New Scotland Yard. I'm an intelligence officer.

25 Q. So what does that mean?

1 A. So my job is basically to take a single piece of
2 intelligence that we get about some criminal activity that
3 is happening and develop that intelligence into something
4 that then can be passed to a reactive team that can then
5 make arrests, interviews, and then charging conviction
6 should we go to court.

7 Q. And how long have you been doing that?

8 A. I've been a police officer for 20 years now, but
9 I've been working as an intelligence officer since 2008,
10 so 16 years roughly.

11 Q. And is there any type of training that comes
12 along with that?

13 A. For the intelligence officers course, yeah, it's
14 a three, what, 12-week program of training going through
15 critical thinking skills, analytical and research kind of
16 skills, and then covert tactics with surveillance,
17 photography and mobile surveillance and that kind of
18 thing.

19 Q. How do you employ those, I guess, investigatory
20 skills in your daily job?

21 A. I mean, they're fundamental. It's every aspect
22 of what we do. Like I say, we -- we get given a single
23 piece of intelligence, it can come from the community or a
24 covert source, and you have to -- my job is to both prove
25 or disprove that intelligence. It's to find out is what

1 we're being told actually happening and by the people that
2 are allegedly doing it. But, like I say, to disprove is
3 just as important because if it turns out that it's
4 somebody else doing it or if it's a different type of
5 criminality, we have to look at our resources and our
6 tactics of how best to deal with what's going on in front
7 of us.

8 Q. And before you were a police officer, did you
9 have any jobs?

10 A. Yes.

11 Q. What?

12 A. Um, so after I left college, which is a different
13 college to what you guys have, it's a slightly -- 16 to 18
14 years old, I worked in a factory run by a company called
15 Federal-Mogul, which is an American company, and I used to
16 make camshafts for diesel Perkins Engines, BMW B12s, Rover
17 for -- I don't know if you have Rover out here. It's like
18 a small British manufacturer. So I did that for 18
19 months, two years, and a bit of bar work, did social
20 building skills, learning how to talk to people from all
21 different kind of backgrounds. And then, yeah, joined the
22 police at 21 years old.

23 Q. Do you have any hobbies?

24 A. Yep. Primarily cars and bikes. I've been a -- I
25 think you guys call it a gearhead out here, petrolhead

1 over in the U.K. My dad was a mechanic growing up. And
2 always been into racing and things like that. So, yeah,
3 cars and motorcycles are my main hobby. Obviously, my
4 kids and my dog, that's the other drain on my life. Yeah,
5 family life, cars, bikes, work. That's pretty much me.

6 Q. And so when you talk about cars and bikes being
7 your hobby, I guess, can you describe like what you've
8 done with them?

9 A. Yeah, yeah. I mean, it's kind of all. Like I
10 said, my dad was a mechanic, so kind of following in dad's
11 footsteps, interested in cars, always been a tinkerer. I
12 like learning how things work, figuring out how to improve
13 them. So like the modifying car scene is just as big in
14 the U.K. as it is here really, so, yeah. I think one of
15 my main character traits is I like knowing how things
16 work, figuring out how they work, how to fix them. And,
17 yeah, so I'm into road trips, going to car shows, track
18 days. We've got some pretty good circuits in the U.K. for
19 Formula 1 and stuff. So both cars and bikes, taking the
20 kids out, nice country drives, yeah, that's kind of that.
21 They're my main hobbies, the cars and the bikes.

22 Q. You mentioned car shows. Are those a big thing
23 in the U.K.?

24 A. Yeah, I mean, again, there's a lot of
25 similarities to over here. You've got kind of your local

1 car meets with all the car guys local to your area, and
2 then you've got your national, your big national shows.
3 There's a big one up every year that's at the National
4 Exhibition Centre up in Birmingham, which is kind of the
5 main -- country's biggest exhibition. I don't know what
6 else to call it other than exhibition, so to speak,
7 display area. And then, you know, British Motor Show and
8 all the usual kind of big calendar events for car guys in
9 the U.K.

10 Q. So with these hobbies of cars and bikes, do you
11 own any?

12 A. Yeah. So I've got my Nissan 300 Zed-X, which I
13 call a Zed. I've got a little Suzuki Vitara
14 four-wheel-drive off-roader thing for going off out in the
15 country with the kids and getting muddy. And I've got my
16 Honda Fireblade, which is a mid-nineties superbike.

17 Q. And can you -- what's special about those
18 vehicles, I guess?

19 A. Um, the -- the Zed is kind of the car that I
20 bought myself as a present for passing my intelligence
21 officers course. I had -- I owned another one previously,
22 which was a present to myself, for when I passed out of
23 police college, which I sold to help finance my first
24 house purchase with my wife. And so, yeah, after I passed
25 my intelligence officers course, I treated myself again.

1 That is -- that's a car I will never sell. That's -- that
2 is my -- that's -- it's part of the family even. I think
3 I've threatened to sell it out of frustration more than on
4 a couple of times, and the wife has told me, "No, no, no,
5 that's part of the family. You can't give up on it.
6 You've got to figure out what's wrong and sort of fix it
7 one way or another." And the kids love it, yeah, so that
8 one is part of the family.

9 The Suzuki Vitara was bought as a replacement
10 car while the Zed was off the road with the engine issues.

11 And the bike is -- I've been riding bikes
12 since, again, I was a kid. Used to do Motocross as a kid.
13 And that's kind of -- if the Zed is not available, the
14 bike is kind of my next best thing. That takes my -- my
15 petrolhead adrenaline kind of desires, the thing, you
16 know, it's my time. I like going out on the bike. That's
17 my time. I'm on my own. Let's me clear my head and deal
18 with the stuff that you've got to deal with in the police
19 in London.

20 Q. Do you do any racing with any of those vehicles?

21 A. Not competitively, no. More, um, I don't know
22 what you call it, like recreational track day. But
23 there's no official timing. It's not a race series.
24 It's just same as you guys have over here. Just a
25 pay-and-you-go kind of setup.

1 Q. So when did you buy the Nissan?

2 A. 2009.

3 Q. Okay. And, I guess, can you kind of walk me
4 through some of the work that you've done on it since then
5 up until 2018?

6 A. Yeah, everything. It started off as -- So it was
7 imported from Japan, so there was some stuff on it that
8 didn't work with kind of U.K. fuels, and the suspension
9 was like scaffold poles. It was rock hard. So some minor
10 bits, and slowly kind of modifying the engine, and for
11 more power, body work restoration, so that -- a full Reese
12 brake, glass out, underside.

13 It's kind of just an ongoing project car.
14 Anytime there's some spare funds that I can kind of spend
15 on the car, I work through, changing, modernizing, I
16 suppose, is probably the best, best way I could put it.
17 Just want to keep it up to modern standards, keep good
18 componentry on it that's going to last and is of good
19 quality. And at the end, every time, unfortunately, I've
20 had a couple of failures in its -- in its past, but like I
21 said earlier, I don't let these things defeat me. I'm
22 going to move on and try and figure out what went wrong
23 and build on it. It's a learning experience at the end of
24 the day trying to figure out what went wrong, how to
25 prevent it from happening again, and trying to improve the

1 car so we get some longevity and do the important thing,
2 which is spend some time in it on the track with the car,
3 with the wife and with the kids and enjoy it. That's what
4 it's there for.

5 Q. Do your kids enjoy driving the car?

6 A. I wouldn't let my kids drive my car. Do they
7 like spending time in my car? Yeah, absolutely. My
8 eldest is my daughter, so she's 12, coming on 13. She's,
9 obviously, had a bit more time in it than my youngest,
10 which is my son, who has just turned 5. Obviously, the
11 car has been off the road now for coming up to three
12 years, could argue five, give or take a couple of months
13 in the middle where it was running. So he's kind of had
14 limited experience to spending time in it. But, yeah, my
15 daughter has. She's been in it since she was tiny.

16 Q. So you mentioned some failures. Did you
17 experience an engine failure around 2018?

18 A. Yeah, it was -- it was just before then. It
19 would have been probably around 2016, but financial
20 constraints kind of meant I couldn't really do anything
21 with it. So around 2018 was when I was kind of getting
22 ready to, right, I've got the cash available to be able to
23 fix this and improve it yet again, hopefully.

24 Q. And so when you were looking to -- I guess, what
25 were you looking to do around 2018?

1 A. Um, fundamentally, I wanted to kind of spend some
2 money on the engine as a final kind of -- I want to get it
3 done properly. I would like -- I've done little things.
4 I've paid other people to do little things, and they
5 haven't quite worked out or had the results that I really
6 wanted. So I kind of -- I had saved up and put a lot of
7 money aside to do, like, let's build this engine properly
8 so it's going to be done, I'm never going to have to do it
9 again, I can concentrate on other things on the car that I
10 think need some attention.

11 So that's when I started looking around
12 trying to find a company that could build an engine to
13 fundamentally do what I needed, which was a reasonable
14 increase in performance and have the componentry inside
15 that really have the longevity that I wanted, so, you
16 know, effectively, I could throw anything at it and it
17 would be bulletproof, it should be able to cope with more
18 than what my actual needs were.

19 Q. And how did you go about looking for a company to
20 do that?

21 A. I went -- So through the years, obviously, I
22 bought parts for my car, and while they did sell my car in
23 the U.K., there's not many companies out there in the U.K.
24 that sell any kind of performance aftermarket parts. And
25 it was a really popular car over here in the States, so,

1 you know, three or four pretty big companies that sell
2 parts and make parts for the car. So the logic to me was,
3 well, if this is where all the parts are available, this
4 is where the specialists are going to be who actually
5 build these engines to the kind of power levels and
6 specification that I really wanted. So I started
7 researching, so the owners clubs and usual places, you
8 know, your Facebook and Instagram, to see which businesses
9 were good.

10 And I had kind of built a bit of a rapport
11 with Mr. Wilson, Engineered Performance Racing, in kind of
12 the buildup to 2018. I ordered a couple of small parts
13 that he produced and to rectify a couple of the issues I
14 was experiencing on a previous engine build. Kind of
15 through communication with him, I kind of built up a good
16 feeling, a good rapport that he was capable of doing the
17 work that I really wanted doing.

18 So, yeah, in 2018 was kind of when I decided
19 to commission the build after speaking with Mr. Wilson and
20 deciding where I wanted to go and how we were going to do
21 things, the complications, me being in the U.K. and him
22 being over here. So all those aspects were kind of
23 covered in the conversation building up to around November
24 2018.

25 Q. And you mentioned forums and, you know, Facebook

1 and stuff. Is there a reason why that's where you were
2 doing your research?

3 A. Yeah, I think time -- things have changed a
4 little bit more in more recent years, but certainly, you
5 know, early 2000s, 2010s, a lot of stuff happens on the
6 Internet when -- that's where car guys would communicate
7 to find out specific things about their cars and what
8 parts were available and stuff, where a lot of discussions
9 and research could be done to kind of identify who in the
10 marketplace had a good reputation, was doing, like I said,
11 the kind of work that I was looking to have done.

12 Q. And so was a lot of this research based on word
13 of mouth?

14 A. Yeah, yeah. I mean, it's -- some of it is word
15 of mouth of other people's experiences. Some of it is
16 what EPR or Engineered Performance Racing put out
17 themselves, showing their work. Obviously, others were
18 doing the same. Just because I think I kind of built that
19 somewhat relationship with Mr. Wilson with technical help,
20 buying a few small parts, that's kind of what steered me
21 more towards using his company.

22 Q. Okay. And so can you describe -- I guess you --
23 you had some conversations with him about having an engine
24 build, yeah?

25 A. Yes, that's correct.

1 Q. Okay. Can you kind of describe what those
2 conversations were like, what you were looking for?

3 A. Yes. I -- I had kind of a power goal in mind,
4 but I also was kind of on the -- working towards an ethos
5 of I wanted an under-stressed engine. So if I wanted to
6 make 600 horsepower, really I wanted the engine to be
7 built for 8, 900, you know, significantly more than what I
8 actually wanted to do because I want to keep it under
9 stress. I didn't want to be pushing every component
10 inside that engine to its absolute limit to try and reach
11 the power goals that I would like.

12 So, yeah, we had more conversations about
13 what parts he could supply, what processes he could do to
14 the components of the engine. And that kind of, even
15 after the initial kind of commissioning of the build,
16 those conversations continued. There was -- obviously, I
17 had kind of a fixed budget, start off with how much I
18 wanted to spend, but then Mr. Wilson was developing other
19 parts and other processes that -- I kind of did the man
20 math, see how I can make this work, I can spend this extra
21 bit of money on camshafts and cylinder porting and stuff
22 like that. It was an ongoing conversation from November
23 2018 all the way through to when the build was probably
24 finalized.

25 Q. And in November of 2018, did you come to an

1 agreement with Mr. Wilson as to an engine build?

2 A. Yes, I did. Yeah, Mr. Wilson provided a invoice,
3 slash, quote of the work that he would do and the parts
4 that he would supply, the parts that I would send from the
5 U.K. over to him to be processed, modified, adapted for
6 the needs that the engine had. And that's when I paid --
7 I paid him in two sections. I paid for the parts up
8 front. Obviously, knowing I was an international
9 customer, I wanted to show good faith in him as a company.
10 So then I paid the outstanding balance at that initial
11 commissioning time to kind of pay the full amount,
12 effectively. And then there was subsequent payments after
13 when we made some adjustments to extra processes and parts
14 that I decided to add to the build.

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

16 THE COURT: You may.

17 Q. Mr. Johnson, can you look at the first pages of
18 what's been marked as Plaintiff's Exhibit No. 1. Do you
19 recognize those documents?

20 A. Yes, I do.

21 Q. All right. Can you kind of -- can you describe
22 what the -- what we're seeing here?

23 A. Yes. So the first one is an invoice for a -- one
24 part, and the second, the lower plenum CNC Keensert
25 upgrade is a part, slash, process that has to be done.

1 Q. Is this one of the invoices from November of
2 2018?

3 A. Yes, that's correct.

4 Q. And this invoice was for how much?

5 A. \$1,400.

6 Q. And if we go to the next page, is that also an
7 invoice from --

8 A. Yeah, I think that one is a duplicate. They're
9 the same invoice number.

10 Q. Okay. My apologies. The third page?

11 A. Yep. So, again, that's -- that's the initial
12 commissioning invoice that I described. That was the vast
13 majority of the work that I had asked to be done.

14 Q. And that's a two-page invoice, correct?

15 A. Yes, that's correct.

16 Q. And what was the total for that invoice?

17 A. \$15,614.

18 Q. And did you pay both of those invoices in
19 November of 2018?

20 A. Yeah, so it would have been a slight crossover,
21 late November and early December, just because of how long
22 some of the balance transfers take to -- from a U.K. bank
23 to a bank over in the U.S.

24 Q. And how did you pay for those?

25 A. Like I say, by -- I think it was a CHAPS balance

1 transfer, basically an online transfer through my bank
2 directly into Mr. Wilson's account.

3 Q. And was that to -- was that to an Engineered
4 Performance Racing bank account?

5 A. No, I believe that was Mitchell Wilson's account.

6 Q. Okay. And so after, after this initial payment
7 in November of 2018, what was the process going from there
8 in terms of the engine build?

9 A. So my understanding at the time was the timeline
10 that Mr. Wilson was going to work to was approximately a
11 16-week build time. And then throughout that process, he
12 would send me photos of the parts that were going to be
13 used, the -- kind of the end result, some of the processes
14 that he had completed to start the engine build itself.
15 Like I say, there was, you know, there was some
16 adjustments with some new parts became available and the
17 processes that I then spent some extra money on to do that
18 work.

19 Q. And did you send Mr. Wilson any parts of your
20 own?

21 A. Yes, I did. I sent him my cylinder heads because
22 they were quite a rare item of a later-year car, and some
23 extra parts, like kind of the intake manifold that sits on
24 the top of the engine, the exhaust manifolds, and the
25 turbocharger housings that I wanted some extra work.

1 There was a ceramic coating that EPR offered on it to have
2 done.

3 But I didn't send the actual, the block, the
4 bottom end of the engine. We'd agreed that Mr. Wilson
5 would provide that. It wasn't economical for me to send a
6 big chunk of iron across the Atlantic to work on where
7 there was plenty of them available here that Mr. Wilson
8 could supply. And same with the crankshaft, he would
9 supply that as well.

10 Q. So just for my clarification, is the engine block
11 like the main piece, when we think of an engine, it's that
12 giant chunk, right?

13 A. That's correct, yeah.

14 Q. And did you have any concerns about any of the
15 parts that you were sending?

16 A. No, not -- Um, there was -- the cylinder heads,
17 because, obviously, I had had previous -- previous work
18 done, and they're quite rare cylinder heads, and I was
19 looking at having further processes, CNC porting done on
20 these cylinder heads. I was a little bit concerned that
21 they may have been skimmed beyond the factory limits of
22 what was -- the manufacturer kind of say is acceptable, so
23 I had concerns about that. But I spoke to Mr. Wilson
24 about that and I asked him, basically, to double check,
25 are you happy with these parts before I spend, you know,

1 this couple of thousand dollars on having all this machine
2 work done to them if they're junk, if they're no good, if
3 they can't be used. But I got several reassurances from
4 Mr. Wilson that those cylinder heads were good to go.
5 They, you know, they needed a tiny little bit of work, but
6 there would be no problem using them going forward.

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

8 THE WITNESS: Thank you.

9 Q. I just handed you what's been marked as
10 Plaintiff's Exhibit No. 4. And on the first page, what's
11 that appear to be?

12 A. That would be messages between myself and
13 Engineered Performance Racing's Facebook Messenger page.

14 Q. And can you -- and is -- and who is the blue
15 text?

16 A. The blue is me.

17 Q. And then the gray would be?

18 A. Mr. Wilson through the EPR's page.

19 Q. Okay. And can you describe what you're talking
20 about in this message?

21 A. Um, yeah. I mean, the top message says it's a
22 question about the cylinder heads and some of the extra
23 work that was going to be done. I ordered some larger
24 higher performance camshafts. They needed some work to
25 the cylinder heads so they would fit. And then as you

1 say, I asked, "No dramas with the head thickness,"
2 question mark, which was the concern that I had. The
3 thickness, you know, was below what was needed. And as
4 you can see, I've got the reply saying, "Nah. You're
5 fine." And that was my main concern with the cylinder.

6 Q. Thank you. So you indicated this was -- you
7 thought it was going to be a 16-week build?

8 A. Yes.

9 Q. Okay. And so the -- from the initial payment in
10 November/December of 2018, how did that process proceed
11 from there?

12 A. There were delays. I think I eventually got the
13 engine in mid-August 2019. The delays are -- recall there
14 was problems with some other people's work that Mitch,
15 Mr. Wilson, sorry, was doing. That kind of pushed my
16 engine back in the priorities.

17 Q. And I want to go back to something you mentioned
18 earlier, about what you were -- you were talking about in
19 terms of what you were looking for in the engine. You
20 mentioned being overbuilt, right?

21 A. That's correct.

22 Q. And was Mr. Wilson aware of that?

23 A. Yeah, absolutely. We had a number of
24 conversations about what I was hoping to achieve and
25 how -- how I wanted it to get there. And Mr. Wilson was

1 completely on board with that. He was more than willing
2 to build an engine to the specification that I kind of
3 wanted.

4 Q. And could you turn to page 4 of Exhibit 4.

5 A. Is this the one that's got the date, is it 6/6/19
6 at the top?

7 Q. Yes.

8 A. Got it.

9 Q. And under the -- there's an image about halfway
10 through the text. And then, once again, the blue is you,
11 correct?

12 A. That's correct.

13 Q. And is -- what is this conversation about under
14 that picture?

15 A. Um, it's going to be describing about what I
16 wanted. I wasn't after the headline numbers, the big,
17 "Oh, look, my car's got a thousand horsepower." That's
18 not what I was after. I wanted something -- you know, I
19 knew I was limited by the size of my turbos, but I wanted
20 an engine that could cope with, you know, with way more
21 than I was ever going to use. So it would be, as I said,
22 wanted over-engineered, over-specced, under-stressed, so,
23 you know, the engine doesn't have to work as hard to make
24 the power that I want, I'm hoping to achieve.

25 Q. And Mr. Wilson recognized that you wanted it to

1 be overbuilt, correct?

2 A. That's correct, yes.

3 Q. Thank you. So you think you got the engine in
4 from Engineered Performance Racing in about September of
5 2019?

6 A. Yeah, it was around late August, beginning of
7 September 2019.

8 Q. Okay. And I guess, first of all, how did it
9 arrive?

10 A. It was in a -- I think it was a U-Haul crate, a
11 big, wooden box, a shipping crate that Mr. Wilson had made
12 like a metal cradle to hold -- hold the engine in place.
13 And it came with some bottles of break-in running-in
14 engine oil. I think there were some other components in
15 there as well. Obviously, the parts that I turned out to
16 be processed that then all come back with the engine.

17 Q. And so upon receiving this engine, what was your
18 plan and what did you do with it?

19 A. Obviously, the plan was to fit it to the car,
20 plumb, you know, attach all the ancillary parts, plumb it
21 all in, make sure it was ready, ready to go. And my plan
22 was to not start the engine up in my space that I was
23 renting out to work on the car. I wanted to take it to a
24 specialist company that would do a calibration of the
25 engine and the electronics, make sure everything was good,

1 and then do a running-in process on the dyno, which, a
2 device that bolts to the car and helps measure the power
3 and set the car up. But there was some problems even on
4 initial installation of putting the engine in the car that
5 were found by myself.

6 Q. And in that box, did you receive any additional
7 documents?

8 A. Of course. Sorry. Yes, I got a orange binder
9 which had what was called the build sheet which had all
10 the tolerances, the clearances for the components inside
11 the engine. There was a document which had break-in
12 instructions, and then there was the warranty document.

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

14 THE COURT: Of course.

15 Q. And I'm giving you what's been marked as
16 Plaintiff's Exhibit No. 7. Have you seen this document
17 before?

18 A. Yes, I have.

19 Q. And what is it?

20 A. This is the warranty disclosure for my engine.

21 Q. Okay. And was it -- and there's kind of two
22 sections to it, correct?

23 A. Yeah. Well, there was this and then there was a
24 supplementary document that was along with it.

25 Q. Okay. And if you -- can you flip through that

1 real quick and make sure, see that everything is there?

2 A. Yep.

3 Q. And so is that the warranty and the supplementary
4 document with the warranty?

5 A. Yes, that's correct.

6 Q. Okay. And can you, I guess, describe what you
7 understood from this warranty?

8 A. Um, so I suppose we go chronologically, is the
9 first part would have been the break-in cycle for the
10 engine, which was -- gave instructions of the kind of oil
11 to use and for what time periods, how many times it should
12 be changed out. And then after that process was complete,
13 that I was then free to use whatever oil I -- that I chose
14 to use. And then the actual main document itself,
15 obviously, goes through what Engineered Performance would
16 be liable for should there be a failure and what they
17 wouldn't be liable for.

18 Q. And is this one of the two pages for the
19 break-in?

20 A. Yeah, that's the first page.

21 Q. Okay. So I just want to go through, make sure we
22 had these documents that you received.

23 But you had mentioned some problem. You
24 mentioned another document that you got, a -- the build
25 sheet, correct?

1 A. That's correct, yes.

2 MR. MATOUKA: Your Honor, may I approach with
3 Mr. Hurley?

4 THE COURT: Yes.

5 (The following was held at the bench
6 outside the hearing of the Jury.)

7 MR. MATOUKA: Your Honor, this is -- Oh, I
8 didn't have the -- share, but my apologies. This is a
9 disputed exhibit.

10 MR. HURLEY: Which number is it? Which
11 number exhibit?

12 MR. MATOUKA: This -- I believe this is 8.

13 MR. HURLEY: Okay. Your Honor, my objection
14 to it is that it's misleading because it's admitted that
15 this was not an accurate -- there's typographical errors
16 in it, and there is an accurate one written in hand sent
17 to them later. So we think rather than have two competing
18 exhibits, confusing and misleading, it should only be the
19 one accurate sent later.

20 MR. MATOUKA: We don't know if the other one
21 was accurate.

22 MR. HURLEY: From our -- the testimony you'll
23 hear from Mr. Wilson.

24 THE COURT: I've not heard anything that
25 would make any exhibit admissible other than by agreement

1 at this point.

2 MR. MATOUKA: He got it in the box. It came
3 with everything else. This is the build sheet that tells
4 him --

5 THE COURT: I don't -- I mean, I don't know
6 what that is.

7 MR. MATOUKA: Okay. Then can I ask him?

8 THE COURT: Work on the foundation.

9 (The following was held in open court.)

10 Q. (BY MR. MATOUKA) Mr. Johnson, you mentioned a
11 build sheet.

12 A. That's correct.

13 Q. Can you describe what that is?

14 A. Um, so it was a document that listed -- the top
15 of it, I believe, it was the size of the pistons used, the
16 size of the connecting rods that we used, the clearances
17 for the ring gap, for the clearances for the bearings on
18 the bottom of the connecting rods, and further down it had
19 the measurements of the housing bores for the crankshaft
20 where the crank lives, the size of the crankshaft itself,
21 and then the bearing clearances, that you subtract those
22 numbers and you end up with a clearance which says how
23 much oil clearance the engine's got. Then further down it
24 had some other bits about what the -- I think it might be
25 some serial numbers, what type of part was -- what brand

1 bearing had been used.

2 Q. And you mentioned oil clearances. Can you
3 elaborate on, I guess for people who don't -- who don't
4 know anything about engines, what are you talking about
5 there?

6 A. For the moving parts in an engine to be
7 lubricated with oil. So we put engine oil in our engines.
8 There needs to be a space for that oil to live in for it
9 to lubricate whatever moving part that it needs to
10 lubricate. So that would be -- oil clearance would be the
11 gap that that oil lives in to support and -- sorry --
12 support and lubricate the parts, that particular
13 component.

14 Q. And jumping forward, and we'll get to this later,
15 what was -- What did you determine was the ultimate cause
16 of the final failure of your engine?

17 MR. HURLEY: Objection, Your Honor. Calls
18 for an expert opinion that he's not qualified to give.
19 He's not been designated an expert. This would require
20 expert opinion.

21 THE COURT: Sustain.

22 MR. MATOUKA: Your Honor, he did
23 investigations. This would be his lay opinion as to what
24 his investigations revealed.

25 THE COURT: Okay. I'll sustain the objection

1 on lack of foundation. I thought we were working on the
2 exhibit that you were trying to build a foundation for an
3 exhibit that I don't know the number of.

4 MR. MATOUKA: It's 8, Your Honor, and --

5 THE COURT: 8.

6 MR. MATOUKA: And the oil clearances are
7 relevant in --

8 THE COURT: I mean, 8 is not admitted into
9 evidence, correct?

10 MR. MATOUKA: Right, Your Honor.

11 THE COURT: So you were questioning him on
12 the foundation for the admissibility of Exhibit 8.

13 MR. MATOUKA: I was trying to demonstrate
14 relevance.

15 THE COURT: If we're going to skip ahead to
16 something else, then you need to tender that back to
17 the -- I mean, you haven't offered 8.

18 MR. MATOUKA: I'd like to offer 8 into
19 evidence.

20 THE COURT: You haven't discussed 8 other
21 than me asking what the number is, so....

22 MR. MATOUKA: May I approach the witness?

23 THE COURT: You may.

24 Q. (BY MR. MATOUKA) Have you seen this document
25 before?

1 A. Yes, I have. Yes, I have.

2 THE COURT: What document did you hand him?

3 MR. MATOUKA: I have handed the Plaintiff
4 what's been marked as Plaintiff's Exhibit No. 8.

5 THE COURT: Okay. Were you referring to 8
6 when you answered his question?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay.

9 Q. Is that the document you received in the box
10 along with the warranty documents and the break-in
11 procedures?

12 A. That's correct, yes.

13 MR. MATOUKA: Plaintiff moves to admit
14 Exhibit 8 into evidence.

15 MR. HURLEY: Again, Your Honor, this is not
16 the accurate build book because it was later determined
17 that there was typographical errors in it, so we believe
18 it's misleading, therefore, under 403 and 404, we think it
19 should not be admitted into evidence.

20 THE COURT: Okay. The exhibit is admitted.
21 8 is admitted.

22 (Plaintiff's Exhibit No. 8 admitted.)

23 Q. (BY MR. MATOUKA) So, Mr. Johnson, this is what
24 we've been talking about in terms of a build sheet; is
25 that correct?

1 A. Yes, that's correct.

2 Q. And you discussed oil clearances. And can you
3 identify where on this document those are located?

4 A. So you've got your con-rod, bearing and piston
5 clearances in the very top table, I supposed you'd call
6 it. And then halfway down the page you've --

7 THE COURT: This red button here is the
8 laser. You can stand up if you'd like.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: And point to the screen.

11 THE WITNESS: Which one was it again?

12 THE COURT: The round one.

13 A. This one is for your piston clearances and your
14 connecting rod clearances, and then the bearings. Then
15 you've got oil clearance on that row. And then the bottom
16 on this was all for the crankshaft, so the size of the
17 housing bores that the crankshaft lives in, the size of
18 the journal, so the part of the crankshaft that is going
19 to live in that hole, and then the oil clearance result of
20 that. But, obviously, there's a measurement missing off
21 that section, which would be the thickness of the bearing
22 which is -- you need that thickness to be able to
23 calculate what -- to make the sum work, basically, to give
24 you your oil clearance.

25 Q. Thank you.

1 A. Yes, sir.

2 Q. But you -- so those are the documents you
3 received along with the engine, correct?

4 A. That's correct.

5 Q. Okay. So then you told us your plan on what you
6 wanted to do. And tell me how you went about, you know,
7 installing the engine.

8 A. So the first thing was to put the ancillary
9 parts, so the turbochargers, the alternator, the power
10 steering pump, all the stuff that I kept over here that
11 needed to go back on the engine, put the engine onto a
12 stand and put all that stuff on. In the case of lifting
13 the engine, putting it into the car itself and then
14 hooking up the kind of coolant hoses, all your air hoses
15 and electronic, all the wiring loom.

16 But prior to actually getting the engine into
17 the car, I installed -- there was a dipstick that I
18 installed. When I installed the actual dipstick itself
19 and put it into the engine, there was a resistance that I
20 could feel. The dipstick on the Zed engine is like a long
21 wire rather than -- It's a long wire with like a weight at
22 the bottom, it's got your oil marks on it. When that went
23 in, there was a resistance to it going in, which there
24 wouldn't be in a factory car, in a stock engine. It would
25 just go all the way in as normal, so when I tried to

1 remove it, it caught on something internally in the
2 engine, which then pulled that, like the little weight,
3 the thing that's on the end of the dipstick off the wire
4 which has then fallen into the engine.

5 So I communicated this to Mr. Wilson to tell
6 him what happened. And, obviously, I think part of the
7 warranty document, it says that any work that is to be
8 done on the engine has to be done with his express
9 permission. So I kind of -- I informed him what happened.
10 It's -- To take the oil pan off the engine, it is a
11 straightforward job. It's not technically difficult. So
12 I had to kind of authorize it. He was happy for me to
13 take the oil pan off, retrieve the bit of metal that was
14 floating around in the bottom of the engine. And I kind
15 of figured out a solution of how I can then use the
16 dipstick to know how much oil I had in my engine, and then
17 reinstalled it, showed him photos of the work of kind of
18 what I had done, that he was happy with the standard of
19 work that I had done, which he was.

20 So then, obviously, going forward, put the
21 engine in the car, started adding the fluids, put the
22 running-in oil into the car that had been provided, and
23 added the coolant, which then emptied itself out onto the
24 floor of the car -- onto the floor underneath the car. So
25 I did some investigation and found that a couple of the

1 bones, I suppose you'd call them, that live inside of the
2 engine that seal off the coolant chambers inside the
3 engine were missing. So, literally, as I poured coolant
4 into the radiator, it was pouring straight out the bottom
5 of the engine.

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

7 THE COURT: You may.

8 Q. Hand you what's been preadmitted as Plaintiff's
9 Exhibit No. 3, and if you could turn to page 28 of that.
10 I believe you'll --

11 A. Yep.

12 Q. Okay. Is that the photograph you're looking at?

13 A. Yeah, I think it's rotated slightly wrong on your
14 screen, but if you can turn it clockwise 90 degrees, I
15 think that'd give you a better idea. There you go.

16 Q. And so what are we looking at right here?

17 A. So that is the bottom side of the engine. And
18 then if you see kind of where the braid --

19 THE COURT: You can use the pointer.

20 THE WITNESS: Oh, yeah, sorry.

21 A. So you got the steel braided tube, which is the
22 oil feed for one of the turbos, and then this hole here is
23 where there should have been a threaded bone that seals
24 off the coolant chamber inside on the side of the engine.

25 Q. And what is the orange fluid?

1 A. That is the coolant that has poured out of the
2 engine.

3 Q. And so there just was no plug here?

4 A. No. It was completely missing. I text
5 Mr. Wilson to inform him.

6 THE WITNESS: I sit back down again? Cool.

7 A. Text Mr. Wilson to inform him that it was
8 missing. And he said the -- basically, apologized, that
9 it was an oversight on his part and I just needed to find
10 a particular size bung grub screw to seal up that hole,
11 but it should have been in there in the first place.

12 Q. So were you able to -- you were able to seal that
13 hole eventually?

14 A. Yes, I was.

15 Q. Okay. And so you've added -- you've got your
16 coolant in now. What else do you do?

17 A. Um, obviously, I added in the running-in oil that
18 had been provided. I had a conversation with Mr. Wilson.
19 Obviously, his running-in document prescribes one way of
20 running it in. The other way that you can do it is on a
21 rolling road. It's more consistent, almost like lab --
22 not laboratory conditions, but it's, you know, it's a
23 controlled environment to run an engine in. So I agreed
24 with him that I would take it to a company called Lloyd
25 Specialist Development, which was a couple of hours away.

1 I wouldn't start the engine at my place. It would be done
2 by them, and then we could basically fire up the engine,
3 get it calibrated, and then go through that running-in
4 process on the dyno, and then that would enable me,
5 basically, to get to run the engine in quicker and get on
6 to fully synthetic fuel -- fully synthetic oil, which is
7 what I was going to use, you know, for the long term. But
8 it was -- we were both happy that that was a shorter
9 running-in method, because it's done in such a controlled
10 environment, it actually speeds up the process. And
11 everybody was happy with that agreement.

12 Q. Can you, I guess, elaborate on what a rolling
13 road is for everyone who doesn't know.

14 A. Okay. So it's a device that -- There's a couple
15 of different variations. One is quite literally rollers
16 that you put the wheels, the driven wheels of the car on,
17 that you basically drive the car statically. The other
18 type, which is a type I used is called a hub dyno, which
19 instead of putting the car on, you take the wheels off and
20 bolt the device to the hubs where the wheels would live,
21 and that is, in my research, found to be a more reliable
22 way of doing it because you don't have wheel spin or tire
23 slip or any other -- It's a lot -- You can control the
24 rate of acceleration of the engine and the amount of load
25 that is put into the engine, not at an infinitesimal

1 level, but under very controlled circumstances.

2 Q. So, I mean, for a layman, would it be fair to
3 understand that as, effectively, a treadmill for a car?

4 A. That would be the way, yeah, that's one way of
5 describing it, especially the roller style.

6 Q. Okay. And did you come across any other issues
7 before putting it on the rolling -- on the hub dyno?

8 A. Outside of the missing dipstick and the coolant
9 leak and -- Yes. When I put the -- kind of the -- all the
10 ancillaries on, I found that the belt that kind of came
11 off the main bottom pulley of the engine that fed the
12 house steering pump was misaligned, so it would --
13 basically, a belt would have to run in a straight line so
14 it doesn't spit itself off the engine. You could
15 physically see that the two pulleys that the belt was
16 going to run on were completely misaligned, and that
17 furthered itself that there's kind of a -- There's a big
18 fan that sits on the front of the engine that's for
19 cooling that's connected directly to the engine. It's
20 called a viscous fan. That was catching on the bottom
21 pulley of the engine.

22 So the very first invoice you guys saw that
23 said ATI damper at the top, that was the pulley that
24 Mr. Wilson supplied. So there was some misalignments and
25 some foulings that needed addressing, that obviously were

1 not -- not as they should have been.

2 Q. And if you could go to pictures -- or pages 37
3 and 38 of Exhibit 3.

4 A. Yep, that's correct.

5 Q. And can you tell us what we're looking at here?

6 A. So, yes, kind of as I was describing really, so
7 this pulley here is the bottom crank pulley of the engine,
8 and then, see, there's the belt, and kind of up here is
9 the pulley for the power steering. And then you can kind
10 of see that there's -- I don't know if you can really tell
11 in that photo, but it's misaligned, the pulley is kind of
12 one tooth further back than it should be. You can kind of
13 see the ribs in the pulleys.

14 Q. And if I go to the next page.

15 A. Yes. So that kind of demonstrates which, as I
16 was saying, the belt for the power steering comes off the
17 crank pulley.

18 Q. So you've overcome these issues. You've gotten
19 the engine in the car. You've gotten the car to Lloyd
20 Specialist. What happens when you get there?

21 A. So they put it -- they hook it up to their dyno,
22 and we start with some kind of base calibration, because
23 some parts hadn't been used before, so it was sensors and
24 some other bits that needed setting up and calibrating to
25 make sure that everything would talk to each other and

1 work as it should.

2 And then they attempted to start the car,
3 which it wouldn't start. The -- no -- you know, the start
4 motor would turn, the engine would rotate, but there was
5 no sign of ignition. It wouldn't start.

6 So the guys, myself and the guys at Lloyd
7 Special (sic) Developments kind of went through a bit of a
8 diagnostic procedure to see, okay, we've got some new
9 parts on here that were never used before, let's make sure
10 everything is wired correctly, nothing is -- nothing is
11 plugged in to the wrong sensor or anything like that. And
12 we did that for a good few hours and couldn't find
13 anything obviously wrong with it.

14 So then we did a compression test on the
15 engine to make sure that the engine had compression. I
16 had no reason to think that it wouldn't do; it was a brand
17 new engine. And it had no compression, so that's why it
18 wouldn't start. They did something called a cylinder leak
19 down test, which kind of is a measurement of where
20 pressure is lost inside the cylinder. You kind of put
21 compressed air into the cylinder. It will tell you if
22 it's coming out the valves or if it's coming past the
23 piston or if it's coming -- you've blown a head gasket and
24 it's coming through the coolant system. And they found
25 that the -- the valve, the air was escaping out of the

1 valves, which is why I had no compression in the engine
2 and why it wouldn't fire.

3 Q. And did you end up paying Lloyd Specialist
4 Development at all?

5 A. No. Also, I obviously communicated with
6 Mr. Wilson through the whole process of what was going on
7 and then what was found. It was very obviously a warranty
8 issue, that it was a machining and assembly fault which
9 was covered under the warranty, and Mr. Wilson agreed that
10 that appeared to be the case, so he paid for the
11 diagnostic work at Lloyd Specialist Developments.

12 And then from there, we went through the
13 process of arranging for the engine to be shipped back to
14 him in the States.

15 Q. And at that point, what did you do with the car?

16 A. Then, obviously, I had to transport the car back
17 to the workshop that I was renting out. I removed the
18 engine, basically used the box that it had been sent with
19 in the first place, and packaged up the whole engine,
20 getting ready to go.

21 And then I had some conversations with
22 Mr. Wilson with kind of how we'd go forward. It didn't
23 make sense to me sending the engine over to him, it be
24 repaired and then it be sent back to me, and then there be
25 another issue that would prevent it from running. It just

1 didn't make any sense. So we had the conversation, came
2 to an agreement that the engine, once it had been
3 repaired, would be placed on an engine dyno which
4 differentiates in that it's just the engine that it's
5 strapped to the machine rather than it going into a car
6 and then being run. It's put on an engine machine, and
7 then the running-in process would be done by Mr. Wilson.
8 It would be all set up. And then once he was happy that
9 everything was good, it would then be shipped to me, and
10 I -- then I know I've got a running, working engine that
11 was tuned to the level that we needed it to be, and go
12 from there.

13 Q. What did you do for storage for the car?

14 A. So, as I say, the car was stored in my workshop
15 that I rented out. And, obviously, it's not just the case
16 of the physical car; there's a lot of components that have
17 to come off the car to get the engine out, so like the
18 full exhaust system, the gearbox, the prop shaft. Because
19 I had spent a lot of money on a respray, I didn't want to
20 scratch any of the wing -- fenders, sorry, or the hood.
21 So all those came off to protect them, stop them from
22 being damaged.

23 So it's -- it wasn't just a car; it was
24 obviously a lot of components as well. So while the
25 engine was off, I continued to pay, obviously, for the

1 storage because the vehicle was immobile.

2 Q. And how much were you paying for that rent?

3 A. 360 pounds a month.

4 Q. And when did you start paying that?

5 A. I started paying that probably just before the
6 engine had originally been delivered because, obviously, I
7 knew I needed space to be able to install it, get it ready
8 to go off to Lloyd Specialist Developments to be run. And
9 the idea was once it was up and running, then I didn't
10 need that space anymore, the car would be kept at home. I
11 don't have a garage at my house.

12 Q. And are you still paying for that storage?

13 A. Yes, I am.

14 Q. Do you know what the exchange rate is for pounds
15 to -- 360 pounds to dollars?

16 A. Last time I looked, I think it was 1-dollar-27 to
17 the pound, somewhere like that, or like 88 P. to the
18 dollar. I can't remember which way around. I think it's
19 1-dollar-27 to the pound, roughly at the moment. So I
20 think that 360 worked out about 400 and -- \$420 a month,
21 somewhere around that kind of number.

22 Q. Okay. And so you ship the engine back to
23 Mr. Wilson and EPR?

24 A. That's correct. So it was a bit of delay in
25 physically sending it off because of tax rules in the U.K.

1 that I didn't want -- If I sent the engine out, when it
2 came back, I didn't want to pay import duty again for
3 stuff that I already owned, so there was some paperwork I
4 had to do that caused a bit of delay. And then I think
5 the engine was shipped out just before Christmas. It was
6 kind of second week of December, and then I believe it got
7 to Mr. Wilson around the 4th of January, 2020.

8 Q. And so after he received the engine, did he --
9 did you talk about the progress being made on it?

10 A. Yeah, so, obviously, he confirmed initial receipt
11 that he received the engine. And then I'd, obviously, I'd
12 asked, you know, "Have you had a chance to look at it
13 yet?" And nearly three months went by before Mr. Wilson
14 eventually opened up the crate to have a look at the
15 engine itself.

16 Obviously, prior to sending it, he was super
17 apologetic. Obviously, a mistake had clearly been made.
18 There was a problem with the engine that needed rectifying
19 that, obviously, he treated it as a priority, and he was
20 professionally embarrassed, I think was a phrase that he
21 used, about what happened and wanted to rectify it. But
22 then I, you know, come to agreement that I wouldn't put
23 anything on the Internet, I wouldn't make it public
24 knowledge. I was quite happy to keep it to myself, nobody
25 else's business. So, yeah, then obviously I start to get

1 a little bit frustrated that this apparent priority was
2 not opening the box for three months to find out what had
3 gone wrong with the engine. So it was around beginning of
4 March when the box was finally opened and the inspection
5 started to find out what had failed on the engine.

6 Q. And so, you know, when you've sent it back to
7 him, is it just -- is it just going to be the warranty
8 repair or were there any other -- was there anything else
9 you wanted to be done with that?

10 A. Well, obviously, to rectify the misalignment with
11 the pulleys that you saw the photo of. Obviously, fix --
12 fix the engine. And then, like I say, put it on the
13 engine dyno for it to be run in and calibrated over there
14 so when it was all completed I knew I was getting a
15 running, functioning engine.

16 Q. And did you make any additional purchases or
17 payments?

18 A. Yeah. So the type of ECU, which is kind of the
19 computer brain that controls the engine that I was using
20 was made by a company called Haltech, and I already had
21 one of those, but they released a newer version, and the
22 guy who myself and Mitch had agreed was going to tune the
23 engine, we kind of had a conversation, okay, now is
24 probably a good time to upgrade this. It enables us to do
25 better things with the engine. So there was a -- I paid

1 for that. Obviously, I paid for the -- the dyno time, you
2 know, as when that eventually happened. I think that
3 was -- I can't recall anything else.

4 Q. And how much did you pay for the dyno time?

5 A. I would -- So I know I paid the -- Mr. Pool, who
6 was the guy who both myself and Mr. Wilson agreed was to
7 tune the engine, so I know I paid him a thousand dollars
8 in -- for his time. And then I think the dyno cost was
9 somewhere around the \$1500 mark. I can't remember
10 exactly. I'm sorry.

11 Q. That's all right. And so he gets the engine in
12 January of 2020?

13 A. Yep.

14 Q. Opens it in -- opens the box in March?

15 A. Yep.

16 Q. When, when is the repair complete?

17 A. Um, so I don't think the engine was physically
18 completed until late November, 2020.

19 Q. Okay. And then was it ready to ship back to you
20 at that point?

21 A. No. So, obviously, that was the first point
22 where it had to, as we'd agreed, go on the engine dyno to
23 be checked, to be run in, to be tuned. But there was a --
24 when it -- when it did go into the engine dyno, there was
25 another failure.

1 I had kind of a group -- like a group chat
2 going with Mr. Pool, myself, Mr. Wilson. So the whole
3 engine dyno thing, nobody had done it that we knew of for
4 this type of engine, so we were kind of -- not pushing the
5 limits, but trying out something new. So I wanted to be
6 involved, you know. I was really curious how it was going
7 to go, so I thought it was kind of cool.

8 And then, again, they had problems with
9 starting the engine and getting it running. And it all
10 started sounding very familiar to what I had experienced
11 when I had the engine over in the U.K. in the car. So
12 then I asked, you know, said, "Have you guys done a
13 compression, sorry, a compression test on the engine?"
14 And, yet again, it had no compression, and there had been
15 another failure.

16 Q. And did Mr. Wilson ever tell you what that
17 failure was?

18 A. Yeah, the engine had bent its valves again, not
19 as bad as the first time, but it still bent its valves.

20 Q. So what happened after that?

21 A. So, obviously, it was taken off the dyno. It
22 went back to EPR. Mr. Wilson did some more work on it.
23 And then an issue around piston to valve clearance came
24 up, which is kind of -- how do I describe it. Is when --
25 when the pistons open in the cylinder heads and where the

1 piston is coming up in the cylinder, there's a point that
2 they get pretty close. Obviously, if you get too close,
3 the piston hits and it bends the valves and then you have
4 an engine that doesn't seal.

5 There is a measurement that you can take
6 called a piston to valve clearance. So I asked for that
7 measurement so I could add it to my build sheet. And
8 which I never got that measurement. Mr. Wilson, we kind
9 of decided -- chosen how he was going to try to rectify
10 the issue. He said he thought that the heads actually
11 were -- were an issue, and made an offer to exchange the
12 heads, cylinder heads for another set that he had kind of
13 ready to go, but a very similar specification to what I
14 had. Needed a bit of modification to make it work. There
15 was some, you know, small differences, but he was happy to
16 do that.

17 And, yeah, again the engine was reassembled,
18 and it went back onto an engine dyno a second time.

19 Q. And did it run fine on the dyno that time?

20 A. With difficulties. There was, again, some issues
21 with some of the set, like calibration of sensors to make
22 them -- get them to work properly, to get correct
23 readings. There was one that does kind of the cam timing
24 which is -- decides at what point the engine sparks the
25 fuel so it runs smoothly. There's sensors that read --

1 read how efficiently the engine is burning, so your O2
2 sensors or your lambda sensors. There was an issue with
3 those with a disparity between the sensors.

4 And then there was also an issue where the
5 engine wouldn't rev all the way as far as it should be.
6 So normally these engines rev around 7,000 RPM. This was
7 hitting a limiter at five-and-a-half-thousand RPM. And it
8 was a limiter that was being -- wasn't a mechanical
9 limiter; it was something that was being done with the
10 electronics. So Mr. Pool, and I believe Mr. Wilson, I
11 can't remember exactly, but I believe they were both
12 speaking to Haltech, who made the ECU, to see if they
13 could kind of problem-solve it.

14 They couldn't get to the bottom of what the
15 problem was, but the engine ran sufficiently that they
16 could do a running-in process, so to run the engine in.
17 I asked Mr. Wilson, you know, so I could be clear, really,
18 when I got the engine back, "Is this engine run in? Am I
19 good to go with what oil I want or is there anything else
20 that needed to be done?" And so I sought clarification on
21 that. And the feedback I got was, "Yeah, it's run in.
22 Might be worth doing one more -- one more period on
23 breaking oil and running-in oil, but after that, you're
24 good to go."

25 And then the engine was packaged up and

1 shipped back over to me in the U.K.

2 Q. Um, if you could, go to page 5 of Exhibit 4.

3 A. Page 5, did you say? Sorry, Paul.

4 Q. Yeah, 1 March 2021.

5 A. Yep.

6 Q. And can you tell me what this conversation is
7 about?

8 A. That's me asking how it's going on the engine
9 dyno. So this is, obviously, a message exchange between
10 myself and Mr. Wilson. And then Mr. Wilson explaining
11 that there's a limiter kicking in at 5,500, which I took
12 to mean 5,500 RPM.

13 Q. And that would be on page 6 where you asked, "Is
14 that where the limiter is kicking in?" And Mr. Wilson
15 responds, "Yeah, around there."

16 A. That's correct.

17 Q. And this is what you were talking about the
18 electronic issues was only running up to 5,500 RPMs?

19 A. Yeah, there was something the computer wasn't
20 happy about that wasn't instantly obvious to the guys who
21 were there in the shop. It was just causing a limiter and
22 the engine would not rev any further than that. It would
23 stop, which, obviously, was just under 2000 RPM more than
24 where it should rev to from, you know, from Nissan in its
25 original form.

1 Q. Like you said, I think -- I'd like you to expand
2 on that a little bit. So describe to me what this 5,500
3 means. And you just mentioned 7,500, right?

4 A. Yeah, so an engine is obviously -- like when
5 Nissan made the engine, they designed it to run so the red
6 line on your rev count on your car, on the 300 is 7,000
7 RPMs. So that is -- Normally after that point, either
8 you're -- the engine has stopped making power after then,
9 you hit a limiter that stops the engine from going any
10 further. So that's where we would naturally, naturally go
11 in its stock form.

12 At 5,500 RPM, you're, you know, a thousand,
13 1500 RPM below where it would normally make its peak
14 power. So you normally make your peak power numbers up
15 towards the higher end of the RPM. But this was only
16 going up to five-and-a-half-thousand RPM, and from what I
17 recall, it was only making around 230, 250 horsepower,
18 which is way below what they made from factory. They were
19 a 280, 300 horsepower unit, which, you know, that number
20 made sense for a car that was only revving two-thirds of
21 as far as it should go.

22 Q. And in comparison to what you had, the contract
23 was for, in terms of a high performance engine, what does
24 that 5,500 RPM mean?

25 A. A significantly limited engine. It was never

1 going to make the power goals that it was intended to.
2 But, yeah, it's one that wasn't going to be able to make
3 its potential. But, like I said, it was, you know, it was
4 an electronic limit. It's not something that was -- that
5 we were overly worried about it, was no concern about, but
6 it prevented us from -- The original plan was one, while
7 Mr. Pool was there, that once it was run in, the engine
8 would be fully tuned up to its maximum potential, where,
9 like I said, so when I get the engine back, it's good to
10 go, I just put it in the car and I don't need to do
11 anything else with it.

12 Q. And you mentioned it was making about 250?

13 A. Yeah, somewhere around there.

14 Q. And if you could turn to page 11 of Exhibit 4.

15 A. I miscounted. Sorry. Yep. Okay. Yep.

16 Q. And is this a conversation between you and
17 Mr. Wilson?

18 A. Yes, that's correct.

19 Q. And is Mr. Wilson in the gray?

20 A. Yes, correct.

21 Q. And what is he telling you about your engine?

22 A. Well, there's the top line saying the -- saying
23 that this engine is capable of making an easy 6 to 7
24 horsepower on the setup. Incurring, so the on-93s, the
25 type of fuel, says the octane rates in the fuel, so the

1 bigger the number, the more aggressive you can be with the
2 power is probably the best way of describing it.

3 Q. Okay. So he's telling you that, you know, you're
4 going to be making 600 to 700 horsepower?

5 A. Yep.

6 Q. And the electronic issue was limiting the dyno
7 run to only 250, correct?

8 A. That's correct, yeah.

9 Q. Okay. Before the engine was shipped back to you,
10 how were your turbos working?

11 A. Before, they were perfectly serviceable, I
12 suppose the best way to describe them. They went out
13 perfectly fine. They'd only had a couple of thousand
14 miles on them, but when -- when it went onto the engine
15 dyno, sorry, I don't recall if it was the first or the
16 second time, there was an issue where they started, I
17 think, spewing or puking, I think was the word used, oil
18 out the fronts and the back of the turbochargers, which is
19 not what they're supposed to do. You don't want oil
20 coming out the front of your turbochargers. And where
21 Mr. Wilson said, you know, "Your turbos have had it,
22 they're broken, they can't be used, and I'm going to have
23 to borrow a set from either stores or a client who would
24 be willing to help." I can't remember which way around it
25 was.

1 And again, it was kind of a mix of
2 communication between me and Mitch and me and Mr. Pool.
3 Sorry, yeah. And I just asked the question of you -- I
4 think I asked it to Mister -- to both of them is, "A bung
5 hasn't been left in the drain of these?" So, obviously,
6 your turbo is fed oil, if oil goes in, it's got to come
7 back out again, and there is a drainpipe that feeds the
8 oil back into the bottom of the engine.

9 Q. If I may, I'm going to show page 36 of Exhibit 3,
10 which may help you.

11 A. Can you rotate it 90 degrees clockwise. There
12 you go. So you can -- where is my pointer.

13 Q. So what is this, first?

14 A. This is the front of the left -- the left-hand
15 side turbocharger.

16 Q. Okay.

17 A. So as you can kind of see here, that is the -- I
18 believe the drain tube for the turbo, so where the oil
19 exits. And then this kind of puddle here is of oil that
20 was being pushed out of the front of the -- front of the
21 turbocharger. I think it was the same on the back. And
22 that, I believe that photo was Mr. Wilson that he sent to
23 me showing that "your turbochargers are broken", I suppose
24 would be the nice way of putting it. So, yeah, obviously,
25 because I knew the turbos were -- had little use, you

1 know, they had a couple thousand miles on them, tops,
2 didn't make any sense to me that they would just suddenly
3 have a -- I mean, that would be a catastrophic failure for
4 them. And so I asked the question, "Has a bung been left
5 in the drain?" Because it doesn't make sense for this oil
6 just to be gushing out under pressure of the front and the
7 back of the turbocharger.

8 Q. And you mentioned a text message conversation
9 with Mr. Wilson. I'm going to show you page 16 of
10 Exhibit 4.

11 A. 16 was that?

12 Q. Yep.

13 A. 1st of March '21. I've gone too far. Apologies.
14 Yep. Got it. Sorry.

15 Q. And is this kind of the conversation that you
16 were discussing where he sent you the picture and --

17 A. Yes, that's correct.

18 Q. And, I guess, can you describe what's going
19 through -- what was going through your mind at the time?

20 A. Again, as I kind of explained, it didn't make
21 sense that a part that had such little use had had a
22 spontaneous catastrophic failure, so was kind of trying to
23 help fault find, what has caused this unexpected event to
24 happen. Now that you can see, it says the seals are just
25 blown, but it didn't make any sense to me. It was -- they

1 were perfectly fine and serviceable, and then, you know,
2 there was no problems when I had them, and yet when they
3 went, there was a sudden issue with them.

4 Q. So Mr. Wilson was saying it was a part fault, a
5 part failure?

6 A. Yes, that's correct.

7 Q. Okay. And then I'm just scrolling through that
8 same -- So you're talking about here, and this is page 18,
9 you guys are doing what you were saying troubleshooting,
10 you're talking through what possibly could have happened?

11 A. Yeah, that's correct.

12 Q. And you're referencing conversations with -- that
13 you're having with Matt Pool as well, correct?

14 A. Yeah, who was there at the same time.

15 Q. And then when we get to page 20, this is where I
16 believe you indicate that maybe it's a blocked turbo
17 drain?

18 A. Yes, yep.

19 Q. And Mr. Wilson doesn't believe that?

20 A. That's correct.

21 Q. But then on page 21, you text and say that Matt
22 checked and it was, in fact, the blocked turbo drain?

23 A. That's correct.

24 Q. So your turbos were fine?

25 A. Yeah, just a bung had been left in the drainpipe

1 that caused the problem.

2 Q. Okay. So after that, that sorted, and you know,
3 the engine is running on the dyno at 5,500 RPM, what
4 happens from there?

5 A. So the engine is shipped back to me, again, kind
6 of similar setup to when I got it the first time round,
7 that the parts that needed -- ancillary parts that needed
8 putting on, installed it into the car, fired the car up
9 because it ran, but then I noticed that there was some oil
10 dribbling out of the kind of front -- front of the engine.
11 I was getting a lot of oil dripping down.

12 So I investigated that, which meant I had to
13 kind of strip the whole front end of the engine off. So I
14 pulled the radiator out, all the timing belt, all the
15 ancillaries, and I found that underneath where kind of the
16 camshafts lift at the top -- sorry -- where the camshafts
17 live at the top of the engine, underneath, there's an oil
18 galley that during the build process is -- is drilled out
19 and cleaned and then a bung is put in it to make it
20 serviceable so you can -- should you ever have to strip
21 the engine down and clean it again, it gives it an
22 additional point to make sure that the engine is clean.

23 And I found that these -- So the engine has
24 four camshafts across the top, and each four of these
25 ports on the front were all leaking oil down the front,

1 which, again, I communicated over to Mr. Wilson, sent him
2 photos of what I had found, and kind of expressed some
3 disappointment, but, you know, wasn't the end of the
4 world. It was something that I could -- I was quite
5 comfortable to fix. I believe Mr. Wilson was happy that
6 I was capable of fixing it as well. So that was
7 rectified.

8 Yeah, then I put the engine in, had some
9 calibration issues with a -- a file had been corrupted on
10 the ECU. Not quite sure, again, so I spoke to Haltech,
11 and they basically cut and pasted what Mr. Pool had done
12 which -- into the new map. We call it a map that controls
13 the -- that is the dataset that controls the engine.

14 And then I kind of -- I booked in with
15 another company called Abbey Motorsport. They're -- In
16 the U.K., at least in kind of the motorsport world,
17 they've got a really good reputation, really well known
18 guys. But the downside of that is there's a waiting time.
19 You can't get in in a couple of weeks' notice. It's
20 three, four months. So I booked in with them, which was
21 due to be the end of November, sorry, end of August.

22 And currently in that buildup time, it was me
23 daily, I wasn't daily in the car, but just pootling around
24 the car, driving it, low load, low thresholds, because I
25 knew the map, so the dataset that was controlling the

1 engine wasn't set up for aggressive driving to maximize
2 the performance of the engine, so that's why you take it
3 somewhere like Abbey to get it set up and tuned and make
4 sure everything is all good.

5 So I drive it around and was, you know,
6 gentle with it, changed -- changed the oil in at least one
7 occasion, I believe it was, possibly two. Certainly it
8 had one oil -- had one oil change just after I kind of got
9 it back because it came with the running-in -- My teeth
10 in. Came with the running-in oil still in the engine from
11 when it had been on the engine dyno. Mr. Wilson sent some
12 more oil to do an oil change.

13 So, yeah, kind of just enjoyed the car, but
14 under, you know, low loads, low threshold, just kind of
15 pootling around, put some miles on it, waiting for me to
16 get in to Abbey Motorsport for it to be all tuned and full
17 power.

18 Q. And for, once again, someone like me who knows
19 absolutely nothing about cars except what I've learned in
20 this case, when you're talking about this tune, you know,
21 the tune that you got, when you -- with the engine versus
22 what you were hoping to have at Abbey Motorsports, you
23 indicated that the -- you didn't want to be aggressive
24 with it. Is that related to the tune being done at 5,500
25 RPM versus higher RPMs?

1 A. Not just the RPM; it's the amount of load coming
2 through the engine. So with a turbocharged engine, the
3 more boost pressure that you put through the engine is the
4 more power it makes. But the risk of that is if it's not
5 done -- if the amount of fuel that's added and the amount
6 of ignition that is added, if it's wrong, it will just
7 destroy the engine. That process hadn't happened.
8 That -- so it was a -- the term that's used is a base map.
9 This is kind of your base level. The engine will run.
10 You can, you know, under low load scenarios, you can drive
11 it around and, you know, if you wanted to pop to the shops
12 in it or, you know, take your kids to school in it,
13 there's nothing that -- It will run. It will function.
14 It's just at that higher performance level, it's not set
15 up for it. And that's why you take it to somewhere like
16 Abbey or such-and-such to have it calibrated for that
17 higher level of performance.

18 Q. And we talked about the break-in instructions
19 with the oil. And did you have conversations with
20 Mr. Wilson about where you were in that break-in process
21 when you got the engine back?

22 A. I asked, prior to getting the engine back, I
23 asked if -- is the engine run-in, is it broken in. And
24 the reply I got from Mr. Wilson was, yeah, you know, yeah,
25 it's done. You're worth doing, like I say, one more oil

1 change, and but other than that, you're good to go, which
2 I interpreted as okay, the running-in procedure side of
3 things, that was covered under the supplementary document.
4 That's done. I'm now free to use whatever oil that I want
5 to use, which, obviously, I'm not going to use a rubbish
6 oil. I'm going to use a oil that's well known to me in
7 the U.K. market.

8 Q. Okay. And so I'm going to refer you to Exhibit
9 8 -- or 7. My apologies.

10 A. Is this the --

11 Q. The warranty break-in.

12 A. Sorry.

13 Q. And so it indicates, you know, you have to break
14 it in with the specified oil.

15 A. That's correct.

16 Q. And but once -- it states explicitly, you know,
17 any other break-in oil could void a warranty, correct?

18 A. Which page? Sorry. Which page are you on? The
19 second page.

20 Q. They're transposed. The second page actually is
21 7 and then the first page is 8.

22 A. Okay. Yeah.

23 Q. So at the top of page -- at the top of that page.

24 A. Yep.

25 Q. It specifies that --

1 A. Yeah. Sorry. Yes. Gotcha. Gotcha. Use of any
2 other break-in oil will void you warranty.

3 Q. And so when got the engine back, it was already
4 broken in.

5 A. Yeah. And Mr. Wilson had used the break-in oil,
6 which I believe was Maxima, on the engine motor.

7 Q. And so from here, you spend -- when,
8 approximately, did you get the engine back?

9 A. March '21.

10 Q. Okay. And so this is nearly three years after
11 initially entering into the contract?

12 A. That's correct, yes.

13 Q. Okay. And so when was your appointment with
14 Abbey Motorsports?

15 A. 30th of March 2021.

16 Q. Okay.

17 A. Sorry. 30th of August 2021. Sorry.

18 Q. Thank you. And so you said between that time,
19 you were driving around.

20 A. Yeah.

21 Q. And now take me to that day, August 30th.

22 A. So I dropped the car off a few days beforehand to
23 make sure that it was there ready to go in the morning.
24 I'd just finished work. And I had gone straight because I
25 was working local to where Abbey were, and went down

1 there, and they were doing their kind of setup process.
2 Setup process, they kind of do a health check, make sure
3 it's got no air leaks or coolant leaks or oil leaks,
4 set -- get the base settings of the car ready to go. And
5 then hook it up to their hub dyno, so like the one I said
6 that bolts to the hubs of the car. And then they start
7 going through kind of the tune-in process that they use,
8 which is, I think, you know, start, start small, get a
9 baseline, and progress and progress and progress, adding
10 more and more power to the build to -- and then you,
11 eventually, hopefully, you end up with a complete map.
12 But, unfortunately, that's not what happened.

13 THE COURT: Let's take a 15-minute recess.
14 We've been at it for a while.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Then we'll come back in here.

17 (Recess taken.)

18 (Jury not present.)

19 THE COURT: Plaintiff ready?

20 MR. MATOUKA: Yes, Your Honor.

21 THE COURT: Defense ready?

22 MR. HURLEY: Yes, Your Honor.

23 (Jury present.)

24 THE COURT: Thank you. You may be seated.

25 You may continue.

1 Q. (BY MR. MATOUKA) All right. Mr. Johnson, before
2 the break, I believe you were just starting to talk about
3 August 30th, 2021, correct?

4 A. That's correct.

5 Q. And so you brought your car to Abbey Motorsports?

6 A. That's correct.

7 Q. Okay. And so can you explain how -- Well, what
8 kind of dyno was being used here?

9 A. So it was, as I said before, it was a hub dyno,
10 so one that physically bolts to the wheel hubs rather than
11 a rolling road that the wheels stay on and they go into
12 rollers. So it was the hub dyno style.

13 Q. And what -- Were you there watching this be set
14 up at all?

15 A. Yes, I was there, give or take, the first like 10
16 minutes of the car going into the room where -- the dyno
17 room, as it's called. Yes. So apart from like the first
18 10 minutes, I was there the whole time.

19 Q. So kind of explain like what's being -- what's
20 being wired. How is this dyno set up so that a
21 calibration can be made?

22 MR. HURLEY: Objection, Your Honor. This
23 would take expert testimony on the operation of a dyno,
24 which he's obviously not been designated for.

25 MR. MATOUKA: I'm just trying to get his

1 understanding of what was being hooked up where. He was
2 there. He saw it all.

3 THE COURT: Can you both come up here for a
4 second.

5 (The following was held at the bench
6 outside the presence of the Jury.)

7 THE COURT: From a lay perspective, I think
8 he can say they hooked the vehicle up to the dyno, they
9 bolted the wheels to the thing, they hooked some wires up
10 under the hood and turned on the computer. But as far
11 as --

12 MR. HURLEY: The right way to do it or how.

13 THE COURT: Technically is, you know, the
14 dyno senses a voltage impedance of whatever and stuff like
15 that, then --

16 MR. MATOUKA: If he knows, can he say what
17 was hooked up, like without talking about the technical,
18 like, you know, hey -- Because obviously he's worked on
19 cars long enough.

20 THE COURT: He can testify to what they
21 hooked up to the car, which would be just an observation a
22 layperson can make.

23 MR. HURLEY: Okay.

24 MR. MATOUKA: Yeah.

25 (The following was held in open court.)

1 Q. (BY MR. MATOUKA) All right. Mr. Johnson, can
2 you describe what was hooked up to the car?

3 A. Of course. So, obviously, the gentleman that was
4 doing the calibration, he had his own laptop, which would
5 plug into the ECU, so the control unit of the car. But
6 then the dyno itself has its own computer because it's
7 there to measure things as well.

8 So it had a lambda, or O2 sensor, which
9 measures the gases coming through your -- out of the
10 exhaust, so one of those was hooked up into one of the
11 exhaust pipes.

12 There was a sensor which is called a knock
13 sensor which is -- it's there to detect frequencies.

14 MR. HURLEY: Your Honor, he's getting into
15 descriptions that would require expert testimony talking
16 about what the O2 sensor does.

17 MR. MATOUKA: I -- if he can see what's on
18 the computer, he can see where the sensors are being
19 hooked up and what data is relayed to the computer. A
20 layperson could view that.

21 THE COURT: He started off into an
22 explanation of what a knock sensor is and how it works and
23 how the computer is going to analyze it.

24 MR. MATOUKA: Right.

25 THE COURT: What I was talking about is that

1 he can testify that "I saw them take my car in there.
2 They plugged this sensor into the exhaust. They plugged
3 one in to the air intake. They plugged one here and
4 there. They put something on the wheel that measures the
5 power and they turned it on."

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

7 THE COURT: Something like that, as opposed
8 to what does an O2 sensor or a knock sensor actually do.

9 MR. MATOUKA: Okay.

10 THE COURT: What it actually measures.

11 Q. (BY MR. MATOUKA) So, Mr. Johnson, without
12 describing what these -- what these various sensors do,
13 can you just describe what was hooked up to the car?

14 A. Okay. So as I said, there was a sensor plumbed
15 in to the exhaust pipe. There was a sensor that fed into
16 a set of headphones that the tuner would wear during the
17 process of tuning, obviously, his laptop, which he can
18 make the adjustments to the -- to the map on the ECU, the
19 dataset. And then a couple of other sensors, temperature
20 sensors, and, obviously, the physical dyno itself it was
21 connected to.

22 Q. And but without telling me what the knock sensor
23 does, was that wired into the car?

24 A. So the car has its own knock sensor fitted
25 anyway, that it's part of the engine. It's part of how it

1 came from Nissan. It came with a knock sensor attached to
2 the engine. That was part of the -- part of the setup of
3 the car anyway. And that's the sensor that the ECU, so
4 the control module, can -- can see and can take data from.
5 The additional thing I was talking about was an additional
6 knock sensor that was attached to the engine that fed into
7 a set of headphones that the dyno operator, the tuner,
8 would wear to be able to use that sensor.

9 Q. And do you recall about what time everything was,
10 you know, set up and ready to go?

11 A. It was quite early in the morning. I'd probably
12 say it was probably 9, 9:30-ish, between 9 and 10:00, kind
13 of mid-early to mid-morning.

14 Q. Okay. And then, I guess, can you walk me
15 through -- Were you there as this was being run on the
16 dyno?

17 A. Yeah, the entire time.

18 Q. Okay. So, I guess, can you walk me through what
19 you saw during that process?

20 A. Um, so I basically watched the tuner go through
21 his calibration process. So it would start off as light
22 acceleration runs on it, so wouldn't rev the car out
23 particularly far, wouldn't put loads of load into it
24 immediately. It was kind of incremental gain, incremental
25 steps through as he would, obviously, do a run. And then

1 that data that was obtained from that run, he would make
2 adjustments, and then do another one, and make adjustments
3 and do another. So it was kind of an incremental process.

4 So, yeah, that went on through the morning.
5 Everything was going as expected. It was unremarkable, I
6 suppose would be the term you would say. It was -- there
7 was nothing out of the ordinary. Everything was
8 progressing as we would expect it to progress.

9 Q. At some point, did something happen?

10 A. Yeah, so as we started putting -- I say we. As
11 the tuner started putting more load into the engine,
12 asking more, more boost from the turbo, generating more
13 power, the last run, the sensor that reads the oil
14 pressure showed a lower reading than it had done
15 previously throughout the whole morning. And at that
16 point, we kind of -- we stopped and to investigate what
17 was happening.

18 There was a slight rattle from the engine,
19 which I recognized from my experience as something that's
20 at the top of the engine, it controls the position of the
21 camshafts. It's like an electronic device that -- within
22 the engine that adjusts the cams. It's called VTC. And
23 sometimes when the springs in that solenoid go a bit soft,
24 it gets a tinny rattle. So as part of the diagnostic
25 process, you can deactivate that solenoid. So the tuner

1 deactivated the solenoid, started a -- started another
2 run, and the noise had gone, but there was still a
3 reduction in oil pressure.

4 So at that point, play was stopped as it
5 were. We didn't go any further. Something is wrong. We
6 don't know what it is, but there's no point progressing
7 any further because we don't want to damage the engine.

8 So, yeah, initial, initial thoughts were
9 disappointment and kind of confusion as to what had gone
10 wrong, but there was obviously a problem. So at the
11 earliest opportunity, because it was a five, six hour time
12 difference between us, I sent Mr. Wilson a message to let
13 him know we got a problem, it's lost oil pressure,
14 something is not right, and kind of explained, you know,
15 everything looked good, there was nothing amiss,
16 everything was kind of going as expected, but we've had
17 this drop of oil pressure. A drop of oil pressure in an
18 engine is never a good sign, so something pretty bad has
19 occurred inside the engine for that to happen.

20 Q. And kind of just going back a little bit to, you
21 know, as you're watching this tuner work, was he ever
22 telling you what he was doing it as he was doing it?

23 MR. HURLEY: Objection, Your Honor. Calls
24 for hearsay.

25 MR. MATOUKA: I didn't ask him to give me a

1 specific statement. I'm looking for --

2 THE COURT: He can answer --

3 MR. MATOUKA: -- present sense.

4 THE COURT: He can answer whether or not he
5 was told, but he can't tell the Jury what the tuner told
6 him.

7 MR. MATOUKA: Even if it's a present sense
8 impression, Your Honor?

9 THE COURT: Well, that would be a different
10 objection.

11 MR. MATOUKA: And that's what I'm trying to
12 lay a foundation --

13 THE COURT: Your question didn't -- your
14 question didn't call for hearsay. Your question called
15 for his personal knowledge, was he told.

16 MR. MATOUKA: Yes.

17 THE COURT: Which is a "yes" or "no", which
18 is not a question for hearsay. The next question would
19 be, "What did he tell you?", which I would assume will
20 have an objection. And then your response was to that
21 second objection which has not been made yet.

22 MR. MATOUKA: Yes, Your Honor, that's -- yes.

23 THE COURT: Okay.

24 Q. (BY MR. MATOUKA) So while the tuner was doing
25 things, did he ever explain, you know, what he was doing

1 while he was doing it?

2 A. Yes, he did.

3 Q. And at any point while he was working on the
4 engine, did he mention using an eddy current brake?

5 MR. HURLEY: Objection, Your Honor. Calls
6 for hearsay, and is also leading.

7 THE COURT: Sustain.

8 MR. MATOUKA: As to leading or hearsay?

9 THE COURT: Well, it's hearsay because you
10 asked him, did he tell you something particular from --

11 MR. MATOUKA: While he was doing it.

12 THE COURT: -- which is the same way as
13 saying, what did he tell you about whatever that was.

14 MR. MATOUKA: Your Honor, respectfully, I
15 believe it would come in under present sense impression if
16 he was doing it and explaining it at the same time.

17 THE COURT: I sustained the objection.

18 Q. (BY MR. MATOUKA) Okay. So after you were able
19 to communicate with Mr. Wilson, do you recall what he told
20 you?

21 A. Um, he was as surprised as I was that we had this
22 problem, and kind of theorized as to what the cause of the
23 problem could have been. The initial prognosis, I suppose
24 would be the word, was that I had a bearing failure within
25 the engine.

1 Q. And, I guess, what was -- So you guys have
2 stopped the dyno run. What is your -- what do you start
3 doing at that point?

4 A. Um, because it was kind of so unexpected, this
5 was out of the blue, there was no understandable reason
6 as to why, why this had happened, because everything had
7 gone according to plan, and kind of start in that our
8 own -- well, my own diagnostic process, slash,
9 investigation of, okay, something has gone wrong here,
10 what's gone wrong. Well, the first port of call, which,
11 if I recall, and Mr. Wilson may have also suggested, was
12 to cut open the oil filter to see if there was any metal
13 debris inside the filter, and that would give us an idea
14 of, okay, has a bearing failed or hasn't it.

15 At the same time, because we were taking the
16 filter out that had oil in it, with the advice from the
17 guys at Abbey Motorsport, I could send a sample of oil off
18 and to be analyzed, which would kind of tell you what if,
19 you know, what was in the oil, if there was any materials
20 or minerals or fuel that diluted the oil, anything that
21 was out of the ordinary, it would give you like an actual
22 reading as to what that was. And that would kind of steer
23 us as to, prior to physically stripping the engine down,
24 of what's gone wrong. Let's try and figure this out.

25 Q. And did you cut open the oil filter?

1 A. I didn't personally. Abbey Motorsport did that
2 for me and then sent me a photo.

3 Q. And what was in the oil?

4 A. In the bottom of the oil filter was -- the only
5 way I could describe it would be small chunks of metal.

6 Q. Did you think that was a good thing?

7 A. No. That was -- No, that's not what you want to
8 see in your oil filter. That's a sign of a significant
9 failure on the inside of the engine.

10 Q. And did you share this with Mr. Wilson?

11 A. Yes, I did, yeah.

12 Q. And I guess you got -- what were your
13 conversations with him going from there like?

14 A. Um, it was kind of trying to figure out why it --
15 why it had what appeared to be a bearing failure.
16 Obviously, with the chunks of metal, that kind of suggests
17 it's more than largely to be bearings.

18 I'd expressed that I hadn't heard any, any
19 rattles or knocks, which, with my experience, I would
20 identify what's called rod knock, which is the bearings on
21 the bottom of the connecting rod side of things. Hadn't
22 had any of that knocking noise, which would have been a --
23 It's kind of a common failure point on this particular
24 engine, they do like to kill the rod bearings. So I
25 hadn't heard anything like that.

1 And then Mr. Wilson had -- he expressed his
2 opinion that he thought that it was a manufacturer fault
3 with the bearings, and he sent a couple of messages that
4 had, like, links to Internet forums and other car clubs of
5 people that had had -- experienced bearing failure with
6 this particular brand of the bearing.

7 But, fundamentally, at that point we were
8 still kind of theorizing. We didn't know until we strip
9 the engine down. So, obviously, again, have the
10 conversation with Mr. Wilson that he was happy that I take
11 the engine out, pull the oil pan off. He gave me some
12 instructions as to how he wanted me to do that, so not to
13 flip the engine up so any debris went further in, let's
14 have a look at what was in the oil pan, and then begin
15 kind of the diagnostic strip-down process of removing the
16 parts where the bearings are located so I could physically
17 inspect them and then send him photographs of what was
18 found inside the engine.

19 Q. And, very briefly, I want to go back to something
20 you mentioned, because you talked about rod knock just a
21 moment ago, and previously you had mentioned hearing a
22 rattle.

23 A. Yes.

24 Q. Can you, I guess, give me a sense of how loud
25 that rattle was, what did it sound like?

1 A. So the -- the VTC rattle is a very tinny,
2 not high pitch is not the right word, but it's quite like
3 (demonstrating). It's a very tinny... And it's basically
4 a spring that's rattling around inside the cylinder. It's
5 quite a tinny like noise.

6 Rod knock is a lot deeper. It sounds like
7 it's in the belly of the engine, so it's a lot more of a
8 (demonstrating) kind of noise. And there was a very --
9 they're two very distinct pitches of noise. You can't
10 confuse them at all.

11 Q. Okay. And so you -- Okay. So you've got the
12 engine filter cut open. You start tearing down the
13 engine. And what are you finding inside?

14 A. So -- sorry. When I pull the oil pan off, it's
15 instantly apparent that there's something quite serious
16 has failed because there's some significant chunks of
17 metal in the bottom of the engine, all quite -- Instantly
18 I recognized it as bearing material straight away because
19 of the thickness of it and it just looked like bearing
20 material. I took a video of that and sent that to
21 Mr. Wilson. And then once -- once the oil pan was off the
22 engine and I see no further debris was going to fall into
23 it, I could spin the engine over and then start taking the
24 main caps, they're called, which is the -- the blocks of
25 metal that hold the main bearings in position, and then

1 the rod caps, so which is the -- the -- the half of the
2 semicircle that disconnects, allows connection to the
3 crankshaft where the rod is kind of two halves of the
4 circle that bolt together and the bearings in the middle,
5 so I could photograph and show Mr. Wilson what I had
6 found.

7 Q. Okay. And once you sent him these photographs,
8 do you guys -- do you guys talk about next steps?

9 A. Yes. So for me, it was clearly a part that had
10 failed, and I'd expressed that from what I could tell,
11 this was, yet, again, another warranty issue. This was a
12 part that had been supplied and fitted by Engineered
13 Performance that had failed. So I had a conversation --
14 Well, I sent Mr. Wilson a message saying effectively that,
15 you know, this back and forth of sending the engine to and
16 from the States was just expensive for everybody. It
17 wasn't a good -- you know, it wasn't probably the most
18 sensible thing going forward. So I kind of offered, made
19 the proposal that he, effectively, buy me out of the
20 warranty period that remained on the engine and then I
21 could crack on with repairing the engine at my own time
22 and speed, and it be a little bit of financial
23 compensation to cover some of the costs.

24 And then I had a phone conversation maybe a
25 few days later where Mr. Wilson told me that actually part

1 failures aren't covered under the warranty, that is
2 something that is -- would be covered by the
3 manufacturer's warranty, the manufacturer of that part's
4 warranty. So if it's a, you know, if it's a -- At this
5 point we believed -- Mr. Wilson believed that it was a
6 part failure, so effectively, I need to speak to the
7 manufacturer of that part, which is a company called King
8 Bearings.

9 But, you know, Mr. Wilson did make some
10 offers of supplying a new set of bearings and an oil pump
11 and an idea of maybe shipping some of the engine back for
12 it to be remachined, but the logistics and cost of that
13 didn't make any sense. But at that point, we were still
14 working on the theory that, at that point, that it looked
15 like a bearing had failed rather than anything else was
16 amiss.

17 MR. MATOUKA: Your Honor, may I approach?

18 Q. I'm giving you what's been premarked as
19 Plaintiff's Exhibit No. 11. Have you seen this message
20 before?

21 A. The one dated 7th September '21?

22 Q. Yes.

23 A. Yes, I have, yeah.

24 Q. And is this the text that you were just talking
25 about concerning the warranty claim?

1 A. Yes.

2 Q. Okay. And the one we've got on the first page
3 you can see there's -- it's not all there, correct?

4 A. That's correct.

5 Q. Okay. Is -- oh, boy -- what's on the following
6 three pages the full text?

7 A. Yes, that's correct.

8 Q. And so here you are making a warranty claim,
9 correct?

10 A. That's correct, yeah.

11 Q. And so Mr. Wilson -- however, Mr. Wilson informs
12 you that it's a part failure and so you need to go to the
13 manufacturer?

14 A. That's correct.

15 Q. Okay. What did you do from there?

16 A. Well, I made contact with the U.K. arm of King
17 Bearings -- they're kind of a multinational company and
18 they've got different offices in different countries -- to
19 start the process of getting the bearings sent to them to
20 have an analysis as to why those bearings had failed. But
21 there was also other stuff going on at the same time that,
22 obviously, the -- we got the results of the oil analysis
23 back. And -- and, obviously, as I said, that Mr. Wilson
24 had offered to send the replacement set of bearings for me
25 to use, and while physically looking at the engine, we

1 couldn't see anything amiss, there was no burn -- nothing
2 to show that anything fundamentally had gone wrong with
3 the housings of the bearings, nothing we could physically
4 see. It made sense to me to verify that, to check that
5 actually everything is as it should be, that if I just,
6 you know, put a new set of bearings in, it was all going
7 to be good, it was worth me verifying that.

8 So I took the engine to a machine shop that's
9 fairly local to me for them to measure the housing bores
10 in which the failed bearings lived in to make sure they
11 were as per the build sheet that I had -- that I had
12 received from Mr. Wilson, that everything still measured
13 round and straight and was reusable going forward.

14 Q. And without telling me their results, did they
15 measure these housing?

16 A. Yes, they did, and I video-recorded them doing it
17 live as it were. So as the measurements were being taken,
18 I videoed the process so I could relay those messages --
19 those measurements and the process that was undertaken to
20 Mr. Wilson so he could see what was happening.

21 Q. And while you were recording it, was the person
22 taking the measurements telling you what the measurements
23 were as he was doing it?

24 A. Yeah, he was reading out the measurements as he
25 found them.

1 MR. MATOUKA: Your Honor, may we approach?

2 THE COURT: You may.

3 (The following occurred at the bench,
4 Outside the presence of the Jury.)

5 MR. MATOUKA: So this is a disputed exhibit,
6 No. 6. We have the videos of the measurements being made
7 that Mr. Johnson was recording while this person is
8 measuring the housing bores, and the guy is -- he's
9 reading off the measurements. That is a present sense
10 impression.

11 MR. HURLEY: Your Honor, I disagree. I think
12 present sense impression is not -- If that was true, then
13 everything that is hearsay is followed by the present
14 sense impression rule because -- because everything you
15 say is a present sense impression. That's not what the
16 rule means. Present sense impression is something that,
17 for instance, a person testifying says, "This was my
18 impression at the time and I recall it." Present sense
19 impression from anyone else is following the entire
20 hearsay rule. There would be no hearsay rule because
21 everything else is if you define present sense impression
22 that way.

23 MR. MATOUKA: No, it's not.

24 (The following occurred in open court.)

25 THE COURT: Let me excuse the Jury for a

1 moment, please.

2 (Jury not present.)

3 THE COURT: You can be seated if you'd like.
4 We're going to talk up here for a minute.

5 This is an exceptionally interesting problem.
6 What I'm thinking is that this gentleman watched the
7 measurements, so he was there and can testify as to what
8 he saw.

9 MR. HURLEY: If he can qualify himself to say
10 he understood what -- what those instruments were and what
11 they read.

12 THE COURT: In general speaking, he could
13 say -- I mean, he's not going to be able to say I --
14 Because if he didn't measure it, he can't say "I
15 determined it to be a point whatever." But he can say in
16 general, "I've watched this measurement activity and they
17 were not done, they were not -- they don't match the build
18 sheet or they, whatever." He can figure -- he can testify
19 to that.

20 And if you have to -- you have a hearsay
21 problem with the audio on the video, you can turn the
22 audio off and he can still play the video because he saw
23 the events in the video take place, and then he can
24 explain what the video means to him --

25 MR. HURLEY: But my --

1 THE COURT: -- which is not hearsay.

2 MR. HURLEY: But my only concern is that his
3 only source of knowledge is hearsay, because I don't think
4 he was close enough to actually watch the measurements and
5 readings. He only heard it from -- from the person doing
6 the measurements. He was not in a position -- I don't
7 even know if he knows how to read the instruments, so --

8 THE COURT: Well, I don't either, but that --
9 that's going to come down to the weight and credibility
10 for the Jury to decide. It's kind of -- My thinking is
11 you can watch an airplane roll down the runway and see it
12 take off and the wing fall off.

13 So he can -- he watched it. He doesn't have
14 to know all the details about the speed or the -- you can
15 turn off the audio so that the statements by the person
16 doing the measurement are not in front of the Jury.

17 MR. HURLEY: And my point is that if his only
18 source of the knowledge is what that person was saying,
19 then he is relying on hearsay for his testimony, which is
20 objectionable. If he understood the working of the
21 instrument and saw it himself, I understand what you're
22 saying, but if it's only through the source of the
23 out-of-court declarant, then I think the same hearsay
24 objection still applies because it would be like saying,
25 "I heard the Judge say this and I was there when he said

1 it, so, therefore, I can say what he said, but I'm
2 still --"

3 THE COURT: You can't say what the guy
4 measuring it said.

5 MR. MATOUKA: Your Honor --

6 THE COURT: But, I mean, if you play the
7 video, and we can play the video outside the presence of
8 the Jury and I can see if this is what I'm thinking it is,
9 but he -- assuming that it's obvious from the video what's
10 wrong --

11 MR. MATOUKA: It's not.

12 MR. HURLEY: It's not.

13 MR. MATOUKA: Your Honor, if I may.

14 MR. HURLEY: That's my point.

15 MR. MATOUKA: I believe under 803(1), I'm
16 just going to read it. And these are regardless of
17 whether the declarant is available as a witness. The
18 following are not excluded by the rule against hearsay.
19 Present sense impression, a statement describing or
20 explaining an event or condition made while or immediately
21 after the declarant perceived it.

22 THE COURT: Well, that's great for a general
23 observation, but if you have a specific -- what I'm
24 gathering here is we're dealing with very, very small
25 measurements.

1 MR. MATOUKA: That is correct.

2 MR. HURLEY: And technical processes.

3 MR. MATOUKA: I actually --

4 THE COURT: So if the -- if the person doing
5 the measuring is without his audio, you're not going to be
6 able to tell whether or not there's something wrong
7 with --

8 MR. MATOUKA: Right, but I'm saying his audio
9 is not hearsay because he's describing what he's
10 perceiving.

11 THE COURT: But he's not here to be examined
12 on how he did the measurements or what his tool was or
13 whether it was calculate -- calibrated and all the various
14 problems with the -- essentially a scientific measurement.

15 MR. HURLEY: Which is the very reason for the
16 hearsay rule.

17 MR. MATOUKA: This -- this is an exception to
18 the rule against hearsay regardless of whether the
19 declarant is available as a witness. Doesn't matter if
20 he's available.

21 THE COURT: No, I can't allow the person who
22 is not here to testify as to what the tolerances are.

23 MR. MATOUKA: He's not testifying about the
24 tolerances. He's testifying as to what the
25 measurements he -- like --

1 THE COURT: His measurements.

2 MR. HURLEY: Yes.

3 THE COURT: So.

4 MR. MATOUKA: We also have a video. I
5 didn't -- It has been shared with opposing counsel, but I
6 didn't try to designate it, which we could, which is him
7 also calibrating the instrument.

8 MR. HURLEY: But, again, that's a process
9 that we would need to examine him about to make sure he
10 did that correctly, because it seems to be -- it kind of
11 strikes at the very heart of what hearsay is supposed to
12 protect, which is someone getting to use a statement that
13 was made out of court that no one is there to
14 cross-examine him and test the credibility of that with,
15 and then is taken as fact and has -- it's unfairly
16 prejudicial because he says, "Here's the measurements,"
17 but we don't get to talk to him about --

18 THE COURT: At the end of the day -- at the
19 end of the day, if I'm understanding the Plaintiff's case,
20 he believes that the journals in which the bearings were
21 sitting weren't manufactured correctly, and he can
22 testify -- I'll allow him to testify that his
23 understanding of what is wrong is, whatever.

24 MR. MATOUKA: So can we play the video
25 without audio and he can testify as to what he understood

1 based on what the measurements that were told to him were?

2 THE COURT: I will allow that.

3 MR. HURLEY: But not the specific
4 measurements?

5 THE COURT: But not the specific
6 measurements, kind of in a lay -- a lay testimony of what
7 he believes is wrong.

8 MR. MATOUKA: Okay. So, effectively, I just
9 want to make sure we don't -- so he can say, like, you
10 know, "Yeah, I watched this video, he was describing his
11 measurements as he made them. Based on what he described,
12 my understanding was that the main housing bores were too
13 tight."

14 MR. HURLEY: But to be clear, that, the video
15 he's talking about was just measurements. There weren't
16 conclusions made at that time, that video, I mean --

17 THE COURT: How long is the video?

18 MR. MATOUKA: There's a couple of them. I
19 can show you one of them real quick and you can -- if it
20 may help.

21 THE COURT: It might.

22 MR. HURLEY: Yeah.

23 THE COURT: Let's see that.

24 (A portion of video playing.)

25 THE COURT: Can we play it with audio first.

1 MR. MATOUKA: I'm not entirely sure why the
2 audio is not --

3 THE COURT: Well, it's because I have to turn
4 it on. All right.

5 (A portion of video playing.)

6 THE COURT: Stop the video just for a second.
7 Let me ask him a question.

8 So from the still shot of that picture, is it
9 possible for a layperson to describe what they believe is
10 wrong with the engine? I mean, I --

11 MR. MATOUKA: I think --

12 THE COURT: -- I don't know where he's
13 measuring because I can't see where the instrument goes
14 there, but I'm assuming it's the middle -- the middle set
15 of the --

16 MR. MATOUKA: Yes. And some of the videos go
17 to different ones, so, essentially, this set of videos is
18 him going through and measuring --

19 THE COURT: So he's measuring the middle one
20 right now?

21 MR. MATOUKA: Well, there's four I see.

22 THE COURT: Four or --

23 MR. MATOUKA: And it's the second from the
24 one above the one on the bottom.

25 THE COURT: Okay. So, basically, the

1 Plaintiff's theory is the round hole is not correct?

2 MR. MATOUKA: Yes, Your Honor.

3 THE WITNESS: That's correct.

4 MR. HURLEY: Your Honor, our contention is
5 that absolutely takes expert opinion. I don't think a
6 layperson can do that because, A, it's taking these
7 measurements, and B, it's applying some mechanical and
8 physical knowledge that I don't think the lay -- a
9 layperson has. So I think his only basis for coming to
10 the conclusion is hearing it from someone else. And they
11 do have an expert, obviously, that will testify to this.

12 THE COURT: That's the problem is it's not
13 obvious from the visual without a measurement. I mean
14 it's not obvious. It would be obvious if it was broken in
15 half.

16 MR. HURLEY: Right.

17 THE COURT: You could say, "Well, this is
18 what's broken," but it's not obvious --

19 MR. HURLEY: To the naked eye at all.

20 THE COURT: So it becomes -- it becomes
21 reliant on the person doing the measurement, which is the
22 problem we have with the hearsay.

23 (Off-the-record discussion.)

24 MR. MATOUKA: So with respect to this dial,
25 what I -- we have a calibration video that I didn't try to

1 identify as Exhibit 6, but we can also add that, where
2 there's negative and positive, and you'll see this flip
3 from zero. So it's zeroed, and then it will either say,
4 "Oh, it's more than that" or "it's less than that," and I
5 think that's something Mr. Johnson knows because he saw
6 the calibration so he understands how this specific
7 instrument works. And so as it's being spun around the
8 main housing bore, he can say, and based on, obviously,
9 his -- his being there and watching it, but also, you
10 know, the statements that were made to give him an
11 impression about what was wrong and what the measurements
12 were.

13 MR. HURLEY: And, Your Honor, our response to
14 that would be: He just said that Mr. Johnson knows how
15 this testing equipment works. He hasn't established that,
16 A, and B, that would be an expert opinion on how something
17 that is a technical piece of equipment that's highly,
18 highly precise works and how it was calibrated. And he
19 can't say, "Yes, I know it was calibrated right, or that I
20 understand what those measurements were" because that's
21 what an expert would have to do.

22 MR. MATOUKA: Your Honor, we could voir dire
23 the witness. I could also show you the calibration video.

24 THE COURT: That's not going to help me with
25 that.

1 Darby, can you tell the Jury to come back at
2 1:00, please.

3 THE BAILIFF: Yes, sir.

4 MR. MATOUKA: Sorry, I was trying to mute it
5 so we can stop having that static.

6 THE COURT: Play some more of it. Let me
7 look at it.

8 MR. MATOUKA: Okay.

9 THE COURT: What is the exhibit number?

10 MR. MATOUKA: This is 6. There's four videos
11 as part of 6.

12 THE COURT: All right.

13 (A portion of video playing.)

14 MR. MATOUKA: And, Your Honor, that was just
15 the first video. I think one of them has better audio and
16 more just measurements, if I could try and find that.

17 THE COURT: Okay.

18 (A portion of video playing.)

19 MR. MATOUKA: Would you like me to play a
20 different one?

21 THE COURT: No. I don't think it's really
22 changed the problem any. But I just can't, I mean, I
23 can't see how it's not hearsay. Everything is dependent
24 on the accuracy of the measurement, and that person that's
25 testified about the accuracy of the measurement is not

1 present in court.

2 MR. MATOUKA: But he is reading the
3 measurements as he's making them, which is present
4 sense --

5 THE COURT: I understand that's your idea of
6 a present sense impression. The present sense impression
7 is more, "I saw the car run the stop sign and it crashed,"
8 or maybe that's excited utterance. But the problem with
9 this being a present sense impression, unless you have
10 some cases you want to show me, is that it's a very -- I
11 mean, it's a -- depends on whether he's measuring it
12 correctly. He's reading a present sense impression. I
13 could read that gauge and make a present sense impression
14 and be entirely incorrect because I don't know how to read
15 the needle gauge, but --

16 MR. MATOUKA: Well, Your Honor --

17 THE COURT: -- whether he read it correctly
18 is a subject that would be cross-examination, and he's not
19 here for that. So, yes, it's a present sense impression
20 of an event, but it's not an event that is -- it's an
21 event that requires somebody that knows what they're doing
22 to do it correctly in order to give the right number.

23 MR. MATOUKA: And can the experts here not
24 identify whether or not those measurements were being done
25 correctly?

1 THE COURT: "The experts here."

2 MR. MATOUKA: We have -- both sides has an
3 expert.

4 THE COURT: I don't know. I mean, a possibly
5 is that your expert -- but I don't know -- I don't know
6 how your expert here is going to understand the reading on
7 the measurement. The only reading we have is the guy
8 saying what the measurement is.

9 MR. MATOUKA: But, I mean, I will say two
10 things. One, you can see the needle going from positive
11 to negative, which is indicating disparities in the
12 measurement from the true zero. And then the experts can
13 testify as to whether he was using that tool
14 appropriately, and if he was using that tool
15 appropriately, then that would mean that, I mean, at least
16 with respect to zero, the plus or minus --

17 THE COURT: I tell you what I'll do, is that
18 if you wish to call the expert outside the presence of the
19 Jury, establish the expert and run through the testimony,
20 I'll listen to what your offer of the testimony is and
21 decide whether or not I can admit it or not.

22 MR. MATOUKA: Okay.

23 THE COURT: Outside the presence of the Jury.

24 MR. HURLEY: But that would be to the expert,
25 not to Mr. Johnson.

1 THE COURT: That would be whether the
2 expert -- whether or not the expert wishes -- whether or
3 not the expert can testify, I need that in front of me so
4 I can understand what he says and what his basis is and
5 whether it's based on hearsay that's impermissible.
6 Experts can testify on some -- I can see a situation where
7 a designated expert could watch this video and have
8 something helpful to say that help the Jury understand it.
9 I don't know what that is yet because I haven't heard it
10 and --

11 MR. HURLEY: But even still, that wouldn't
12 make the video then admissible. It would be something he
13 could rely on, but not necessarily make the video
14 admissible.

15 THE COURT: It would be testimony of the
16 expert. It may or may not include the video. It may --
17 maybe it includes the video without audio if there's
18 something where the expert can say, "When the needle flips
19 all the way this way, that indicates something, and when
20 it flips over that way, it indicates something," which in
21 that situation, it doesn't really matter how exact it is.
22 But if it's like my mechanical engineering son that wishes
23 to talk in .07 something, then that is a very specific
24 number that depends entirely on whether the person making
25 the measurement was accurate, and has to be available to

1 be cross-examined. So there's kind of the gulf I'm in. I
2 don't think the individual measurements come in from the
3 person reading them under the present since impression.
4 Whether your expert can rely on this and say in general,
5 "It appears that this part right here is out of round and
6 that's why the bearing slipped," that seems reasonable, if
7 the expert is otherwise qualified and bases his opinion on
8 the proper foundation, if that makes sense.

9 MR. MATOUKA: Absolutely, Your Honor. When
10 would you want us to -- to do that?

11 THE COURT: Well, I would -- it's the order
12 that you wish to proceed in your case is up to you. So if
13 you wish to pursue this inquiry at this time with this
14 witness, I'm sustaining the objection. And you're more
15 than willing -- I'm more than willing to entertain you
16 trying to figure out how to get it in through your expert,
17 and we can do that outside the presence of the Jury first
18 later. It doesn't have to be right now. It's whenever
19 you're ready to do it.

20 MR. MATOUKA: Your Honor, may I at least ask
21 him, because this is all part of his investigation, right,
22 and there -- I want there to be a reason for him to
23 continue investigating, right. I want the Jury to
24 understand he went to this, you know, these experts or
25 these machinists, mechanics, and then he kept looking.

1 And if we just say, "Well, he went there," why is he still
2 looking. I feel like he should be able to say something
3 as to, "Yes, I went to some mechanics, and based on what
4 they told me, I felt that we needed to continue looking
5 beyond just a simple part failure."

6 MR. HURLEY: But again, Your Honor, I think
7 when you say "based on what they told me," that is reliant
8 on hearsay and that is the definition.

9 MR. MATOUKA: But it doesn't matter what the
10 truth of the matter asserted is; it's the effect on the
11 listener at this point because it's what it made him do.

12 THE COURT: Let me think about it while I go
13 eat some lunch. I can be back here in -- at 1:00, and let
14 me think about it over lunch.

15 MR. MATOUKA: Thank you.

16 THE COURT: I see a real problem with
17 proceeding with measurements done by somebody who is not
18 here to be cross-examined. I think there might be a way
19 for your client to say, "This is where the crankshaft
20 goes, this is where bearings are, this is where the
21 journals are, and there's a, you know, arguably a problem
22 in this area somewhere," without getting into
23 measurements, because he understands that much, but I
24 don't know exactly yet.

25 MR. MATOUKA: Okay.

1 THE COURT: Probably have to listen to that
2 question and answer outside the presence of the Jury and
3 then decide whether that offer is admissible.

4 MR. MATOUKA: Okay. Thank you, Your Honor.

5 THE COURT: All right. So take a lunch break
6 and let's see what that does to help us understand.

7 MR. HURLEY: 1:00, Your Honor?

8 THE COURT: Yes, please.

9 MR. HURLEY: Thank you.

10 (Recess taken.)

11 THE COURT: I'll confirm that I'm sustaining
12 the objection to the video on hearsay grounds, and then
13 I'll listen to what your expert has to say. If I need to
14 do that outside the presence of the Jury first, that's
15 fine, whenever you call him.

16 MR. MATOUKA: Okay.

17 THE COURT: Then that would be the way to
18 handle that.

19 MR. MATOUKA: Okay. So, Your Honor, we do
20 anticipate calling him later then, and I'm okay with not
21 bringing the videos in at this time, but I would like to
22 clarify as to what questions I can ask Mr. Johnson about,
23 you know, what happened when he went to this mechanic.

24 THE COURT: Well, obviously that you -- if
25 you want to just run through that testimony now and I can

1 hear the objection, but I can't --

2 MR. MATOUKA: Yes, Your Honor.

3 THE COURT: I can't imagine all of the
4 possible objections if I've not heard the testimony.

5 MR. MATOUKA: Yes, Your Honor.

6 MR. HURLEY: I don't see any reason to
7 exclude the Jury if we're doing that. I mean, if we're
8 going to have our objections, you're going to rule on
9 them, and we'll proceed however you direct us. I don't
10 know that we need to do that outside the presence of the
11 Jury.

12 THE COURT: Okay. We'll try that. If we
13 need to have a bench conference, that's fine. If we need
14 to, I'll send the Jury out and we can finish.

15 All right. Ready.

16 (Jury present.)

17 THE COURT: Thank you. You may be seated.

18 You may continue.

19 Q. (BY MR. MATOUKA) So, Mr. Johnson, before we took
20 our break for lunch, you were describing that you had
21 broken down the engine and you were conducting your
22 investigation, correct?

23 A. Yeah, that's correct.

24 Q. And so you had taken the engine to where?

25 A. A place called Roe Engineering which was an

1 engine machinist -- a machine shop that did engine
2 machining, basically.

3 Q. Okay. And what did -- what did you see them do?

4 A. So I explained the circumstances to them of kind
5 of what happened, that I had a bearing failure within the
6 engine, that there was a possible resolution of hopefully
7 fitting a new set of bearings and everything being good to
8 go, but I wanted to verify that the housing bores in the
9 engine were as they should be, they were the correct size
10 and dimension. And I asked them to basically verify that
11 for me before I moved on, and, obviously, if they
12 identified any issues, I could then decide what route I
13 was going to take to further investigate the cause.

14 Q. And without telling me what the results of
15 anything they did, did they make measurements?

16 A. Yes, measurements were taken.

17 Q. Okay. And after -- after what Roe Engineering
18 did, what did you do next?

19 A. I referred to the build sheet that I had been
20 provided with the engine to have a look at the numbers
21 that I was expecting to see there, and I noticed that
22 there was a discrepancy in the measurements on the size of
23 the housing bores and the size of the journals of the
24 engine in the -- They basically made an impossible number.
25 They resulted in negative clearances, that the sum didn't

1 make sense, so I queried that.

2 Q. And is that -- My apologies. I'm going to refer
3 you to Exhibit 8.

4 A. Yep.

5 Q. And this is the build sheet, correct?

6 A. That's correct, yes.

7 Q. And so can you kind of walk us through what you
8 were -- what you were just describing?

9 A. Yes. So these measurements here of the housing
10 bore, so that's the cradle in which the crankshaft sits
11 in, the journal, which is the journal of the crankshaft,
12 and then the clearance. And you would subtract the
13 journal diameter from the housing bore, plus the thickness
14 of the bearings that were in there, and that would give
15 you your oil clearance. But if you subtracted these
16 numbers from each other, it ended up with a number that
17 was effectively impossible. The engine wouldn't have run
18 full stop. You wouldn't have been able to turn it over.
19 It was like an interference fit.

20 So, obviously, I questioned that with
21 Mr. Wilson and said, obviously, "I am -- I'm referring to
22 the build sheet. I've noticed this issue. Can you kind
23 of explain?"

24 Q. And do you remember what he said?

25 A. Yeah, he said that he'd be able to provide me

1 with an updated build sheet, which then I recall -- I
2 think he asked for a photo of the copy of what I had,
3 which I provided. And then he said he would be able to
4 provide an updated one with some additional figures on it.
5 And then a short period later, I got a photo of that,
6 which was kind of a handwritten version of this, this
7 document, and which had slightly different numbers for the
8 journal size.

9 Q. Okay. And so -- and so what was, I guess, he
10 trying to tell you there or what did he tell you about
11 that?

12 A. He said that it was a typo on the build sheet,
13 that the numbers that he had originally provided me were,
14 like I say, a typo, and that they should have been of a
15 smaller diameter and that's how he got to the -- the oil
16 clearance, how the sum worked effectively to give the oil
17 clearance.

18 Q. Okay. And beyond, beyond, you know, this
19 discussion about the build sheet, did you do anything
20 else, you know, in -- as part of your investigation with
21 the housing bores?

22 A. Yes. So it wasn't just one shop that I took it
23 to. I wanted to kind of verify the findings, make sure
24 that it just wasn't, you know, a -- just one person's view
25 of the measurements of the engine. It was: Take it to

1 get it verified, see if somebody else would get the same
2 or something different, see if there was any consistency
3 with the readings that were being made.

4 So I took it to another company called Serdi
5 U.K. who are a company who make a lot of the machines that
6 are used in the machining of engines. They took their own
7 readings, which were corroborated, so they matched with
8 the readings that Roe had taken. And they took some other
9 readings for me as well, things like the surface finish of
10 the -- the surface finish on the maintenance services on
11 the block where the cylinder heads bolt on, because the
12 type of head gaskets that had been used, they require a
13 certain grade finish or the manufacturers stipulate that
14 you should aim for finish better than this, and those
15 readings were taken, and they were nearly triple, triple
16 the coarseness of what they should have been.

17 Q. Do you recall if Mr. Wilson ever admitted that
18 the roughness was incorrect?

19 A. I wouldn't say he admitted that they were
20 incorrect. It was more of he -- he deemed that that was
21 still acceptable to him.

22 Q. And, okay, so you've had the housing bores
23 measured twice. In tearing down the engine, did you
24 identify any other issues?

25 A. Yes. Um, so the first -- probably the major

1 one was when I took the cylinder heads off, I wanted to
2 strip them down to inspect the components that were in
3 there to make sure, because, obviously, there had been
4 bits of metal in the oil and that will circulate from the
5 engine. I didn't want that. I wanted to check that there
6 had been no secondary damage from that metal going around
7 the engine.

8 So in the cylinder heads, I took all the
9 valve springs and the valves out of the engine, and that's
10 where I found the -- there was a -- So each cylinder head
11 has 12 valves in it, 12 valves, 12 valve spring seats,
12 which is like a metal collet that the spring sits on, the
13 spring, the retainer. But one of my cylinder heads, I had
14 13. The 13th one was wedged into one of the valve
15 springs.

16 So that was -- and then there was kind of
17 some secondary damage from the presence of that extra part
18 floating around in the top of the engine, which it damaged
19 the valve stem seal, which is the seal that prevents oil
20 getting down into the combustion chamber from the valve.
21 And then some of the other little parts that sit on top of
22 that had clearly been impacted and damaged as a result of
23 that extra part being in the engine.

24 Q. Okay. I'm going to refer you to page 23 of
25 Exhibit 3.

1 A. Gotcha.

2 Q. And can you describe what that is?

3 A. So, obviously, this coily bit is your valve
4 spring, and this bit of metal, this washer-shaped item
5 here is the valve spring seat that shouldn't live there.
6 That should live at the bottom of the valve here. But
7 each of the spring seats are held in by the valve stem
8 seal. It stops them just coming off loosely. So all the
9 ones that were installed, the 12 were all still present in
10 the place they should have been. It's just I had a 13th
11 floating around in the top of the head.

12 Q. And going to the next picture.

13 A. So that's the other part. That's the retainer,
14 so that's what sits on top of the valve -- sorry -- the
15 valve spring and kind of -- sorry. This kind of scoring,
16 slash, gouge shouldn't be there. That is damage that has
17 been as a result of that part.

18 Q. And so as you're -- you've gone through all this
19 work. What's -- what is Mitch telling you?

20 A. So I kind of drafted quite a long message that
21 kind of summarized the findings, the investigatory --
22 that's not a word -- route that I had taken to kind of
23 identify what the problem was, and said, you know, I
24 believe that this was a fault that was caused by a
25 machining and assembly error made by himself, and that as

1 a result should be covered by warranty, because the
2 warranty covers machining and assembly errors.

3 Q. Had you conducted any further investigation into
4 the bearings themselves?

5 A. Yeah. So, as I said earlier on, when it was --
6 when Mr. Wilson said to me that he believed that it was a
7 manufacturer fault with the bearings, I contacted the U.K.
8 branch of King Bearings to submit those bearings for,
9 effectively, a failure report to find out why these parts
10 had failed. So I packaged up the bearings that actually
11 failed, sent them off to -- via the U.K. branch to their
12 quality assessment facility which is over in Israel, and
13 then I composed an email which contained as much
14 information as I could really put in it and the same
15 information that I shared with Mr. Wilson, so photos of
16 the other bearings, and so the con rod bearings, a video
17 of the condition of the crankshaft, photos of the pistons
18 and any marks on the pistons, a copy of the data log,
19 which is an electronic file which shows what each sensor
20 was reading during the time that it was on each run on the
21 dyno so it would record every input that -- Every sensor
22 that is on that engine, it would give a reading and it
23 would record that reading. So, basically, gave them as
24 much information as I physically could, as well as the
25 physical bearings so that they could make an assessment as

1 to why those bearings had failed.

2 Q. And did you get a report from them?

3 A. Yes, I did.

4 Q. Did they approve a warranty claim against their
5 bearings?

6 MR. HURLEY: Objection. Calls for hearsay.

7 THE COURT: Sustained.

8 MR. MATOUKA: I believe that's a legal --
9 legal action if they -- whether or not they granted or
10 denied a warranty claim that -- it doesn't -- there's no
11 truth behind it other than if they said yes or no, we're
12 honoring the warranty on this.

13 THE COURT: I sustained the objection.

14 Q. (BY MR. MATOUKA) Did King Bearings resolve your
15 problems?

16 A. No.

17 Q. Did you inform Mr. Wilson of their findings?

18 A. Yes, I did.

19 Q. What did Mr. Wilson say about their findings?

20 A. He dismissed them initially because he didn't
21 believe that I had sent them the physical bearings, that
22 they made their conclusion in their report purely based
23 off photographs, the same photographs that I had shared
24 with him of the failed bearings themselves. And, again,
25 he rejected any warranty claim from me that this was a

1 problem caused by him.

2 Q. And at this point, what was he saying the problem
3 was?

4 A. So after, obviously, the results of the report
5 from King came back, I believe that eliminated the cause
6 of the failure to being a manufacturer fault. So the next
7 reason that I was given as to why he wouldn't honor the
8 warranty was because I had used the incorrect oil during
9 the running-in period.

10 Q. But the engine had already been broken in,
11 according to Mr. Wilson.

12 A. As far as I was aware, yeah, I was free to use
13 whatever oil I chose to use. And seeing with an expensive
14 \$20,000 engine, I wasn't going to put cheap oil in it.
15 It's just a brand that is extremely well known over in the
16 U.K. and Europe.

17 Q. And so Mr. Wilson rejected any type of warranty
18 claim from you?

19 A. Yes, he did, yeah.

20 Q. And do you recall about when that was?

21 A. I would say that was probably around January or
22 February '22, maybe, somewhere around that time, I think,
23 was when I got a quite substantial reply from him as to
24 why he didn't believe that it was his fault.

25 Q. So I kind of want to zoom out a little bit.

1 Earlier, you were talking about the car shows and car
2 groups in U.K., right?

3 A. Yeah, that's correct.

4 Q. Are you a member of any of these groups?

5 A. Yeah, I'm a member of the U.K. 300 Zed X owners
6 club, which I've been a member of since 2004 from when I
7 got my very first one.

8 Q. And, I guess, what do you do as part of that
9 group?

10 A. I mean, it's sharing experiences, technological
11 knowledge, technical knowledge, with other members.
12 Obviously, we have -- we have meets. We have
13 competitions. A big one that happens every year, so in --
14 in November, we have, well not we, the National Exhibition
15 Centre in Birmingham has a big classic car show, which
16 is -- it's a big show. There's hundreds of thousands of
17 people who attend, and our club regularly gets an invite
18 to display cars at that show. And so every year in the
19 buildup to that, because, obviously, there's only so
20 much -- each club stand only has so much space. So a
21 competition is basically run within the club to choose
22 whose car are we going to display at the show. And in
23 both 2019 and 2021, I was picked to display my car because
24 of -- primarily, a lot of it was due to the work that had
25 been done to the engine. It was going to be one of the

1 highest specification engines for this car in the U.K.
2 and, obviously, some of the other work I had done as well
3 with the respray, it was quite -- I'm quite proud of my
4 car. So, yeah, it was quite cool, cool thing to be voted
5 on. But, obviously, with the failures, I had to back out
6 of both of those at short notice because they were -- like
7 I said, the show was in November, and both of these
8 failures occurred in kind of tail end of August, tail end
9 of September, you know, only a few weeks' notice.

10 Q. And has that affected how you interact with that
11 community?

12 A. Yeah. Yeah, I -- Well, obviously, the -- I'm not
13 one for airing with dirty laundry out in the public and I
14 wouldn't -- With the dispute that's been going on, I've
15 kind of kept to myself. But that means, you know, I can't
16 really go on a forum and talk about -- talk with the other
17 owners about how things are going with my engine and, you
18 know, share my knowledge of how it's running and what I've
19 learned by doing the things that I've elected to do, so
20 I've pretty much -- I've kind of pretty much withdrawn
21 from the club. I don't really take part in it until this
22 has all been resolved.

23 Q. And do you think that it would be harder for you
24 to win to have -- win the competition to have your car in
25 the auto show in the future?

1 MR. HURLEY: Your Honor, calls for
2 speculation.

3 THE COURT: Sustained.

4 Q. (BY MR. MATOUKA) And so you also paid for other
5 work or services to be done for tuning and engine,
6 correct?

7 A. Yeah, tuning the engine, yeah.

8 Q. Can you kind of go through, and we can refer to
9 Exhibit 1, if you'd like.

10 A. So was that the --

11 Q. Invoices.

12 A. -- the invoices. Cool.

13 Q. So I guess that I can kind of go through this a
14 little bit. So we've got page 5, it appears to be another
15 invoice from EPR?

16 A. That's correct, yeah.

17 Q. And what was this for?

18 A. So the break-in oil, a set of spark plugs, the
19 dyno time, which was for the time that it was on the
20 engine dyno while it was over in Texas, and then the
21 shipping container to ship it back to me in the U.K.

22 Q. And what was the total you paid for that?

23 A. \$1,725.

24 Q. And this is from Lloyd Specialist, correct?

25 A. That's correct, yeah.

1 Q. And what was this for?

2 A. As it says, kind of the diagnostics of why the
3 engine wouldn't start when it was taken to them and the
4 tuning session was aborted because the engine wouldn't
5 start. So kind of the, yeah, the fault-finding session.

6 Q. And did Mr. Wilson pay for that?

7 A. Yes, he did, yeah.

8 Q. Okay.

9 A. And same with the following one from Lloyd as
10 well, which is 42 pounds. Mr. Wilson paid for that as
11 well.

12 Q. Okay. And here we have one from Abbey
13 Motorsports?

14 A. Yeah, that's correct.

15 Q. And what was this for?

16 A. That was for, effectively, doing the oil
17 analysis, so taking off the oil filter, cutting it open,
18 inspecting it, taking the oil sample and sending the oil
19 sample off, and the fee that is associated with that.

20 Q. And how much was that for, again?

21 A. 142 pounds and 33 pence, which is about 180
22 dollars, something in there, roughly.

23 Q. And the next one?

24 A. The next one is for the tuning session, which, as
25 it says, install the car on the dyno, confirm it, set up

1 the boost levels, make some adjustments, carry out the
2 tuning, and the noise from the engine, work to maybe sort
3 issue, adjust NVCS, which is another term for the
4 variable, the VTC, solenoid that I described earlier that
5 was rattling. A few more runs, the noise stopped. And
6 then, as I say, the car was removed from the dyno and the
7 session was aborted, and that was for 714 pounds.

8 Q. Okay. Then we've got a couple of pages of PayPal
9 transactions, that we redacted?

10 A. Yeah.

11 Q. This one in October of 2019?

12 A. Yeah.

13 Q. Do you recall what that was for?

14 A. I believe that was for the camshafts.

15 Q. Okay.

16 A. The camshafts that Mr. Wilson or EPR provided
17 that were of a higher specification than the stock, a high
18 performance camshaft.

19 Q. Okay.

20 A. I think there was another one.

21 Q. And then we've got -- I may have had the month
22 wrong on the last one. My apologies. I think your dates
23 are backwards.

24 A. No, no, that's the way we do it. I'm sorry.

25 Q. So this would be August 14th of 2019, correct?

1 A. That's correct, yeah.

2 Q. Do you recall what this one was for?

3 A. Um, August '19, I think that might have been for
4 ceramic coatings of the exhaust housings and the
5 manifolds -- or 14th of August. Oh, that could have been
6 for the shipping container, shipping container and the
7 break-in oil maybe. Thinking about it, looking at the
8 time of when it was, that's roughly about when the engine
9 would have been shipped, so I think that's probably what
10 that was for.

11 And same for the hundred dollars just a few
12 days later. Might have been an additional shipping fee
13 that had to be paid to send the engine out.

14 Q. Okay. And then -- I apologize. I'm trying to
15 get rid of this. It doesn't want to leave.

16 Anyway, can you tell me what this invoice is,
17 page 20?

18 A. Yeah, I can see it from here. That's, obviously,
19 the vehicle is immobile after the failure, so it had to be
20 recovered back to my workshop for me to then be able to do
21 the investigation as to why it failed, so that's the --
22 that's the bill for recovering the vehicle back from Abbey
23 to my workshop.

24 Q. And so -- and this is after the second failure.

25 A. Oh, sorry. I misread that one. I was on a

1 different page. Yes. So that's the one from Abbey
2 Motorsport.

3 Q. Okay. I believe this may be a duplicate of that.

4 A. I think one is from and one is to.

5 Q. Okay. And then this one, page 22?

6 A. Yeah. So there should be another one as well for
7 Lloyd. There was a transportation to Lloyd Specialist
8 Developments, and there was a transportation, obviously,
9 after the engine failure back from Lloyd Specialist.
10 That's my unit.

11 Q. And then earlier you mentioned that you had to
12 purchase another vehicle?

13 A. That's correct, yeah.

14 Q. And is this a Bill of Sale for that vehicle?

15 A. That's correct, yep.

16 Q. And how much did you pay for that?

17 A. 2000 pounds.

18 Q. And then, finally, and I believe this is only
19 from '21, September of 2021 to February of 2024, but can
20 you tell me what this document is?

21 A. That's an invoice for the rent that I've paid for
22 the workshop where the car has been stored, obviously,
23 where I've stripped it down to do the investigation.

24 Q. But you've been paying since 2019, correct?

25 A. Yes, that's correct, yeah, since just prior to

1 the first engine being received.

2 Q. And would you have -- would you have continued to
3 pay for that shop if that car worked?

4 A. No.

5 Q. Then, finally, page 26?

6 A. Yep.

7 Q. And can you tell me what that is?

8 A. That's the invoice for the shipping of the engine
9 in September 2019, so the first engine that I received.
10 So that's the cost of the shipping from EPR back to the
11 unit where I keep the car.

12 Q. And, roughly, how much have you spent on this
13 since you entered into the contract with Mr. Wilson?

14 A. I -- it's a rough conversion rate, it's probably
15 just over \$30,000 maybe, maybe more than that. Actually,
16 maybe closer to 40. I'd have to look at all my numbers
17 again to be specific.

18 Q. At any point has Mr. Wilson offered to honor the
19 warranty?

20 A. No.

21 Q. Has -- Do you have the engine you contracted for?

22 A. No.

23 Q. Do you have an engine that runs?

24 A. No, sir.

25 Q. What do you believe the cause of the failure was?

1 MR. HURLEY: Objection, Your Honor. Calls
2 for an expert opinion that he's not qualified to give.

3 MR. MATOUKA: I can ask for his belief.

4 MR. HURLEY: But he's going to testify about
5 a technical matter that would require expert testimony, so
6 it's inappropriate for him to opine on it.

7 THE COURT: Sustain.

8 Q. (BY MR. MATOUKA) Do you have a belief as to what
9 the cause of the failure was?

10 A. Yes, I do.

11 Q. Is that based on your investigations?

12 A. Yes, it is, and the evidence that was -- became
13 apparent during my investigation.

14 Q. And is it your belief that it is Mr. Wilson's
15 fault?

16 MR. HURLEY: Objection, Your Honor. Calls
17 for a legal conclusion and, again, calls for expert
18 testimony.

19 MR. MATOUKA: Your Honor, I'm not asking for
20 him to give anything other than identifying who he thinks
21 the responsible party is.

22 THE COURT: Overruled.

23 MR. MATOUKA: You can answer.

24 THE WITNESS: Can you repeat the question for
25 me, please.

1 Q. (BY MR. MATOUKA) Do you believe that it's
2 Mr. Wilson's fault?

3 A. Yes, I do.

4 MR. MATOUKA: Nothing further.

5 CROSS-EXAMINATION

6 BY MR. HURLEY:

7 Q. Mr. Johnson, I'm going to ask you some questions
8 about your testimony, if you don't mind.

9 A. That works.

10 Q. I'm going to go back to the beginning where your
11 lawyer started. Your profession is as a police officer,
12 correct?

13 A. That's correct, yeah.

14 Q. You are not a mechanic?

15 A. No, I'm not a -- that is not my employment, no.

16 Q. You are not a machinist?

17 A. No, that's not my employment.

18 Q. Are you -- do you consider yourself an engine
19 builder?

20 A. I consider myself an enthusiast.

21 Q. Which is not to say you're a professional; you're
22 a hobbyist, correct?

23 A. That's correct, yeah.

24 Q. But you have had to rebuild your engine before,
25 haven't you?

1 A. Yes, I have.

2 Q. And it failed?

3 A. Yes, it did.

4 Q. You also hired someone else at one point. Prior
5 to your dealings with Mr. Wilson, you hired someone else,
6 correct, to try to rebuild your engine, and that failed as
7 well?

8 A. Yeah, back in 2010, I had an engine failure. The
9 original engine that came with the car failed during a
10 track session that required it to be -- have the pistons
11 replaced, so, yes, I commissioned an engine then that was
12 built in, yeah, 2010.

13 Q. And from 2010 until 2018, was the car running?

14 A. Yes, it was.

15 Q. So did you have that piston damage repaired in
16 2010?

17 A. So the first -- so the original engine that came
18 with the car failed during a track session. That engine
19 was built in 2010, and that engine failed in 2013 during a
20 top speed event, it's a runaway. So that engine lasted
21 from '10 to '13. As I kind of described earlier, when I
22 said I had to take a bit of a pause to regain my finances
23 to pay, to repair stuff, so from 2013 to '15 the vic was
24 off the road while I saved up.

25 2015, I had major reconstructive surgery on

1 my knee after an accident I had. While I was recovering
2 from that and off work is when I started building the
3 engine again myself. So that's the engine you refer to
4 that I built myself. And that engine ran up till about --
5 around 2016, 2017-ish.

6 Q. So the work you just described that you did --

7 A. When I say "did", I assembled the engine. I
8 didn't machine the engine.

9 Q. Where did you do that?

10 A. Where did I do that?

11 Q. Yes.

12 A. I did that in my mom's garage.

13 Q. And where is that located?

14 A. In the next town down from where I live in the
15 U.K.

16 Q. Is that still available to you?

17 A. No, it's not. She lives in a different house and
18 my stepdad has motorbikes now, so that space is not
19 available to me.

20 Q. So despite the fact that you're not a mechanic,
21 not a machinist, but that doesn't mean you didn't do work
22 on the car, right? You just described that you, in fact,
23 regularly did work on the car?

24 A. That's correct, yeah.

25 Q. And you did the work on that car based on what,

1 on Internet education, YouTube videos? How did you know
2 how to do that work on the car?

3 A. From what I was taught by my father as a kid
4 growing up. Like I said, I used to race Motocross bikes
5 as a kid. And if any of you have ever ridden an off-road
6 bike that's two stroke, they have a limited shelf life
7 anyway. Their shelf life is measured in hours, so they
8 need regularly stripping down and rebuilding and -- to
9 maintain their performance. So it's been personal
10 experience from that.

11 And then, obviously, the guy who built the
12 engine in 2010 for me, he took the time to be willing to
13 explain how things work, because as I kind of said to you
14 guys earlier, that is what interests me. I like knowing
15 how things work, how things are done so I can learn. It's
16 a hobby.

17 Q. So you mentioned a motorcycle earlier.

18 A. Yep.

19 Q. How long have you had a motorcycle?

20 A. How long have I been riding motorcycles or how
21 long have I owned my current motorcycle?

22 Q. Well, how many motorcycles have you owned?

23 A. At least 30.

24 Q. And you do work on those as well?

25 A. Yeah, yeah.

1 Q. Where do you do that work?

2 A. I work on my motorcycle in my conservatory.

3 Q. Where is that?

4 A. At my home.

5 Q. So the work you did on this car was done at a
6 rented garage, but the work you do on the motorcycle is
7 done at home?

8 A. Yeah, because I can't get my car or engine
9 through that size door, while I can a motorbike.

10 Q. What else is kept at that garage you rent?

11 A. My car, shelving units for keeping stuff on.

12 Q. And what is on the shelving units?

13 A. Like I said, the parts that I removed, so
14 fenders, bonnet, bumper, gearbox, ancillary parts, all the
15 stuff that had to come off the car to be able to remove
16 the engine.

17 Q. And you removed all those, right?

18 A. Yes, I did.

19 Q. You also mentioned a Suzuki, and I don't remember
20 what the make was.

21 A. It's a Vitara -- Suzuki is the manufacturer. The
22 model is a Vitara. I think you call it a GEO Tracker over
23 here. It's a Chevrolet.

24 Q. Okay. And you said you use that for off-roading?

25 A. Amongst other things. It's also my somewhat

1 daily commuter to the train station. It's only got a 1.6
2 liter engine. It's quite economical and easy for me to
3 use.

4 Q. And that's what you use when your family goes off
5 and kind of has these off-road adventures?

6 A. Yeah, that's correct.

7 Q. When did you buy it?

8 A. I'd have to refer back to the Bill of Sale on the
9 original that was just produced for the exact date. I
10 don't recall.

11 Q. Obviously, your Z car isn't used for off-roading
12 though, right?

13 A. No, that would just end badly.

14 Q. Okay. So the Suzuki, obviously, provides you an
15 option that you don't have with the Z car in terms of
16 being able to go off road, right?

17 A. It's a different car for a different purpose.

18 Q. Okay. You said something that I want to clarify.
19 You said no competitive racing, just recreational racing.
20 What is the difference?

21 A. No. Recreational track use, I think I said.

22 Q. Okay. What does that mean?

23 A. It means that members of the public can pay to go
24 to a race circuit and drive around the race circuit not
25 having to be concerned with the rules of the road that

1 will get you speeding tickets and such, but it's not --
2 there is no timing. You can't time yourself. You can't
3 video yourself. It's just a driving experience in a
4 closed environment that lets you push the limits of
5 yourself as a driver -- I mean, I'm a trained, advanced
6 police driver -- and, obviously, the capabilities of the
7 car.

8 Q. So it's that type of event, I guess I'll call it,
9 where you get to use the high performance side of your Z
10 car, right?

11 A. That's correct, yeah.

12 Q. You don't get to use that on everyday road
13 driving, right?

14 A. Every -- Well, it depends where I am. If I'm in
15 the U.K., obviously, I'm confined to U.K. road laws and
16 speed limits. But Germany and their Autobahns is only 600
17 miles away. There are no speed limits. So it depends on
18 if I'm going on a road trip to go over to Germany or the
19 Italian Alps or if I'm taking my kids to school.
20 Basically, entirely dependent on the circumstances which
21 I'm using the car for.

22 Q. Do you ever take that Z car to the -- to Germany
23 or the Italian Alps?

24 A. Well, no, because at no point in its recent
25 engine build has it lasted long enough to do that.

1 Q. So we talked about the two previous failures of
2 this engine dating all the way back to 2010, right?

3 A. That's correct.

4 Q. And you bought it in 2008?

5 A. That's correct.

6 Q. So did the car ever have a high performance
7 engine in it before you contacted Mr. Wilson?

8 A. Yeah.

9 Q. But those were the engines that failed?

10 A. So the engine that was built in 2010 -- Well, so,
11 I'll step back. As I said, the engine that pre-2010 was
12 the original engine as it came from Nissan, and it had
13 some -- The car was imported from Japan, and it came with
14 an aftermarket air filter and a sportier exhaust, but,
15 fundamentally, it was a factory stock engine.

16 The engine that was built in 2010 had some
17 high performance internal components as well as some -- so
18 talking pistons, connecting rods. And then I had some
19 extra parts, so larger turbochargers, larger intercoolers,
20 bigger fuel injectors. But I didn't have the -- the
21 Haltech engine control unit that I mentioned to you guys
22 earlier. It was the original computer that could be tuned
23 on a -- it's called an EPROM. It's like a -- it's an
24 old-school computer chip that you plug into a circuit
25 board. It's not -- nowhere near as complicated. It's

1 like comparing an abacus to a calculator.

2 Q. But, ultimately, those two engine builds, the one
3 that happened in 2010, and the other one that happened
4 when you did it in -- what was the date of that?

5 A. 2015.

6 Q. 2015. You considered those engines to have
7 failed and not been high performance engines, ultimately,
8 correct?

9 A. Sorry. Can you ask that question again?

10 Q. The engine that you had built in 2010 --

11 A. Was a high performance engine.

12 Q. -- but it failed?

13 A. Yes.

14 Q. The engine you personally built in 2015, was it a
15 high performance engine?

16 A. It was -- it used virtually all of the same
17 internal componentry, so, yes.

18 Q. And it ultimately failed?

19 A. Yes.

20 Q. So --

21 A. Because I made a mistake.

22 Q. -- so at any time for any period, any lengthy
23 period of time, has your Z car had a high performance
24 engine in it?

25 A. Yes. So from 2010 to 2013 where it failed on a

1 high-speed event on a runway, yeah, so that's three years
2 there. 2015 to 2017, it was running fine, made not far
3 off the same sort of power levels that I was hoping to
4 achieve with the engine from EPR, difference being the
5 componentry that I asked to go and work that went into the
6 engine from EPR was designed to cope with even higher
7 levels of performance, rather than like the previous. The
8 2015 engine and the 2010 engine were kind of almost the --
9 what I believe was close to the limits of the internal
10 componentry. So when it blew up on a runway when I'm
11 trying to do 185 miles an hour, it was kind of a risk you
12 take. If you want to push your car to the limit, if it
13 goes bang, that's the risk you take.

14 Q. Is that true of all high performance engines,
15 there's always a risk involved?

16 A. Um, a risk in what regard?

17 Q. In that I think the term you used, it might go
18 bang, that there's always a potential for failure.

19 A. There's a potential for failure if you're doing
20 an activity that pushes that engine to the limits. So in
21 answer to that, yes. Is there an inherent risk with just
22 running a high performance engine? No, there shouldn't
23 be.

24 Q. Okay. So I'm confused, because you said if you
25 push it to its limits, it always has the risk of failure.

1 A. Yeah.

2 Q. But if you run it -- if you run it under normal
3 conditions, then you think it may not, it should not fail.

4 A. No, no.

5 Q. So the obvious question this all leads to is:
6 Why didn't you just rebuild your own high performance
7 engine after it failed in 2015?

8 A. Because, as I said a moment ago, I identified, so
9 the engine I built in 2015, obviously, I built myself, and
10 I built it to, effectively, the clearances listed in a
11 workshop manual. Nissan published a workshop manual that
12 gives all their clearances and tolerances and margins. I
13 built the engine, because I didn't know any better, from
14 my experience, that they were the -- the clearances that I
15 aimed to achieve -- that I set the engine up for were
16 based off factory numbers, when I, obviously, run the
17 engine at higher than factory performance. The failure I
18 had was a rod bearing failure. I had insufficient oil
19 clearance for the performance I was asking from the
20 engine.

21 Q. And so -- so you just didn't want to try it again
22 because you didn't trust yourself to build a high
23 performance engine?

24 A. Um, it wasn't a case of that. It was I,
25 obviously, as you kind of said, I've gone through a bit of

1 a history of I've had engines built and I had a bit of a
2 failure, tried it myself, didn't get it a hundred percent.
3 You kind of get bored of going over old ground. I was
4 willing to invest the money to, like I said, there was
5 other things with the car that I wanted to do, other
6 restoration work that I wanted to do. I couldn't just
7 keep going back to the engine. I wanted an engine that I
8 believe would be good to go, like you know, no longer an
9 issue, no longer a consideration moving forward. I could
10 then change my efforts on doing the interior or suspension
11 componentry or whatever it was. Basically, I wanted to
12 kind of do the engine, that's that, done, let's move on to
13 something else.

14 Q. So stated differently, you wanted a pro to build
15 your engine?

16 A. Yes.

17 Q. And in your research and your discussions with
18 others, you determined that Mitchell Wilson was the right
19 person to be that pro, right?

20 A. Yes.

21 Q. How -- You mentioned that Mr. Wilson had done
22 some things for you in the past, prior to the engine
23 build. What was that?

24 A. He -- So that engine that I was talking about
25 that I built in 2015, he gave me some technical advice

1 around that. After I had built the engine and the car was
2 being tuned, there was an issue with -- how do I put it --
3 the signal that the engine, the ECU sees of the position
4 of the camshaft and the crankshaft and the position of the
5 camshaft, the -- where they are in relation to each other
6 as they rotate, we were getting some variance in that
7 signal. And Mr. Wilson made a part which changed the way
8 in which the timing belt was tensioned that kind of got
9 rid of that issue, and so I purchased that part from him,
10 and it worked, by all accounts.

11 Q. So you just answered my next question. Prior to
12 the engine build, everything Mr. Wilson did for you was
13 spot-on?

14 A. Well, the only thing he did for me was sell me a
15 part. Everything else was just advice.

16 Q. But the advice was spot-on?

17 A. The advice was the advice. It kind of -- I
18 can't --

19 Q. Did it work?

20 A. Did what work?

21 Q. The advice. If you followed his advice, did it
22 work?

23 A. It wasn't advice in terms of "Should I do this?"
24 It was more of a "What do you think to this? What is your
25 opinion on this?" It's an opinion. I can take it or

1 leave it.

2 Q. And did you take it?

3 A. It depends on which piece, particular piece of
4 advice you're talking about.

5 Q. Well, you bought a part from him, correct?

6 A. That's correct.

7 Q. Was that based on his advice?

8 A. It was both of his advice and a guy, another guy
9 in the U.K. who had bought that part and used it and had
10 similar kind of results that I was hoping to achieve,
11 yeah.

12 Q. Did you install that part?

13 A. Did I install that part? Yes, I did, yeah.

14 Q. And was that -- was the installation something
15 that he suggested to you?

16 A. Did he suggest that I install the part that I
17 purchased from him? Is that what you're asking?

18 Q. Did he give you any advice about installing the
19 part?

20 A. I mean, the -- I believe the part came with
21 instructions of how to set up -- how to set it up and how
22 to install it. They were pretty clear instructions. I
23 don't recall having any issues with those instructions.

24 Q. Let me ask it a different way. Did your
25 interaction with Mr. Wilson, before you commissioned him

1 to build your engine, did it increase your confidence in
2 his abilities?

3 A. Um, did it increase my confidence in his
4 abilities. I got the impression that he knew what he was
5 talking about. We built a good rapport. We had -- How
6 else to explain it. You know, when you talk to somebody,
7 you can kind of get whether they're on the similar sort of
8 wavelength to you. You understand what they're saying.
9 They understand what you're saying. It was more of a
10 rapport kind of thing.

11 Q. So it didn't have anything to do with his
12 technical capabilities; you just liked the guy?

13 A. No, it had -- Technical capabilities is obviously
14 a fundamental reason as to why I chose to use him. The
15 rapport, the experience that I had gained in the times in
16 talking to him, the advice he offered, the part that I
17 purchased from him, which I was more than happy with, it
18 did what I hoped it would do, it kind of all blends into:
19 Do I use this guy that I've had this level of
20 communication with and bought parts from, or do I use
21 somebody else who offers the same service that I've never
22 really spoken to in a day. So you kind of get a feel of
23 people from talking to them, and that's where that
24 judgment was made.

25 Q. So after you decided to approach Mr. Wilson

1 about -- in 2018 about commissioning this new engine
2 build, did you have an ongoing dialogue about what that
3 would look like, or did you just say, "Hey, Mitchell,
4 here's what I want, do it," or did you have some
5 collaborations on it?

6 A. There was collaboration.

7 Q. And what kind of collaboration was it?

8 A. Um, the -- what type of parts. Obviously,
9 where -- I believe I discussed my kind of goals for the
10 engine, what I wanted to achieve. As I mentioned before,
11 I wanted him to know the over-engineered, under-stressed
12 kind of ethos that I wanted to go with.

13 Mr. Wilson offered -- Obviously, there's
14 different levels of parts that could be offered that were
15 at a different price point. So there was discussions
16 about, occasionally, "This part or this part? This one
17 is obviously more expensive but it is better." There was
18 those kind of -- that kind of collaboration.

19 As I said earlier, even after the initial,
20 "Okay, this is the spec of the engine I'd like you to
21 build," that then continued as the build was going on of
22 "Actually, no, I'd like -- maybe we could add this or we
23 could do this."

24 Q. So you were -- you were an active participant in
25 deciding how your engine was built?

1 A. Yes, absolutely.

2 Q. Let me show you a document. This is from
3 Exhibit 1, Plaintiff's Exhibit 1. This is the -- the heat
4 that you described earlier as kind of the invoice
5 proposal, and so I want to go through a couple of these
6 with you just to make sure I understand kind of what your
7 role was and what Mr. Wilson's role was in what he
8 provided you.

9 A. Okay.

10 Q. Your allegation in this lawsuit is that you got
11 nothing of value when you got the engine from Mr. Wilson,
12 correct?

13 A. Sorry. I don't understand the question.

14 Q. You expect a full refund of everything you paid
15 Mr. Wilson.

16 A. Yes.

17 Q. So let's go through and look at this. Did
18 Mr. Wilson deliver all of the things listed on this
19 invoice?

20 A. In terms of components?

21 Q. Yes.

22 A. I believe so, yeah.

23 Q. Did you -- do you still have all those
24 components?

25 A. Yes, I do.

1 Q. Some of them you brought here in this handy,
2 little suitcase, right?

3 A. Yes, I did.

4 Q. Is there any components on here -- If you'll just
5 look through it quickly. Are there any components on here
6 that you don't currently have?

7 A. Well, since I received the engine, nothing has
8 left my possession. So, by proxy, no, I've got
9 everything.

10 Q. Okay.

11 A. Well, actually, I'll caveat that. The cylinder
12 heads are different. So the cylinder heads, where it says
13 about the work done on the cylinder heads, they are
14 actually a different set of cylinder heads because they
15 were replaced by Mr. Wilson.

16 Q. Did you pay for those?

17 A. Did I pay for the replacement cylinder heads
18 after it bent all its valves? No, I didn't.

19 Q. Okay. So it's not that you didn't get what you
20 paid for; you just got something different?

21 A. Yeah.

22 Q. Okay.

23 A. Which I was completely happy with it because I
24 think it was a fair trade given the failure that had
25 happened.

1 Q. Okay. What -- what was the issue -- Let's go
2 back and ask you this question. There were certain parts
3 that you sent him.

4 A. Yes, that's correct.

5 Q. In particular, what was the part that you sent
6 him that there was a little bit of a concern about?

7 A. They were the cylinder heads.

8 Q. And so, ultimately, those are what were replaced?

9 A. They were replaced by Mr. Wilson, yeah.

10 Q. And where had those cylinder heads come from?

11 A. They were cylinder heads from the original
12 engine.

13 Q. Okay. And the engine that had failed in the
14 past?

15 A. Yes, that's correct.

16 Q. So on this kind of long list, you can tell me to
17 move up or down, what is it that you think you didn't
18 receive from Mr. Wilson?

19 A. A complete, functioning engine.

20 Q. But all of the parts listed here, you do, in
21 fact, possess and you did receive from Mr. Wilson?

22 A. Yeah, but a bunch of parts, unless they're
23 assembled correctly, don't work.

24 Q. And you've assembled those engines before,
25 correct?

1 A. As you know, and they lasted longer than these
2 engines did.

3 Q. So you currently have all the parts necessary for
4 you to assemble your engine?

5 A. No, because some of the components are damaged.

6 Q. Which components are damaged?

7 A. The -- the valve stem seals as that was posted.
8 The main bearings which -- and the rod bearings which
9 suffered, I believe, secondary damage. The turbochargers
10 suffered secondary damage in that the oil debris, the
11 metal debris that was in the oil had obviously been
12 circulating throughout the whole engine. The
13 turbochargers also have damage.

14 So the core components are there. I should
15 say that I'm not an expert. I can't tell you whether they
16 can be reused. But at the point that I'm able to
17 reassemble that engine, that's -- they can be presented to
18 whoever I decide to build the engine next, or might do it
19 myself. I don't know.

20 MR. HURLEY: Your Honor, may I approach and
21 give him the witness notebook for Defendant's exhibits?

22 THE COURT: You may.

23 MR. HURLEY: Mr. Johnson, this is just a
24 notebook of preadmitted Defendant's exhibits, so I'll be
25 referring to them.

1 THE WITNESS: Can I put these to one side?

2 MR. HURLEY: I'd ask the Court Reporter that.
3 She'll want them a specific way.

4 THE WITNESS: No, I was talking about my
5 exhibits, the Plaintiff's ones.

6 MR. HURLEY: Right. And I want to make sure
7 the Court Reporter instructs you on how to handle them so
8 they're not all over --

9 THE WITNESS: I just want to move them to one
10 side.

11 MR. HURLEY: Okay.

12 THE COURT: Yes, you can move them.

13 THE WITNESS: Thank you.

14 Q. So this is Defendant's Exhibit No. 8. This is a
15 series of --

16 A. Was that 8? Sorry.

17 Q. Yes. Sorry, because I don't think I'm at -- As
18 we go down -- Well, I'm sorry. Let me go down to the
19 correct -- I think they're out of order.

20 If you look at this photo.

21 A. Yep.

22 Q. Are you nightfury_Z32?

23 A. Indeed, I am.

24 Q. What -- what social media?

25 A. That's Instagram.

1 Q. And so this is a box with a bunch of stuff in it,
2 right?

3 A. That's correct. That's the stuff I described
4 that I sent off to Mr. Wilson.

5 Q. And you say they are parts going off to
6 Engineered Performance for the new engine build?

7 A. That's correct.

8 Q. So that's everything you sent Mr. Wilson?

9 A. I believe so, yeah.

10 Q. And I see something that looks like -- the "R" is
11 covered up, but something that says "turbo". What else is
12 in that box?

13 A. The box, I don't believe, contained turbos. It
14 was just a box that I happened to have that was used.

15 Q. Oh, okay.

16 A. What was in the engine -- Sorry. What was in the
17 box. Like I said, my cylinder heads, which had the
18 aftermarket valve train, so the valve springs and stuff in
19 it, exhaust manifolds, turbo housings, the upper intake
20 manifold, the plates that sit behind the timing belt that
21 then the cam gears go in front of, the timing belt collar
22 then goes in front of. So a lot of kind of ancillary
23 parts that basically create a full long block as it were,
24 the -- apart from the ancillaries I described earlier,
25 like your alternator and your power steering pump. It was

1 kind of 95 percent it would have been a complete engine.

2 Q. Okay. So -- so let me ask this question. And I
3 think this is a term that probably originated in your home
4 country. Would you consider this a bespoke engine? In
5 that it's one of a kind, put together --

6 A. No.

7 Q. -- and it's not unlike any other engine out
8 there?

9 A. No.

10 Q. So this could have been made in the factory as a
11 mass produced engine?

12 A. It would be extremely expensive, but yeah.

13 Q. But were there other engines out there like this
14 that you know of?

15 A. Yes.

16 Q. So why didn't you just go by one of those?

17 A. Um, why didn't I go and buy a complete engine.
18 Is that what you're asking?

19 Q. Did you say others existed out there like the one
20 you wanted?

21 A. Yeah, as in they already had been built, they --
22 somebody else had already built those engines?

23 Q. Well, that was your testimony. You said they
24 existed out there, this is not a unique engine.

25 A. No, it's not a unique engine. There are other

1 people in the world that have an engine of the similar
2 specifications to the one that I had commissioned to be
3 built. That's correct.

4 Q. Why didn't you just go out and buy one?

5 A. Because as far as I'm aware, they're not
6 available as a complete unit to buy a crate motor, I think
7 is a phrase that you guys might know over here. As far as
8 I'm aware, they don't exist, so you have to commission
9 somebody to build those engines.

10 Q. And when you commission someone to build it, you
11 understand, of course, that it is a unique, one-off
12 process. It's not a -- it's not Ford or Chevy or even
13 Nissan with a factory that's putting these engines out in
14 mass. This is a unique and one-off engine that's being
15 built as a single engine.

16 A. It's not unique or one-off because it's a
17 completely repeatable process. The parts are available
18 for anybody to buy. It's not that the -- the pistons in
19 that engine only exist in my engine. That is simply not
20 the case. They're a part made by CP Pistons.

21 Q. So, but my point is that this isn't a mass
22 produced engine, correct?

23 A. No, it's not a mass produced engine by any
24 recognized automotive manufacturer.

25 Q. And you understand that because of the request

1 you are making to have it be a high performance engine
2 that's not mass produced, that what came with that is the
3 fact that it was more sophisticated and potentially
4 subject to more problems than, say, a factory engine is?

5 A. No. Disagree with that.

6 Q. So why did your other engines fail then?

7 A. The first engine failed because it was the
8 original engine from Nissan. The failure in 2010 was a
9 failure due to a failing fuel pump which caused
10 insufficient fuel to go to the engine that blew the head
11 gasket. And the engine failure in 2015 was, as I said to
12 you guys, I built that engine using factory clearances, so
13 Nissan's clearances, but I was -- that engine performed,
14 it made double the horsepower of a factory engine, so
15 those clearances were not sufficient for what I had done.

16 Q. So --

17 A. So that was the mistake that I had made.

18 Q. So --

19 MR. MATOUKA: Your Honor, he's got to let the
20 witness finish his answers before he cuts him off.

21 THE COURT: Try to only one at a time.

22 MR. HURLEY: Sorry.

23 Q. (BY MR. HURLEY) So what you're saying is it's
24 not common to have failures in these types of engines, but
25 you had three.

1 A. It's not common. Repeat the question again,
2 please.

3 Q. You said earlier that you did not think this was
4 the kind of engine that was prone to failure because of
5 its uniqueness. But then you just described three times
6 that you've had a similar engine fail, correct?

7 A. The engines failed due to the circumstances in
8 which they were being used, not due to the componentry
9 that had been used. There's a difference.

10 Q. Well, isn't that, in fact, one and the same?
11 It's the components that failed because of the way it was
12 being used.

13 A. Okay. But if I'm -- So you're going down a
14 hypothetical that I don't really understand.

15 Q. My point is: This is a unique engine. It's
16 being built as a one-off engine and not being mass
17 produced. And because of that, it has the opportunity for
18 more, more bugs in it because of that process and it not
19 being a mass produced engine.

20 MR. MATOUKA: Objection. Asked and answered
21 multiple times.

22 MR. HURLEY: He asked me to explain it so I'm
23 not sure how --

24 THE COURT: Overruled.

25 Q. (BY MR. HURLEY:) You can answer the question.

1 A. Sorry. Go again. So you're asking me if -- are
2 high performance engines more prone to failure?

3 Q. Yes.

4 A. I don't believe so, no.

5 Q. And the three failures you had have no bearing on
6 your answer?

7 A. No.

8 Q. Okay. So let's talk about this, this thread that
9 we're actually looking at. This is -- this is just
10 postings that you did on Instagram that kind of document
11 the process, correct?

12 A. That's correct, yeah.

13 Q. Where did you get the photos for these?

14 A. Some of them I physically took myself. Some of
15 them are photographs sent to me by Mr. Wilson.

16 Q. When you say you physically took them yourself,
17 that would have been before it left your possession in
18 England?

19 A. So like that, the -- Sorry, I can't see which
20 photo. So that's -- Clearly, that's a photo by
21 Mr. Wilson. That's a photo of the pistons when they had
22 been bought. The photo of the box, for example, with the
23 components, that's my photo that I took on my driveway
24 before it was being shipped. So it's a mix.

25 Q. So what was your purpose or goal in kind of

1 documenting this process on Instagram?

2 A. I have lots of friends in the car scene, and my
3 family get fed up with me posting car stuff on my personal
4 Instagram, so I set one specifically for them for the car
5 so they didn't have to be badgered with my car stuff.

6 Q. So let me ask you this. We're down to page 3 --
7 I'm sorry. Yeah, that's right, 3.

8 A. Yeah, it's --

9 Q. What is that?

10 A. That's a connecting rod.

11 Q. And whose hand is that?

12 A. That's -- well...

13 Q. If you know.

14 A. I don't know for sure, but I would guess -- I
15 know that Mr. Wilson took the photo, so I would guess it
16 was his hand.

17 Q. And why is he sending you these photos?

18 A. To show me the components that I paid for.

19 Q. Okay.

20 A. And that were going to be, as far as I'm aware,
21 ultimately used in the building of this engine.

22 Q. And so as we go down through this, I want to ask
23 you a couple of questions.

24 A. Of course.

25 Q. Did you post all the photos that Mr. Wilson

1 delivered to you or did you just pick and choose from what
2 he sent you?

3 A. I believe I posted the vast majority. I think
4 the only ones that maybe I didn't post ones that he posted
5 on his own business Instagram page, which he tagged me in.
6 Or, don't know. I couldn't say that I posted 100 percent
7 of every image he's ever sent me. No, I can't tell you
8 that, but I would say it was a significant number of them,
9 yeah.

10 Q. What is this photo?

11 A. That is a photo of -- they are torque plates.
12 That's for where the -- I believe that where the cylinders
13 are being machined in preparation for the new pistons
14 being installed.

15 Q. What are those black heads that are on top of --

16 THE COURT: Turn the monitor on.

17 THE WITNESS: Oh, sorry.

18 THE COURT: I thought it was on. Sorry.

19 A. Sorry. Can you repeat the question?

20 Q. What are those black things on top of the things
21 that are sticking up?

22 A. They look to me like nuts on the end of stubs.

23 Q. And your text says, "Machining underway." So
24 were you kept fully apprised of the machining that was
25 going on?

1 A. Yes, I was, yeah.

2 Q. So did you keep a constant level of communication
3 with Mr. Wilson as he was sending you these photos,
4 discussing what was going on?

5 A. Yep, that's correct.

6 Q. Did you ever have any questions or suggestions
7 for him or was it just a "Here's what happened today.
8 Thanks. I appreciate it."?

9 A. There was some of that, and, like I say, there
10 was discussions about the potential for further work to be
11 done. So, like I said before, there was a consideration
12 for adding camshafts and the work that would go along with
13 that. There was consideration for -- I don't know how
14 recently he had started doing it, but he offered a CNC
15 porting program on his cylinder heads, which I don't think
16 was part of the initial commission, as it were. It was
17 something that came later. So, yes, there was ongoing
18 discussions throughout.

19 Q. And if you'd look back at your screen now, what
20 is this a picture of?

21 A. That is a photo of the housing bore for the
22 crankshaft.

23 Q. And you say, "The crank isn't going anywhere."
24 What did you mean by that?

25 A. So the -- that -- kind of the top half a bit way

1 says -- has EPR stamped into it. That's the part that I
2 bought from Mr. Wilson that is a billet steel component
3 which is sold as being significantly stronger than the
4 cast iron item that would be used to hold the crankshaft
5 in place. So that was one of the upgrades I looked to do
6 was basically add extra strength to the internal
7 components of the engine.

8 Q. So when you said that's not going anywhere, you
9 meant it was a firm piece of machinery that was going to
10 hold everything in place that was supposed to hold in
11 place; is that correct?

12 A. Yeah.

13 Q. Did you ever question any of the work?

14 A. Question in what regard?

15 Q. For instance, did you say, "Ooh, I don't think
16 that's right," or "Ooh, why are you doing that?" or
17 anything like that?

18 A. Well, as I said before, I questioned the
19 condition of the cylinder heads, whether they were -- they
20 could be used because of the extra process that I had
21 asked to be completed, which was the CNC porting and the
22 stuff for the camshafts. That was an expensive piece of
23 work. It made no sense to put those cylinder heads
24 through that process if they weren't -- they weren't
25 within the specification that was needed.

1 Q. Is this the cylinder heads?

2 A. Yes, it is.

3 Q. So below this, you say, "This was meant to be a
4 CNC profiled valve seat by the machine shop who installed
5 my Supertech Performance valve train. Last time I
6 checked, CNC machines didn't use gravel for tooling.
7 Thankfully, Engineered Performance is on it. Soon to be a
8 proper CNC valve seat with both CNC heads and lower plenum
9 porting for the ultimate flow package for my 48P heads."

10 So is that a description of what you think
11 the previous shop did wrong?

12 A. So that is a description of what Mr. Wilson told
13 me he found when he inspected the cylinder heads, that he
14 said that the --

15 THE WITNESS: Sorry. My monitor has gone off
16 here.

17 A. He didn't believe that CNC valve seat had been
18 cut, and that, obviously, in the process of the
19 discussions that we had where I decided to have the full
20 CNC porting profile done, that would effectively have
21 rectified what allegedly had been done before, what I paid
22 for from a previous company.

23 Q. Did you agree with him?

24 A. Did I agree with him that what?

25 Q. On what you just said, that he told you it was --

1 A. I defer to his experience. I couldn't have
2 identified whether something had been CNC ported. Bear in
3 mind, that was maybe the second time I had seen that
4 component, which was prior to me installing it, and then
5 after the failure, when I removed it, so...

6 Q. Okay. So you just don't have the knowledge to
7 agree or disagree with that?

8 A. Not on that particular component, no.

9 Q. What are these?

10 A. They're pistons.

11 Q. And what is that coating around them?

12 A. Which one particularly?

13 Q. That golden color at the top.

14 A. That is a ceramic coating that Mister -- that EPR
15 sell as a process that they can do to their -- do to the
16 pistons.

17 Q. And it says, below your entry, says, "My
18 CP-Carrillo given -- given -- been some extra protection
19 with black diamond -- DiamonDyzed anodizing and Tech Line
20 Coatings ceramic crowns and skirts, courtesy of Engineered
21 Performance. Almost too pretty to fit."

22 What did you mean by that?

23 A. They're a really nice looking component.

24 Q. What's the -- what's the point in ceramic --
25 putting on a ceramic coating?

1 A. It was sold to me that the purpose of a ceramic
2 coating is that it offers extra -- extra protection to
3 those components that are coated. It's like a barrier
4 that helps protect them.

5 Q. And, again, you obviously -- you obviously
6 deferred to Mr. Wilson or agreed with him, correct, on
7 that?

8 A. Yeah. I mean, I did some of my own research
9 around ceramic coatings, and there seemed to be a fairly
10 consistent opinion that they are beneficial.

11 Q. What is the wiring harness that you mentioned
12 earlier?

13 A. Wiring harness I mentioned earlier, as in when I
14 reinstalled the engine into the car?

15 Q. Yes.

16 A. That is the -- Don't know how else to describe it
17 other than a wiring harness.

18 Q. What does it do?

19 A. It's the -- it's the wires that connect the
20 sensors in the engine to the engine control unit, would
21 probably be the way I'd describe it.

22 Q. If you'll look at this picture, is that a wiring
23 harness?

24 A. Yes, it is.

25 Q. You say, "What a royal pain in the arse that was

1 to remove with the dash in. New OEM one going in while my
2 MilSpec loom is being made." What is a loom?

3 A. It's another term for harness. It's just
4 terminology for one and the same thing. A MilSpec loom
5 is -- "mil-spec" is short for military spec. That never
6 happened.

7 Q. And this -- this harness was something you
8 removed from the car, right?

9 A. Yeah, that was the original harness in the car.

10 Q. And did you send this harness to Mr. Wilson?

11 A. Yes, I did.

12 Q. And what was the purpose in sending him that?

13 A. Because I knew it was a functional harness that
14 when we were going to -- when the engine was built after
15 the first failure, that it was going to go in the engine
16 dyno. He needed the wires to be able to run that engine
17 to plug it into the ECU to make it operate on the dyno,
18 so...

19 Q. So it was for the purpose of the dyno run?

20 A. Yeah. Yes. Yes, it was for the purpose of the
21 dyno run.

22 Q. And it says you -- but this entry says you're
23 going to get a new one, right?

24 A. Yeah, so I did buy a new Nissan -- a genuine part
25 from Nissan, yeah.

1 Q. Why did you buy a new one?

2 A. Because I'd just spent 20,000 dollars on an
3 engine. I thought it made sense to have brand new wiring
4 to control that engine, to read the sensors for it. Kind
5 of made sense. It was a bit of a 600, 700-dollar part for
6 a multiple-thousand-dollar engine. Kind of made sense.

7 Q. So it was just everything else was new, you might
8 as well get that new as well?

9 A. Yep, that's correct.

10 Q. But for the engine dyno, the old one was used,
11 correct?

12 A. Yeah. That harness was fully functional. The
13 car was running fine on it. There was no reason to
14 suspect that there was an issue with it.

15 Q. What -- what are we looking at in this picture?

16 A. That is a photo of the engine block.

17 Q. And so you say there, "Final deburr and cleaning
18 out freeze plugs. It's had its final clean and paint.
19 Into assembly tomorrow." Does that mean it's close to
20 finish?

21 A. No. Well, the context is close to finish in that
22 it's clean and ready to be built. "Close" depends on how
23 much time is then put into it and what other subsequent
24 processes need to take place.

25 Q. And what were those?

1 A. Well, physically --

2 Q. Do you know, I guess, maybe is a better question.
3 Do you know what other processes had to take place?

4 A. Well, the engine had to be assembled, which it's
5 currently not in that photo. I don't know how much
6 further you want to go than that.

7 Q. So that was what was left to be done?

8 A. The engine needed to be -- I mean, what's this,
9 twenty-nine -- Sorry, I can't really read it on the
10 screen.

11 Q. June 27th, 2019.

12 A. Yeah, yeah. So this is the first engine.

13 Q. Correct.

14 A. Yeah, yeah. This is the first engine.

15 Q. And so from the June 27th, 2019 to when you got
16 it, do you remember when you received it the first time?

17 A. It was around the 30th of August, somewhere
18 around there, 2019.

19 Q. So about a month later?

20 A. Yeah, somewhere, five weeks, something like that.

21 Q. Okay. So let me ask you about when you received
22 it. You described that process. Before it came to you,
23 did you and Mr. Wilson agree that it was ready to be sent
24 to you?

25 A. Sorry. Repeat that, please.

1 Q. Before the first time it came to you --

2 A. Yep.

3 Q. -- did you and Mr. Wilson agree that it was ready
4 to be sent to you?

5 A. Did we agree that the engine was finished and
6 ready to be sent to me? Yeah.

7 Q. Yes.

8 A. Yeah.

9 Q. Okay. And were you, based on the things you had
10 seen via a photograph and your discussions with
11 Mr. Wilson, you were, at that point, very complimentary of
12 the work that had been done to date, correct?

13 A. Yeah, that's correct. It all looked good.

14 Q. So when you received the engine, you were the one
15 that installed it in your car. This is, again, the first
16 time. You were the one that installed it in your car?

17 A. That's correct, yes.

18 Q. Um --

19 A. After I received the -- the initial issues were
20 identified with the dipstick and...

21 Q. So let me ask about that dipstick issue. Did
22 Mr. Wilson offer to send you a new dipstick?

23 A. I don't recall.

24 Q. How did you fix it? How did you fix the issue?
25 Did you go out and find one on eBay?

1 A. No. I had a friend who sells secondhand parts
2 for Nissans. He had one, so that replaced the one that
3 was broken. How I resolved it from pulling the dipstick
4 off, I think I -- So there's a -- a metal plate, which is
5 referred to as the girdle, which kind of interlinks the
6 big bits of billet steel that the photo was there earlier.
7 We believed, I think, that it was catching on there. And
8 I recall being advised to clearance that plate to stop it
9 from catching.

10 Q. And so --

11 A. So it was done under the advisement of
12 Mr. Wilson, yeah.

13 Q. And it was an easy fix?

14 A. Relatively, yeah.

15 Q. And how much did the new dipstick cost, like 6 or
16 7 pounds?

17 A. I honestly can't remember. It was five years
18 ago.

19 Q. Was it expensive?

20 A. Not especially, no.

21 Q. So that was an easy fix to that problem, correct?

22 A. It was, yeah, it was an easy fix, yeah.

23 Q. So what -- and, I'm sorry, because my notes, some
24 reason, have a blank here. What was the other problem
25 that you mentioned? Dipstick and something else.

1 A. The alignment of the power steering pulley and
2 the viscous fan.

3 Q. How was that issue fixed?

4 A. It wasn't fixed until it went back to EPR under
5 warranty.

6 Q. Okay. When you had it the first time though, you
7 did still do a dyno run?

8 A. That's correct. Well, no, because it didn't
9 start.

10 Q. But you took it to have a dyno run and it
11 wouldn't start?

12 A. That's correct.

13 Q. So would the misalignment of pulleys create an
14 issue with the dyno run?

15 A. No, because they're an ancillary, the belt drive,
16 an ancillary part. I don't need power steering for a car
17 that's locked in a static position and on a dyno.

18 Q. And Mr. Wilson didn't do anything to the power
19 steering on this. Mr. Wilson didn't do anything to the
20 power steering on this car, correct?

21 A. No, but he did do something on the crank pulley
22 which is what feeds the -- what connects the power
23 steering and the belt all run off the power steering, the
24 crank pulley and the belt. He did modify the crank
25 pulley.

1 Q. Okay. So when the car wouldn't start on the
2 first -- Let me go back and ask you something else. This
3 is Plaintiff's Exhibit 7. And you talked about this with
4 your attorney. This was the warranty that you received
5 with the car when it first got to you, correct? Is that
6 correct?

7 A. Is this No. 7, did you say? Yes, that's correct.

8 Q. And you, obviously, read it, correct?

9 A. Of course.

10 Q. Did you have a discussion with Mr. Wilson about
11 it at that time?

12 A. At what time?

13 Q. When you read it.

14 A. When I very first received it?

15 Q. Yes.

16 A. I don't recall.

17 Q. Did you have any questions or disagreements with
18 it?

19 A. When I first received the warranty document, not
20 that I recall.

21 Q. Did you have any issues with it later? And what
22 I mean when I say issues, did you have issues with the
23 wording of the document?

24 A. Did I look at the wording of the document?

25 Q. Did you have any issues with the wording of the

1 document at any point?

2 A. At any point, I mean, no.

3 Q. Was it clear to you what the warranty covered and
4 what it didn't cover?

5 A. Initially, no, because of my, as I said earlier,
6 slight difference in consumer law regarding if somebody
7 supplies and fix a part, they have to warranty that in the
8 U.K.; while over here, that is different. So there was
9 that misunderstanding of did the warranty cover a part, a
10 part failure. Outside of that particular item, no,
11 everything else made sense.

12 Q. So did you read the portion of this warranty
13 where it suggests that they are not responsible for part
14 failures?

15 A. Yes, I did.

16 Q. Do you see --

17 A. But this is, obviously, in -- First failure is
18 2019. It was the subsequent failure was --

19 Q. I understand. But I'm just asking you about your
20 understanding of the warranty when you first received it.

21 A. Okay.

22 Q. Do you -- do you see the part where it says any
23 and all parts? This is the third sheet of the warranty.

24 A. Which paragraph are we on?

25 Q. Any and all parts used.

1 A. Any and all parts used. Yep.

2 Q. Can you read that for us?

3 A. Yep.

4 "Any and all parts used in or on engines
5 shall be guaranteed solely by the manufacturer of those
6 parts if any given or implied by the manufacturer."

7 Q. Then what does the next line say?

8 A. "Most manufacturers of performance, race or
9 off-road parts do not offer or imply any type of warranty
10 and nor shall Engineered Performance extend or imply any
11 further warranty on such parts."

12 Q. So, clearly, from the minute you got this, it was
13 clear that the warranty did not cover any parts in the
14 engine if they were the cause of the failure?

15 A. That's correct.

16 Q. If you'll go down to the next paragraph.

17 A. Still on the third page?

18 Q. Yes.

19 It says, "If a failure or problem occurs and
20 it is determined to not" in all cap letters, "be caused by
21 poor workmanship or machining of the part of Engineered
22 Performance and was determined to be caused by the
23 customer in any way, shape or form, the cost of the parts
24 as well as the labor for the repair, including any
25 additional charges, will be the sole responsibility of the

1 customer."

2 Do you -- did I read that correctly?

3 A. I believe so, yeah.

4 Q. Then the next line says, "Customers have the
5 right to not continue with any additional repairs but
6 would still be liable and responsible for any charges for
7 parts and labor up to that point."

8 THE COURT: You've got to slow down a little
9 bit.

10 MR. HURLEY: I'm sorry.

11 Q. Let me re-read that again.

12 "Customers have the right to continue with
13 any additional repairs but would still be liable and
14 responsible for any charges for parts and labor up to that
15 point."

16 Did you understand that you could at any time
17 say, "Yeah, I don't want you working on this engine
18 anymore"?

19 A. Yes, I did.

20 Q. When you made what you were calling the second
21 warranty claim, isn't that what you said? You did not
22 tender it for repair. You simply wanted money, correct?

23 A. No, I made a proposal to Mr. Wilson that -- As I
24 said, there was, you know, a two-year gap from when I
25 received this initial warranty document to when the

1 second -- the third failure, sorry, happened. So,
2 obviously, my recollection, I'd kind of just deferred to
3 what I know in terms of U.K., my experience in the U.K.,
4 that if somebody fixes and supplies a part, they warranty
5 it.

6 Obviously, that particular paragraph wasn't
7 fresh in my memory because it was two years prior to
8 reading it. So the proposal I put to Mr. Wilson at the
9 time was: It makes no sense for me to send this engine
10 back to you again. You know, it costs 6, 7, 800-dollars
11 per time of crossing the Atlantic. This doesn't make
12 sense. I believed that it was a part failure that should
13 have been covered. Obviously, you just showed that the
14 warranty doesn't, but at the time I made, you know, that
15 he effectively buys me out of the remainder of warranty
16 period because it looked more economically viable to do
17 that than repeatedly send the engine to and from here --
18 to and from Texas back to the U.K.

19 Q. So it was basically a demand for money?

20 A. No, no, it wasn't a demand. It was a proposal
21 that I asked for feedback on.

22 Q. So your proposal involved him paying you money,
23 not repairing the engine, correct?

24 A. Purely because I thought it was more economically
25 viable for both parties for what I believed was, as I

1 said, at the time, I believed that this should have been a
2 warranty issue. And at the time, at that point prior to a
3 lot of the investigatory stuff that happened, it just
4 appeared that it had been a bearing failure. So to just
5 replace the bearings was relatively inexpensive in the
6 grand scheme of things. If you then factor on 1400 pounds
7 or 1500 dollars worth of shipping costs to and from the
8 States, that didn't make any sense. So the proposal was,
9 yes, so some financial compensation possibly toward -- to
10 me, but because that saves paying out on shipping.

11 Q. But that was your proposal, not his, correct?

12 A. That was my initial proposal, yeah.

13 Q. Did you ever tender the engine to Mr. Wilson for
14 repairs after the final failure?

15 A. I was never asked to send it back.

16 Q. But you never -- you never offered to send it
17 back either, correct?

18 A. No.

19 Q. Let me go down to another important part of this,
20 I think. Do you see that paragraph that says "Completion
21 date and time"?

22 A. What page are we on? Still on the third page?

23 Q. No, I believe this is the fourth or fifth page.
24 At the bottom, it says "EPR 268", if that helps you.

25 A. This on the Plaintiff's one, I haven't got

1 numbers on the pages.

2 Q. No, no. I'm sorry. This is in the other -- Oh,
3 I'm sorry. This would be...

4 A. So are we still talking about Plaintiff's 7?

5 Q. Yes. And this would be the one, two, fourth
6 page, I believe. And the first paragraph has in bold
7 "Completion date and time."

8 A. Sorry. Say that last bit again.

9 Q. The first paragraph says "Completion date and
10 time" in bold.

11 A. My first paragraph on there on the fourth page is
12 "There is no warranty or no guarantee."

13 Q. Okay. I'm sorry. It's the next page.

14 A. Oh, okay. Yeah, yeah, yeah. Gotcha, gotcha.
15 Completion date and time.

16 Q. Could you please read that first sentence?

17 A. "Completion date and time. There is no guarantee
18 or certainty on dates or times as to when exactly the
19 engine will be completed."

20 Do you want me to keep reading?

21 Q. Yes, please.

22 A. "Custom built engines require much more time to
23 machine, clearance, port, balance, and complete than stock
24 factory spec engines and require special ordered parts
25 from numerous suppliers across the nation and around the

1 world."

2 Q. You can stop there. Let me ask you a couple of
3 questions.

4 A. Of course.

5 Q. Did you understand that when you first -- when
6 you first had a discussion with Mr. Wilson?

7 A. When I first had a discussion about?

8 Q. The build of the engine.

9 A. No, because I didn't receive this document until
10 after I received the engine.

11 Q. When you received it, after you received it, did
12 you understand it?

13 A. After I received the engine, did I understand
14 that engines take awhile to build, yeah.

15 Q. Yes. Along those same lines, when you sent it
16 back after the first delivery back to Mr. Wilson --

17 A. Yep.

18 Q. -- what year was that?

19 A. So it was technically sent at the end of 2019,
20 but -- so second week of 2019, but it arrived to him, I
21 believe, on the 4th of January 2020.

22 Q. What was going on during January in -- beginning
23 in 2020 around the world?

24 A. I believe in March, April, we had the COVID-19
25 pandemic.

1 Q. Would you agree with me that that kind of put
2 a -- put a damper on things like delivery of parts and
3 other goods around the world?

4 A. It did, but I don't think that's relative in this
5 case.

6 Q. I'm sorry. What did you say?

7 A. Said I don't think that that is relative in this
8 case at that particular time.

9 Q. You don't think COVID had any impact on his
10 ability to fix the engine and get it back to you the
11 second time?

12 A. No, but it had no sway on his ability to open the
13 box when he received it and examine and to order the parts
14 prior to us, obviously, knowing that the COVID pandemic
15 was going to -- was on the horizon. So my point is that,
16 yes, after, after March, April 2020 when COVID kicked off,
17 yeah, obviously that took time.

18 Q. Okay.

19 A. But it took two months, three months for the box
20 to get opened to find out what the problem was.

21 Q. And, of course, you understood that he had other
22 engines he was working on at that time as well, right?

23 A. Obviously, yeah. Obviously, but I --

24 Q. You had --

25 A. -- had been told that I would be prioritized

1 because of the issue that, you know, this was a warranty
2 claim that he wanted me to not have in the public domain.
3 And the kickback from that was "We will prioritize you.
4 We will look after you to make sure we get this sorted in
5 a quick manner."

6 Q. So if you would go down on that same page to the
7 paragraph entitled "Engine and car performance".

8 A. Yep.

9 Q. Would you just read the first couple of lines of
10 that paragraph as well?

11 A. "Engine and car performance. High performance
12 engines do not run and perform like factory built stock
13 engines. Additional parts may be required to get the full
14 potential out of a high performance engine or race engine
15 including lower end," sorry, "including lower rear end
16 gears, higher stall torque converters, a modified or
17 stronger suspension, better breathing exhaust, more
18 efficient cooling system, and so on."

19 Q. Then what does the next line say?

20 A. "All modified high performance and racing engines
21 require additional tuning and care than factory stock
22 engine and may have certain quirks such as low idle vacuum
23 which will result in power brake boosters and other vacuum
24 operated devices not functioning properly, idling
25 differently from time to time, or running high octane fuel

1 dieseling on hot days if ignition timing is incorrect or
2 octane is insufficient, and so on."

3 Q. We've used this term "tuning" throughout today.

4 A. Yes.

5 Q. Can you describe or explain to us what you
6 understand "tuning" to mean of a high performance engine?

7 A. It -- tuning, I would say is the process of
8 optimizing the components that are used to get everything
9 to cooperate as it should do. You are getting every
10 component to work together to -- so the end result is it
11 makes power.

12 Q. And so is the tuning critical to achieve the
13 power?

14 A. Yes.

15 Q. If it's tuned incorrectly, could it affect the
16 performance of the engine?

17 A. Yes.

18 Q. Mr. Wilson never tuned any of your engines,
19 correct?

20 A. No, he didn't.

21 Q. Who did?

22 A. Uh --

23 Q. Let me go back and -- That was an unfair question
24 because I know it's been done multiple times. When you
25 first returned the engine to Mr. Wilson, who tuned it for

1 the first dyno run done here in America?

2 A. I believe it was a combination of both Mr. Pool,
3 and I can't remember the guy's name from Haltech. Rick,
4 Ricky. I can't remember.

5 Q. And, again, who is Haltech?

6 A. Haltech is the manufacturer of the ECU, the
7 control module.

8 Q. And so was he present at that first dyno run?

9 A. The chap from Haltech?

10 Q. Yes.

11 A. No. I believe he was on the phone.

12 Q. So you can tune an engine not being physically
13 present?

14 A. Yes.

15 Q. But you said it was -- was the gentleman from
16 Haltech and Matt Pool, correct?

17 A. Yes.

18 Q. And you had a separate agreement with Mr. Pool to
19 tune that engine, correct? You paid him directly for it?

20 A. Yes, I did, yeah.

21 Q. Did you and he talk about how to tune the engine?
22 Or did you just rely on him to do it correctly?

23 A. That's kind of an ambiguous question. Did I --

24 Q. Did you -- let me ask --

25 A. Did I ask Matt to tune the engine, yes.

1 Q. Did you tell him how to tune the engine?

2 A. No.

3 Q. So you left it up to him to do?

4 A. Yes.

5 Q. You mentioned that the first dyno run that was
6 done here in America could only get up to 5500 RPMs,
7 correct?

8 A. No. The first dyno run, the engine failed again.

9 Q. And then it was taken back and modifications were
10 made so it would be -- it would work on the dyno?

11 A. Yes, that's correct.

12 Q. And then the second dyno run here in America, it
13 couldn't get past 5500 RPMs?

14 A. That's what I was told.

15 Q. And you said it was an electronics issue,
16 correct?

17 A. That's what I was told.

18 Q. And what do you mean by electronics issue?

19 A. That something in the -- either the brain itself,
20 the -- from my understanding, something within that
21 Haltech ECU was seeing something it didn't like and it
22 didn't want the engine to rev beyond five-and-a-half RPM.
23 And from what I was told by both Mr. Wilson and Mr. Pool
24 was they believed that was an electrical-based issue
25 rather than mechanical-based issue.

1 Q. And Mr. Wilson was only responsible for
2 mechanical improvements on the engine. He did not do the
3 electronics, correct?

4 A. Yeah, that's correct.

5 Q. Who did?

6 A. Well, the wiring harness is Nissan, so the -- the
7 harness, the one that we showed a photo of earlier, that's
8 a Nissan part. The other side of the electronics to make
9 it work on the engine dyno, I believe that was -- I don't
10 know if it was solely done by Mr. Pool, but I know he
11 provided it.

12 Q. And, again, just to kind of get a picture in our
13 minds, it's literally wires that you connect back and
14 forth, correct? You connect it to the dyno, connect it to
15 the car, or the engine?

16 A. Uh, yeah, yeah, I think that would be fair.

17 Q. Okay. I just want to make sure. That's all
18 those wires in the harness, that's what are going between
19 the dyno machine and the engine, correct?

20 A. Now, that -- No. That, the -- for the photograph
21 you showed earlier, that's purely from the sensors on the
22 engine to the ECU, the Haltech control module. It's got
23 nothing to do with the -- the dyno.

24 Q. Okay. And so, but the wiring of that dyno run
25 was done by Mr. Pool?

1 A. The wiring to make the -- Okay. Put the context
2 in there. Obviously, when an engine is in a car, it's not
3 just the engine that goes -- the wiring that goes to the
4 engine to make it operate. There are sensors on the car
5 itself, so your ignition relay or your starter motor
6 relay, all that kind of stuff, that has to be replicated
7 to work in that environment.

8 Did Mr. Pool create that part of the wiring
9 harness? Yeah. I don't know if he did it alone, but,
10 yeah, that was provided by him.

11 Q. Okay.

12 A. I think we covered that.

13 Q. I'll come back to that dyno run we're talking
14 about.

15 A. Okay.

16 Q. Let me finish with this document first. If you
17 turn over to the next page in this warranty document,
18 there's a paragraph that starts, "Estimated power output."
19 Could you please read that?

20 A. I think I might have -- Okay.

21 Estimated power output. Engineered
22 Performance will not guarantee the exact power output of
23 any engine within reason unless the customer has paid
24 additional fees to have the engine put on a dyno and tuned
25 for such power rating by Engineered Performance.

1 Q. Let me stop you right there and ask you a
2 question.

3 A. Okay.

4 Q. You did not pay Engineered Performance to tune
5 the engine, correct?

6 A. No, I paid Engineered Performance to facilitate
7 the tuning of the engine.

8 Q. When you say facilitate the tuning, you mean make
9 the engine available to someone who was going to tune it?

10 A. No, to physically fit the engine onto the dyno
11 and make the adaptations that were needed to make that
12 happen.

13 Q. But they did not tune it?

14 A. No.

15 Q. And, again, on the dyno run here in America, Matt
16 Pool tuned it, correct?

17 A. Yes.

18 Q. And in the dyno run in England, Abbey Motorsports
19 tuned it, correct?

20 A. That's correct, yeah.

21 Q. Can you read the next line that starts off "Power
22 loss"?

23 A. "Power loss and/or poor performance from an
24 engine or vehicle due to incorrect or improper tuning, the
25 mismatch of parts and/or components, or any other measured

1 needing --"

2 Sorry. That doesn't read well.

3 "Or any other measures needing to be addressed by
4 the customer to fulfill -- get the full potential out of
5 the engine or vehicle is solely up to the customer and not
6 the responsibility -- not the responsibility of Engineered
7 Performance."

8 Q. Did you understand when you first got this
9 document, did you understand that to be the case, that
10 going forward, the tuning of the engine and the power
11 performance or output was up to you and your tuner?

12 A. Was I aware that Mitch couldn't promise me a
13 specified power number and that power number was kind of
14 defined about what it did on the dyno? Yeah, that's just
15 common sense.

16 Q. Okay. Last question on just the warranty itself.
17 So if you could read that. This is one more page over
18 from what you just read.

19 A. The last page, is it?

20 Q. Yes. So it says, "So, in a nutshell, we stand
21 behind our work. We do not -- we do great work and make
22 sure that everything we do is correct before an engine
23 leaves the shop. We want to make sure that everyone is
24 totally clear on where we stand as far as backing up our
25 engines. What we don't stand behind is engines and/or

1 problems that we didn't cause or that are out of our
2 control after the engine or vehicle has left our shop."

3 A. Is there a question?

4 Q. When you read that paragraph when you first got
5 this document, what did you understand that to mean?

6 A. As it says. It's pretty plain English.

7 Q. So there was no confusion?

8 A. No.

9 Q. Okay. Let's go back to the first dyno.

10 A. The first.

11 Q. I'm sorry, the second dyno run done in America
12 with Matt Pool.

13 A. Okay.

14 Q. So why was it okay to you that the engine could
15 only reach 5500 RPMs?

16 A. Why was it -- I didn't have a choice in the
17 matter.

18 Q. What do you mean?

19 A. Well, I couldn't control what the engine was
20 doing when I was on the other side of the Atlantic.

21 Q. But you could have told Mr. Pool or Mr. Wilson or
22 someone from Haltech, "Figure this problem out because I
23 want this dyno run to go higher than 5500 RPMs," correct?

24 A. And that did happen with -- There were ongoing --
25 We kind of had multiple chats going on between myself and

1 Mr. Pool and myself and Mr. Wilson. Obviously, those two
2 were together in the building talking to each other. And
3 there was Haltech involved. There was ongoing
4 diagnostics. But, fundamentally, to kind of get where I
5 think you're going, is time on the dyno costs money.
6 There comes to a point where if an -- a problem can't be
7 resolved without spending more and more, you know. It's
8 not an infinitesimal part and money. There is time
9 constraints on the engine dyno.

10 If I am being told by the parties that are
11 there that mechanically the engine appears to be okay,
12 there is a problem that it will only rev to this certain
13 level, we cannot complete the complete tuning of the
14 engine, if I'm told it can't be done, there's not a huge
15 amount I can do about that. I have to -- I have to submit
16 to that, that opinion effectively.

17 Q. And was it Matt Pool that told you it couldn't be
18 done?

19 A. Both. Well, from my recollection, both Mr. Pool
20 and Mr. Wilson told me it couldn't be done. Well, it
21 couldn't be completed because of this issue.

22 Q. Up to 5500 RPMs?

23 A. That's correct.

24 Q. Was the engine operating as you expected it to?

25 A. Was the engine operating -- Well, we think it

1 made kind of less power than it probably should have done
2 at that point, but it was marginal. Did the engine appear
3 to function at a low power level and relatively low RPM,
4 yes, it did.

5 Q. So you were okay with that engine being crated
6 and sent back to you after that second dyno run here in
7 America?

8 A. Well, it appeared to be a running, functioning
9 engine, which was an improvement on the previous one,
10 yeah.

11 Q. So you didn't object and say, "Hold on. Don't
12 send it yet. There's more work to be done. There's more
13 things to be fixed." You accepted the idea that it was
14 going to be shipped to you?

15 A. From the -- I can't recall the exact
16 conversations, but I believe the feedback I got from
17 Mr. Wilson was that he was happy with the engine, and that
18 the engine had been run in. So I was -- you know, that's
19 a significant jump forward from where it was before. If
20 the engine had been successfully gone through the
21 running-in process, I was then -- whether that had been
22 done in the States or in the U.K., I have to wait for the
23 running-in process to be done before I can tune it. If
24 the tuning wasn't possible to happen in the U.S. because
25 of this problem, but the running-in process had been

1 completed, I'm then free to have it tuned in the U.K.

2 So it kind of made more sense. Well, it
3 appears to run. It appears to be as much as what we think
4 is an electronic issue, from what I was being told. It
5 functioned. So I could put it in the car and have my guys
6 in the U.K. tune it.

7 Q. So that's exactly what you did, correct?

8 A. Effectively, yes.

9 Q. And when you say your guys in the U.K., that's
10 Abbey Motorsports?

11 A. That's correct, yes.

12 Q. So second delivery back to you in the U.K., did
13 you, once again, take the engine out of the crate and put
14 it in the car?

15 A. Yes, that's correct.

16 Q. Did anyone help you?

17 A. Did anyone help me. Yeah, I mean, there's a
18 point where you -- I don't know what it is in pounds,
19 sorry, 250, 200-something kilo weight on an engine crane
20 that you've got to line up on -- on the engine mounts in
21 the car. Kind of trying to hold an engine crane and an
22 engine at the same time for one guy, I'm not small, but
23 it's kind of difficult. So did I have some physical
24 assistance putting the engine in the car, yeah.

25 Q. Who was that?

1 A. I don't actually recall.

2 Q. How did you confirm that you installed the engine
3 correctly into the car?

4 A. Well, I think as you've kind of heard, I've had a
5 few failures before, so I'm getting kind of good at taking
6 an engine out and putting it back in.

7 Q. But what process do you use to kind of confirm
8 that? Do you just assume it's right when you put it in or
9 do you go back and do some sort of --

10 A. There are guides online, and I think the factory
11 Nissan workshop manual also explains how to remove and how
12 to reinstall the engine, so --

13 Q. Is that -- I'm sorry. Go ahead.

14 A. No, no. I was saying there are multiple points
15 of reference in which I can refer to.

16 Q. And did you use those --

17 A. Yes, I did.

18 Q. -- installing the car the second time? So once
19 you got the engine installed in the car --

20 A. Yeah.

21 Q. -- you started driving it, right?

22 A. Uh, yeah.

23 Q. And how many months did you drive it before --
24 I'm sorry. I think it was March to August before you
25 could get it to Abbey Motorsports; is that correct?

1 A. That's correct, yes.

2 Q. So did you drive it during that time?

3 A. So I can't remember exactly the point of where I
4 installed it, fired it up to make sure everything was
5 okay. Obviously, as I described earlier, I then found oil
6 leaks at the front of the engine that required it to be --
7 the front to be stripped down again and reassembled. We
8 had some issues with the map that was on the Haltech.
9 Something had corrupted the Haltech. I think it was Rick,
10 again, sorry, can't remember his name, just how basically
11 effects to be cut and paste everything onto a new one.
12 It's like an Excel spreadsheet that kind of goes a bit
13 iffy sometimes and corrupts. So that was all redone.

14 Q. And not to interrupt you, but that issue you just
15 described with the mapping --

16 A. Yeah.

17 Q. -- that was all done by either Mr. Pool or
18 Haltech?

19 A. That's correct.

20 Q. It had nothing to do with Mr. Wilson?

21 A. Yeah, yeah, yeah, that's correct.

22 Q. I'm sorry. Go ahead.

23 A. No, no, no. That's correct.

24 Q. So you then drove it for a period of?

25 A. A couple of months. With work commitments and

1 stuff like that, yeah, probably at a safe estimate, tail
2 end of April to maybe beginning of May until August, when
3 it was at Abbey Motorsport.

4 Q. So was it your daily driver?

5 A. No, it wasn't, no.

6 Q. What was?

7 A. I have a police car.

8 Q. Okay. So it wasn't something that you used every
9 day?

10 A. Nope.

11 Q. And when you say you have a police car, something
12 provided to you by your job?

13 A. That's correct, yeah.

14 Q. Is that your daily driver just to and from work
15 or something you use for personal use as well?

16 A. Depends on whether I'm on call or not. If I'm on
17 call, then I'm allowed to use it for personal use because
18 I'm on call. If I'm not on call, then, no. My wife has a
19 car.

20 Q. She doesn't drive a high performance car, too,
21 does she?

22 A. No. She has a BMW.

23 Q. Okay. So how often would you drive the car
24 during this period?

25 A. Two weekends a month, maybe. Maybe four

1 weekends. Depends on the weather. U.K. doesn't have
2 great weather, so it entirely depends. It was when I
3 was -- if I was working that weekend -- When I was free,
4 basically, when. So it was spontaneous, I suppose would
5 be the best way to describe the use of the car.

6 Q. Would you describe, for lack of a better term,
7 would you describe it as joyrides, not going anywhere in
8 particular, just going out to enjoy driving the car?

9 A. Yeah, and put some extra miles on it. You know,
10 problems with engines or cars will appear when you use
11 them. The only way of identifying has the car got any
12 problems is to use it.

13 Q. So when you were driving the car during this
14 period, did you identify any problems that you can recall?

15 A. Not that I can recall, outside, like I said, the
16 oil leaks, no. But I was, like I said, I was, despite
17 encouragement to treat it harder from Mr. Wilson, I didn't
18 think it was worth the risk. I wanted to protect the
19 engine until I could get it onto the dyno and be tuned
20 properly.

21 Q. And during this period, you think you put about
22 400 miles on it?

23 A. At a rough go, 4 to 500, a rough guess.

24 Q. What was the top speed you got it up to?

25 A. 70 miles an hour maybe.

1 Q. Did you take any extended trips where you were on
2 like a highway for extended periods?

3 A. Define extended period.

4 Q. Like for multiple hours.

5 A. No.

6 Q. So they were all short trips?

7 A. I mean, yeah, it depends. Depends where I was
8 going and the type of roads. We haven't got -- Our road
9 network is completely different than yours where we don't
10 have many wide dual carriageways and interstates. Our
11 "A" roads are twisty country roads to you guys, but to us,
12 it's -- it's not just staying at, you know, 3,000 RPM for
13 five hours.

14 Q. Okay.

15 A. Different environment.

16 Q. When your -- before you started driving it during
17 this period, was it tuned in any way before you started
18 driving it kind of on these joyrides?

19 A. It had the tune that Mr. Wilson -- sorry,
20 Mr. Pool and Haltech had put together, so, effectively,
21 the base map.

22 Q. But there was no additional tuning in England
23 before you started driving it?

24 A. No.

25 Q. And that was all going to come from Abbey

1 Motorsports?

2 A. That's correct.

3 MR. HURLEY: Your Honor, do you want -- Is
4 this a good time for the break? I saw you...

5 THE COURT: Well, they've been at it for a
6 while.

7 MR. HURLEY: Yeah.

8 THE COURT: Sometimes I forget that we need
9 to take a break. So we'll take a 15-minute break. Be
10 back at 5 after.

11 (Recess taken.)

12 (Jury not present.)

13 THE COURT: Plaintiff ready?

14 MR. MATOUKA: Plaintiff's ready.

15 MR. HURLEY: Yes, Your Honor.

16 THE COURT: Yes, sir.

17 (Jury present.)

18 THE COURT: Thank you. You may be seated.

19 MR. HURLEY: Thank you, Your Honor.

20 Q. (BY MR. HURLEY) Mr. Johnson, when we left off,
21 we were talking about the time period after you received
22 the engine, installed it back in your car, but before it
23 went back to Abbey Motorsports.

24 A. That's correct, yes.

25 Q. On Exhibit 7, which we were using earlier that

1 was the warranty --

2 A. Yep.

3 Q. -- if you turn to the very last page of that,
4 there's a document entitled "Engine break-in procedure".

5 A. That's correct.

6 Q. I think these are actually reversed. I think the
7 last page should have been the page before it and they
8 should have -- the last pages should have been flipped.
9 But we're starting at the end so I think we're starting at
10 the right spot.

11 Did you read this document when you received
12 it?

13 A. Did I receive this document when I received it
14 when I first received the engine. Yes, I did.

15 Q. And that would have been back in -- the first
16 time you received it from Mr. Wilson?

17 A. Yeah, that's correct.

18 Q. So you had this document already in your
19 possession by the time the engine came back the second
20 time, correct?

21 A. Yes, which is why I asked for the engine to be
22 broken in America.

23 Q. When you said you wanted the engine broken in,
24 what does that mean?

25 A. To effectively follow this procedure to bed the

1 engine in, all the new components, they require -- I don't
2 know how else to explain it other than they are bedded in,
3 they are given time to settle within the engine, I suppose
4 would be the best way of describing it. And I'd asked
5 Mr. Wilson, like I said earlier, that it made sense if,
6 obviously, I'm sending the engine back because it had an
7 internal fault that was warrantable, rather than sending
8 it back to me again, that the engine stay with him and
9 this break-in procedure be run through so when I receive
10 the engine, it's effectively good to go and ready to use
11 as however I -- however I would like to use it.

12 Q. So let's -- let's read through this document. It
13 says "Engine break-in procedure", and then the next line
14 says "on the street". What did you understand that to
15 mean?

16 A. On the street means on the street.

17 Q. Mean -- mean in the car, operating the car?

18 A. Yeah.

19 Q. On -- on normal driving conditions?

20 A. Yes, a public highway. But --

21 Q. If you go down, it says, "No synthetic oil."
22 What did you understand that to mean?

23 A. That no synthetic oil should be used in the
24 engine during the engine break-in procedure.

25 Q. And it says, "Use Valvoline, Castrol, or similar

1 15W-50 slash 20W-50 petroleum oil for at least two full
2 days of driving, or 800 to a thousand miles of street
3 driving after you have used the required break in oil."

4 Did you do that?

5 A. Did I -- Sorry. Did I use -- did I do two full
6 days of driving on the street driving after the required
7 use of the break-in oil?

8 Q. With Valvoline, Castrol, or similar 15W-50 or
9 20W-50 petroleum oil?

10 A. Um, two full -- I couldn't recall if I dedicated
11 two full days.

12 Q. And it says you do that after you've used the
13 required break-in oil.

14 Then in big, bold letters with -- that are
15 underlined and stars around it, what does it say?

16 A. Only use Motul or Maxima break-in oil.

17 Q. What do you understand Motul or Maxima break-in
18 oil is?

19 A. They are two different brands of oil and it is a
20 specified type of oil which is called break-in oil or
21 running-in oil is what we call it in the U.K.

22 Q. Why do you understand that's important?

23 A. Because that's part of the prescribed procedure.

24 Q. And why is it -- but why is it part of the
25 prescribed procedure, do you know?

1 A. As I said, the engines require time to settle,
2 and those break-in oils have slightly different additives
3 and chemicals in it from your normal day-to-day oil.

4 Q. Do you know what happens if that break-in
5 procedure and oil is not properly followed, what could
6 happen?

7 A. Nope.

8 Q. Okay. Now, this is the second page, which
9 actually in the exhibits is the page before it.

10 A. Yep.

11 Q. What does it say there at the top?

12 A. Use of any other break-in oil will void your
13 warranty.

14 Q. Did you ever, when you received it back the
15 second time in -- during this period where you were
16 driving it on joyrides, did you ever use Motul or Maxima
17 oil in your car?

18 A. The engine came shipped from Mr. Wilson with
19 Maxima running-in oil already in the engine, so, yes.

20 Q. So did you ever drain that oil?

21 A. After a period of time of driving it, yes.

22 Q. How long?

23 A. I couldn't give you an exact period.

24 Q. Let me ask it two different ways. Can you
25 think -- do you know how many miles you drove on it before

1 you emptied that oil?

2 A. It would be a guess. I couldn't give you an
3 accurate description, I'm afraid.

4 Q. Do you remember how long in numbers of days or
5 weeks it was before you emptied that oil?

6 A. I couldn't give you a definitive answer on that,
7 no.

8 Q. If you go on down on this document, it talks
9 about oil intervals.

10 A. Yeah.

11 Q. And it says "One dash break-in oil with new WIX
12 filter." What is a WIX filter?

13 A. That is a brand of oil filter.

14 Q. When you changed the oil as you just described,
15 did you use a WIX filter?

16 A. Yes.

17 Q. When you put new oil back in it, did you put
18 Motul or Maxima oil?

19 A. No. I used my own oil as it said on the previous
20 page that after the breaking-in period, you're free to use
21 your own oil.

22 Q. And let's go down and read steps 2 through 5.
23 No. 2 says, "Fill with either brand" meaning Motul or
24 Maxima "oil suggested above and new WIX filter. You will
25 want to do a hundred to 200 miles. Drain oil and remove

1 filter."

2 Did you ever run the car a hundred to 200
3 miles and then drain the oil and remove the filter and
4 replace it with Motul or Maxima oil again?

5 A. It doesn't say that, to replace it with oil Motul
6 or Maxima.

7 Q. Let's read No. 3 then. "Fill with either brand
8 of oil suggested above and new WIX filter."

9 That's the third step, correct?

10 A. Yeah.

11 Q. So did you ever do that?

12 A. No, because I received a message that told me
13 that I could do differently.

14 Q. And who was that message from?

15 A. Mr. Wilson.

16 Q. If Mr. Wilson disagrees with that message and
17 says he never authorized you to use any -- or deviate from
18 this oil break-in procedure, why is it that you think he
19 did?

20 A. Because I asked a specific question of, "Is the
21 engine broken in?" After it had been on the engine dyno
22 over there, "Has the engine been broken in?" To which I
23 received a reply that said, "Yes. Use one more running-in
24 oil, mineral oil, and then you're ready to go fully synth"
25 was the instruction I got.

1 Q. How long was the dyno, the second dyno run in
2 America that where you think it was broken in?

3 A. A couple of days.

4 Q. It ran constantly for a couple of days?

5 A. Not constantly because it's not a 24-hour
6 operation.

7 Q. So how many hours did the engine run?

8 A. I couldn't give you an exact number. You'd have
9 to ask Mr. Wilson or Mr. Pool.

10 Q. How many miles were put on the engine during that
11 dyno run --

12 A. -- I don't know how you can measure the miles on
13 it when it's not in the car. There's no odometer reading.

14 Q. It doesn't have a computer program that gives you
15 an estimate of what those miles would have been?

16 A. I wasn't shown it so I don't -- I can't answer
17 that question, I'm afraid.

18 Q. So there's five steps. Each one of those steps
19 says, "Fill with either brand, Motul or Maxima oil, and a
20 new WIX filter." And then at the end of the prescribed
21 period, it says drain oil and remove. But the fifth one
22 says, "Fill with Maxima or Motul oil 15W-50 or 20W-50 and
23 new WIX filter. If you prefer to purchase either the
24 Motul or Maxima from us, we can supply as needed. Give us
25 a call any time to order the oil you need." Then it gives

1 you some specifics about the use of Motul, the --

2 A. 300 V.

3 Q. -- use of Maxima.

4 A. Yep. That is synthetic oils. I hadn't gone to
5 fully synthetic oil at the time it had gone onto the dyno.
6 I was still using a semi-synthetic oil, similar -- similar
7 brand to what had been described above. I hadn't gone to
8 full synthetic.

9 Q. And why is that?

10 A. Because the engine hadn't been tuned yet. It was
11 still being -- There was no need to. It was kind of
12 following instructions. I wasn't ready to go fully
13 synthetic.

14 Q. You said you weren't -- you were following
15 instructions because it said to not go to fully synthetic?

16 A. No, I said I wasn't ready to change to fully
17 synthetic.

18 Q. And again, my question is: Why not use fully
19 synthetic before that point?

20 A. There was no specific need to.

21 Q. And you made that decision?

22 A. Yeah.

23 Q. Okay. I want to talk about what occurred when
24 you had your second dyno run. You said you were
25 physically present for that entire run?

1 A. That's correct.

2 Q. Did you have any role in actually conducting the
3 dyno session?

4 A. No. I was just an observer.

5 Q. And who was in charge of it?

6 A. The chap at Abbey Motorsport, a gentleman called
7 Mark Gillam or Mark Gilliam. Sorry, I can't remember his
8 exact surname.

9 Q. And this has always been confusing to me. They
10 talk about runs on the dyno and that multiple runs
11 happened.

12 A. Yep.

13 Q. What is a run?

14 A. Um, run is -- how to describe it. A run is a --
15 an event where you start your whatever starting RPM the
16 tuner decides to start on, and then the -- it concludes at
17 the point where the engine has revved out to its
18 prescribed rev limit. And that is what I would call a
19 run. That is what each -- you get a printout for each
20 run. You get some data for each, each time that engine is
21 run from a set RPM up to its final RPM.

22 Q. And how many runs were done at the second dyno,
23 this dyno run in England?

24 A. I couldn't give you an exact number, but I would
25 say it was somewhere in the region of 20. I think it was

1 five sets of five runs, but some runs were, obviously, a
2 lot shorter than other runs because it's a calibration
3 process. From what I observed, it starts small and you
4 get, you know, each run gets slightly longer, slightly
5 further up the RPMs as things are calibrated.

6 Q. And what, to your understanding, what is being
7 calibrated?

8 A. The amount of air and fuel that's going into the
9 engine, the amount of boost that the turbo is -- the
10 turbos are producing, the amount of ignition timing that
11 is being used which controls when what part of the
12 combustion cycle the spark occurs.

13 Q. And so all of those things deal with the
14 electronic mapping that we were talking about earlier,
15 correct?

16 A. That is what you're adjusting, yeah.

17 Q. And those are all on the electronic side, not on
18 the mechanical side, correct?

19 A. Uh, yeah, I mean, it's adjusting electronic
20 parameters that have an influence on the mechanical
21 behavior of the engine, I suppose how you describe it.

22 Q. Kind of tells the car what to do?

23 A. Yeah.

24 Q. And what happens if that -- that tuning is not
25 done correctly?

1 A. A variety of things.

2 Q. Give me a couple of examples.

3 A. The engine won't run correctly. It will
4 underperform. It could potentially overheat. The -- any,
5 anything up to and including failure of the engine.

6 Q. And you talked about the -- I think you called it
7 the tinny noise --

8 A. Yeah, yeah.

9 Q. -- that you heard.

10 A. Yeah.

11 Q. You believe that issue was corrected through the
12 dyno process, correct?

13 A. Correct? Uh, it --

14 Q. Maybe the better word is "addressed"?

15 A. No, I wouldn't say it was corrected or addressed.
16 It was -- it was identified as a potential cause of the
17 noise, but the subsequent test after turning off that
18 system, I believe, was not even a complete run. While the
19 noise had gone, the actual issue of the reduced oil
20 pressure that had been noted was still present, so that's
21 when everything stopped. So it was a secondary issue,
22 effectively.

23 Q. And so secondary issue meaning it didn't have a
24 direct impact on what was the ultimate failure?

25 A. It didn't have direct -- it didn't appear to have

1 an influence to the main issue that was apparent, which
2 was a reduction in oil pressure.

3 Q. Let me show you, back to Exhibit 1, which is a
4 Plaintiff's exhibit, and if you'll -- These are the
5 invoices that you talked about with your counsel.

6 A. Oh, yeah, yeah, yeah.

7 Q. And if you'll turn to the one from Abbey
8 Motorsport that is dated, I guess, August 24th, 2021, for
9 the amount of \$595.

10 A. The -- Yeah, I've got that document.

11 Q. So under the -- I'm sorry. Okay. It's -- Under
12 the labor description there, can you read that for us?

13 A. "Got car onto dyno, confirmed timing base boost
14 over 1.5 bar, bypass boost solenoid base boost 0.7 bar,
15 brass filter in bleed side of boost solenoid, tune car for
16 base boost start to raise boost, unable to raise boost,
17 customer found loose boost pipe jubilee clip, rectified
18 and checked all other pipes, carried on tuning car, noise
19 from engine, work to maybe sort issue, adjust NVCS, noise
20 stopped, few more runs -- sorry -- few more runs, noise
21 still there, running -- sorry -- noise still there,
22 stopped running car, removed from dyno."

23 Q. What is the NVCS you reference there?

24 A. I think I referred to it as a VTC solenoid. I
25 think NV -- I believe NVCS stands for Nissan Valve Control

1 System, and VTC stands for variable timing control.

2 Nissan terminology for their systems, I suppose would be
3 the best way of describing that.

4 Q. So according to this labor description from Abbey
5 Motorsports, it was the tuner of your car?

6 A. Yep.

7 Q. The reason they -- the reason they stopped the
8 runs was because they continued to hear that noise,
9 correct?

10 A. That's what that says, yes.

11 Q. It never says anything about oil pressure, does
12 it?

13 A. Nope, not on that document, no.

14 Q. This was the only document you have from Abbey
15 Motorsports describing that?

16 A. No, that's incorrect. I have emails.

17 Q. Was there another -- is there -- was there
18 another invoice issued?

19 A. No. There was emails. There was communication
20 via email.

21 Q. So your contention is that this description is
22 just incorrect?

23 A. No, I wouldn't say it was incorrect, but I don't
24 think it gives a full summary of the events that took
25 place.

1 Q. So it says that the noise was still there.

2 A. Yes.

3 Q. At one point, it says it stopped, but then it
4 says it's still there. Your contention is that the noise
5 stopped?

6 A. From my recollection, I believe the noise
7 stopped, yeah.

8 Q. And you were there physically present and you
9 heard that noise?

10 A. Yes. Well, I -- Yes, I heard a noise, yeah.

11 Q. You described the process for the tuner wearing a
12 set of headphones.

13 A. That's correct.

14 Q. Are those headphones meant to be listening for
15 those kinds of noises or is that for something else?

16 A. No, it's listening -- Well, "those kind of
17 noises" is quite a broad term.

18 Q. Well, I mean any noises.

19 A. The purpose of the headphones is to listen for
20 detonation, which is a specific frequency within the
21 engine when you have uncontrolled explosions take place.
22 Could you hear other frequencies? I've never personally
23 used the equipment so I couldn't tell you.

24 Q. You said there were -- did you say five runs of
25 five? Is that what you said?

1 A. That is an estimation. I couldn't give you an
2 exact number, but I know I've produced a lot of those
3 documents.

4 Q. What were the highest RPMs that you saw the
5 engine reach during those dyno runs?

6 A. I believe the rev limit was the factory Nissan
7 rev limit which was around 7,000 or 7,200 RPM.

8 Q. And it reached that RPM level?

9 A. Eventually, yes.

10 Q. How many times did it reach that RPM level?

11 A. I would have to refer back to the documents. I
12 couldn't give you an exact number.

13 Q. So whatever was present at the dyno run in the
14 U.S. where Mr. Pool was in attendance was not obviously
15 present when you did this dyno run?

16 A. No, because it wasn't hooked up to a -- an
17 adapted harness. It was physically installed into the
18 car. That's the biggest difference between the two.

19 Q. After the failure that caused the dyno run to be
20 aborted, what was immediately done then?

21 A. What was immediately done after the dyno run was
22 aborted? It was removed from the dyno. I called
23 Mr. Wilson and explained what happened, and the -- the
24 drop in oil pressure had been noticed, and the -- the guys
25 at Abbey Motorsport were going to cut open the oil filter

1 and have a look and see if there was any debris in there,
2 as well as take a sample to send off for an analysis.

3 THE WITNESS: Excuse me. Sorry.

4 MR. HURLEY: Bless you.

5 Q. Did you make the decision to stop the dyno runs?

6 A. Nope.

7 Q. Who did?

8 A. The tuner, Mark. Can I just call him Mark?

9 Mr. Gillam.

10 Q. And so was he the one wearing the headphones?

11 A. Yes, that's correct.

12 Q. And how soon after the drop in oil pressure did
13 he abort that run?

14 A. So the drop in oil pressure didn't present itself
15 until the very top of the RPM range. So in -- in the
16 previous runs, it was making in excess of a hundred PSI
17 oil pressure at the very -- at kind of 7,000-ish RPM.

18 On the final run or final pair of runs, that
19 top end oil pressure dropped down to 97 PSI. So roughly a
20 10 PSI drop in oil pressure. And then when the engine was
21 allowed to come back down to an idle RPM, that oil
22 pressure was again lower than it had been throughout the
23 day, and that's when, obviously, the investigations took
24 place and the tuning period -- the tuning session was
25 aborted. The tuner decided, "No, we have a problem, we're

1 stopping."

2 Q. Was the tuning considered complete at that point?

3 A. No, not by any stretch, no.

4 Q. How much tuning was done or maybe what kind of
5 tuning was done through this dyno run?

6 A. I mean, as it said, the -- as it says kind of in
7 that document, the base timing was set up, so that's, I
8 suppose, an aspect of the tuning. That sets a baseline
9 for the computer to recognize, okay, well, the engine, the
10 baseline is 15 degrees of timing, the ECU is calibrated to
11 see that, so they match. So it matches its position.

12 Then as it says in there, there was an issue
13 with a boost solenoid that was making it boost more than
14 that was desired to start off with. That was addressed.

15 And then the air fuel ratios, so the amount
16 of fuel being injected into the engine for the amount of
17 air that the engine was then taking, that was adjusted.

18 As far as I'm aware, the ignition side of
19 things, the ignition timing was left as per the base map,
20 which the base maps that come from Haltech and from the
21 other manufacturers as well are very, very conservative.
22 They're designed to be safe so you don't blow up your
23 engine just by trying to start it and put some miles on
24 it. It's considered safe. So as far as I'm aware, my
25 recollection, the ignition timing side of it wasn't

1 touched.

2 Q. When you called Mr. Wilson and told him about
3 what had happened --

4 A. Yeah.

5 Q. -- wasn't he the one that told you to cut open
6 the oil filter and look for debris?

7 A. I don't recall. Quite possibly. It could
8 equally have been suggested by the guys at Abbey or it
9 could have been suggested by myself. It's kind of a
10 fairly logical step when you've had a suspected bearing
11 failure.

12 Q. And what you found in there were chunks of -- was
13 it metal?

14 A. Yes, I believe so, yeah.

15 Q. Did you ever touch one of those chunks of metal
16 or was it a little too hot?

17 A. I mean, the oil filter was -- I don't think the
18 oil filter was cut open until a couple days after when I
19 got the photo. You'd have to check the date on the photo
20 when it was physically cut.

21 Q. And, again, it was Abbey that cut that oil
22 filter?

23 A. Yeah, yeah.

24 Q. Were you there when they did that?

25 A. No, I wasn't.

1 Q. You mentioned that after the oil filter was cut
2 and debris was found in the oil filter, the engine was,
3 once again, torn down, correct, to inspect it?

4 A. Yeah, yeah. I described kind of the process that
5 I went through.

6 Q. And it was you that did that?

7 A. Yes, that's correct, yeah.

8 Q. What -- when you say torn down, tell us how far
9 of a teardown it was. Was it back to its condition as
10 just being a set of parts or was it not taken completely
11 down?

12 A. It was done in stages really while communicating
13 with Mr. Wilson. So the first stage would be to remove
14 the oil pan, which, as I said to you before, to do it in a
15 particular way, that exposed the inside of the oil pan
16 where more metal chunks were found.

17 So we had discussions with Mr. Wilson, it
18 was, okay, the bearings need to be inspected. My
19 understanding was he was happy for me to do that and to
20 photograph it and send him photos of what I found. And
21 that kind of progressed with, okay, well, I'd like to see
22 certain photos of the pistons. Wasn't a direct
23 instruction, but the inference was he was happy for me to
24 then remove the pistons, to take photographs and send them
25 off to him.

1 And then it made sense to, obviously, as I
2 said earlier, there appeared to be some secondary damage
3 because of the debris that had been floating around the
4 engine, so further, you know, like the heads were stripped
5 to make sure that there was no damage to the new camshafts
6 or no damage to the valve train or any of the journals
7 that they stick in that are all fed by oil and it's highly
8 possible that that debris could have made it -- made its
9 way all the way through the engine.

10 Q. And you did all of that?

11 A. Yes, I did, yeah.

12 Q. Did anyone help you?

13 A. No, not that I recall.

14 Q. How did you know how to tear down that engine?

15 A. Because I've torn engines down before.

16 Q. Was that one of the -- the engine you tore down
17 before, is that the one that failed?

18 A. I've torn down multiple engines over the years.

19 Q. For what purpose?

20 A. As I said, for when I was racing, riding
21 Motocross bikes, they only last 50 hours before they need
22 a rebuild. Obviously, as I said to you and as I've said
23 before, kind of after the builds, the engine I built, I
24 had to strip it down to be able to then build it back up
25 again. And Mr. Wilson showed no sign that he was unhappy

1 with me doing that and seemed confident in my ability to
2 do it.

3 Q. You talked about things that Mitchell offered you
4 in the way of parts and supplies after this occurred.

5 A. Yep, uh-huh.

6 Q. What were they?

7 A. Specifically parts? Specifically parts were you
8 asking?

9 Q. Whatever he offered you is what I want to know.

10 A. So I believe he offered me a set of replacement
11 bearings, an oil pump, and then there was discussion
12 with -- So when I mentioned the proposal I had -- that I
13 had earlier, it was about the whole shipping to and from
14 the States. One of the offers he made was I ship the
15 block and the crankshaft back to him for him to then -- he
16 happily remachine that and send it back to me, but,
17 obviously, I'd have to pay for postage both ways.

18 Q. And you didn't want to do that?

19 A. At the time, based on the information I had at
20 the time, that didn't seem to make economic, like,
21 financial sense. As I said, it was, you know, 6, 7, 800
22 pounds to ship an engine each way over to the -- from
23 England to Texas and Texas back to England. Effectively,
24 that money would -- and, obviously, the time delays, or I
25 could have had -- spent similar -- it would have cost less

1 to have the same work done in the U.K.

2 And it wasn't -- At the time, we thought it
3 was a relatively quick repair, that the crankshaft looked
4 like it only needed a quick polish. Everything else
5 looked good. It would have -- our understanding at that
6 time was that is all it probably needed was a new set of
7 bearings. It's only when I investigated further that I
8 found further issues.

9 Q. So you never -- the work you just described you
10 never had done, even in England, correct?

11 A. No.

12 Q. Have you ever had any work done on the engine
13 since this event?

14 A. Other than it being measured by the other machine
15 shops, no, no other work.

16 Q. Have you ever tried to sell the chassis to the
17 car?

18 A. Nope.

19 Q. Have you ever --

20 A. I'd get crucified if I did that by the wife.

21 Q. Have you ever tried -- have you ever asked
22 someone to give you an estimate on what it would cost to
23 repair the engine?

24 A. Yes, I have, yeah.

25 Q. How much is that?

1 A. I got quotes from three companies, I believe, and
2 they varied. They varied in cost depending on, obviously,
3 the condition. Everybody who was providing a quotation
4 was done on the -- kind of a what they thought was the
5 worst case scenario, so what other work, what other
6 potential machining might be needed to rectify the issues,
7 and then the cost of rebuilding it and any new gaskets
8 that were needed or stuff like that.

9 So I believe Abbey was one, Abbey Motorsport,
10 who tuned it. There was another company called Torque
11 Developments International. And there was another company
12 who the name escapes me, I'm afraid. I can't remember.

13 Q. What was the range of those quotes?

14 A. Honestly, without looking at them, I can't
15 remember. I couldn't give you a number. I'd have to look
16 at the quotes again.

17 Q. Was it less than 10,000 -- or doing the
18 conversion in your head, if you can, would it be less than
19 \$10,000?

20 A. I believe it was in excess of that, to completely
21 remachine and rebuild the engine. I believe it was in
22 excess. But, like I said, I can't give you a definitive
23 without physically looking at the quotes.

24 Q. You said Abbey gave you a quote. Who were the
25 others?

1 A. One was -- one was a company called Torque --
2 It's either Torques Development or Torque Development
3 International. And I can't remember the name of the third
4 one, I'm afraid.

5 Q. So why didn't you take up one of those offers?

6 A. Because at that time, I was trying to go through
7 a -- well, I think at the time I got the quotations, we
8 had already started the legal proceedings.

9 Q. So because of the legal proceedings, you have not
10 had the engine repaired?

11 A. That's correct. I was preserving the evidence.

12 Q. Did Mr. Wilson ever ask you to preserve it?

13 A. No, but that's -- I don't think that was his
14 prerogative.

15 Q. When did you receive the handwritten build sheet
16 from Mr. Wilson that you talked about with your counsel?

17 A. Uh, just over two years after I received the
18 original that was posted with the engine.

19 Q. So what was that in response to?

20 A. As I said earlier, about a discrepancy in the
21 numbers on the build sheet. They didn't make sense. They
22 were impossible.

23 Q. So do you recall, generally, what time -- how --
24 where that fits in the timeline of your investigation?

25 A. Uh, it would have been on or -- I would say

1 probably just before I took the engine to Roe Engineering
2 to be measured.

3 Q. So roughly what, do you remember a --

4 A. Early September, somewhere around early -- I
5 mean, the engine failure happened 30th of August. I would
6 say somewhere around the 7th of September, somewhere
7 around there.

8 Q. If you will take the Defendant's exhibit notebook
9 in front of you and turn to Defendant's Exhibit 17.

10 A. Yep, I've got that.

11 Q. Is that what we're talking about?

12 A. I don't know. I've never received an actual
13 paper copy of the handwritten version. I've only had a
14 photograph of it sent through --

15 Q. Does this look --

16 A. -- Signal Messenger.

17 Q. I'm sorry. Does this look like the photograph
18 that you received?

19 A. It looks similar, yeah.

20 Q. If you go down -- Did -- did this version make
21 more sense to you than the typewritten one did, based on
22 what your concerns were prior?

23 A. Well, did it make more sense, well, yeah, the
24 numbers weren't impossible to provide a bearing clearance,
25 but, obviously, it was still missing a key measurement.

1 Q. What key measurement was that?

2 A. The thickness of the bearings.

3 Q. Is that standard?

4 A. Standard for what?

5 Q. For instance, if I install King bearings, is the
6 thickness always going to be the same?

7 A. I'm sure they have a manufacturing tolerance of
8 how thick they should be and how much deviation from that
9 thickness they should be, but from memory, Mr. Wilson
10 measured the thickness of those bearings, but I don't see
11 a record of what those measurements were written down
12 anywhere so I can't see how --

13 Q. How did --

14 A. Like I said, it's a key, the thickness of the
15 bearing is a key measurement to work out your oil
16 clearance, where we've got the housing bore dimension, the
17 journal dimension, but no bearing thickness to make that
18 calculation of 00.35. That's the point I'm trying to
19 make.

20 Q. And you said but you do know that Mr. Wilson did
21 actually measure those bearings?

22 A. I was told he did and I believe there might be a
23 photograph of him measuring a bearing. I can't -- I
24 couldn't tell you which bearing was being measured. I
25 don't recall without referring back to it.

1 Q. And did those measurements cause you any concern
2 or raise any issue with the information that's on this
3 page?

4 A. Well, I didn't get -- That's my point. I didn't
5 get the measurements. It's just a photograph of a
6 measurement being taken. There's no actual number that
7 goes with that photograph, and the thickness of the
8 bearings was not recorded on the build sheet.

9 Q. After you received this --

10 A. Yep.

11 Q. -- is that when you asked Mr. Wilson about the
12 thickness of the bearings or was it before this?

13 A. It would have been part of the same conversation.

14 Q. Okay.

15 A. So it would have come up in the context of a
16 conversation that we were having of -- I'd have to refer
17 back to the full conversation. My recollection is that
18 obviously he was -- After I made my proposal, he called
19 me, we had a conversation. Obviously, the offer was made
20 for a new set of bearings to be provided. Obviously,
21 that's where I decided that I need to have the engine
22 measured to make sure that there were no further problems,
23 that I could just put new bearings in, but I would need to
24 work out my bearing clearances, and so when I referred to
25 the original document that I was provided with the engine

1 that these numbers are impossible, that I then asked
2 for -- I queried it which is where Mr. Wilson then
3 provided this document.

4 Q. And you referred to it in your earlier testimony
5 as "updated sheet", but didn't Mr. Wilson tell you that
6 this was actually the original sheet that he had written
7 on and had only just transcribed it and typed it in so it
8 would be cleaner to read?

9 A. No, I believe the exact message was, "I will send
10 you an updated version," but I'd have to look -- you'd
11 have to produce the exact message.

12 Q. But did you understand that this was the original
13 sheet that he wrote down on --

14 A. No.

15 Q. -- as he was doing the work?

16 A. No, I understood that this was a updated version
17 as he said.

18 Q. How could he update it if he didn't have the
19 engine?

20 A. That's a good question.

21 Q. Okay. After you had this conversation -- Well,
22 let me ask it this way. Was it before or after this
23 conversation that Mr. Wilson offered for you to send back
24 parts of the engine for him to do additional work on,
25 including borings?

1 A. That was part of the phone conversation that we
2 had as a result of my proposal.

3 Q. And, again, the reason you rejected that offer
4 was because you just didn't think it was financially
5 prudent to do?

6 A. Yeah, and I think I explained that in a message
7 to him that while he explained that this wasn't a warranty
8 issue because part failures are not covered under
9 warranty, he was willing to help. And I was grateful for
10 that offer at the time based on the information that I
11 had. But equally, as you say, financially prudent, it
12 didn't make sense that if the work being done -- if, you
13 know, I was now out of warranty because the engine had
14 failed due to a part failure, then I was technically free
15 to use who I wanted to use. And it didn't make any sense
16 to spend 1500 bucks sending it to America. As much as the
17 offer was nice and appreciated, it didn't make financial
18 sense when I could have had the work done quicker to the
19 same standard over in the U.K. --

20 Q. So --

21 A. -- because there was no waiting time for
22 shipping.

23 Q. What you believe was your decision to make?

24 A. Yeah, based on the information I had at the time,
25 yeah, that was the decision I made.

1 Q. And so you rejected that proposal with the
2 assumption that you would just find somebody in England to
3 do the work and not let Mr. Wilson do any of the work,
4 correct?

5 A. No, that's not correct.

6 Q. What was your plan then?

7 A. Well, my plan was, as I said, sir, double check
8 that everything was as it should be, that if I chose to
9 fit the bearings for Mr. Wilson, which if I recall, there
10 was a delay in sending them out, I needed to know that I
11 had a stable base to then be able to build the engine off.

12 Q. And so, but ultimately --

13 A. And I didn't.

14 Q. -- you never let Mr. Wilson work on the engine
15 again, correct? Which you believed it was your right to
16 do, correct?

17 A. At the time when we suspected it was a
18 manufacturing failure of the bearings, I was -- it was
19 made crystal clear to me that this is not a warranty issue
20 and would not be resolved under warranty; therefore, I
21 was -- I have to sort myself out, effectively. He was
22 willing to provide the parts, and if it made sense for me
23 to ship the engine back to him, but this was being done as
24 an offer rather than an obligation under warranty.

25 Q. And was he going to charge you for that work or

1 was he going to provide it to you for free?

2 A. I don't recall. It may have been a discounted
3 rate. It may have been -- I don't recall.

4 Q. But in the end, your whole goal was just to get
5 at least some of your money back?

6 A. No. My whole goal was to have a running, working
7 engine.

8 Q. But you didn't let him work on it. So how --

9 A. Because he rejected my warranty claim. Why would
10 I let him work on it when he'd already rejected my claim
11 to fix the engine under warranty?

12 Q. So his contention was it was a bearing issue,
13 therefore, it wasn't a warrantable claim.

14 A. Yes.

15 Q. "I'll still do the work."

16 A. Oh, it was an offer that was appreciated, but it
17 wasn't one that I was obliged to take to satisfy the terms
18 of the warranty. He'd made it crystal clear that warranty
19 was not in play because at that time, we believed it was a
20 part failure. Certainly from subsequent investigation
21 that it does not -- it wasn't a part failure. The
22 manufacturer said so.

23 Q. Let me ask you a little bit about what your goal
24 was in dealing with Mr. Wilson on that. Did you expect
25 him to fix the issue even if it was a parts manufacturer

1 failure?

2 MR. MATOUKA: Objection, Your Honor. At this
3 point, that's been asked and answered several times.

4 MR. HURLEY: I don't believe so, Your Honor.
5 I'm asking him if he believed it was a warrantable issue
6 even if it was a parts manufacturer failure, because he
7 keeps saying that Mitchell said it, because of that, it
8 wasn't warrantable, but he's never said what his belief
9 was on that.

10 MR. MATOUKA: Your Honor --

11 THE COURT: Overruled.

12 MR. HURLEY: You can go ahead answer.

13 THE WITNESS: I answer? Sorry. Can you
14 repeat the question?

15 Q. (BY MR. HURLEY) Did you believe that Mitchell
16 had an obligation to repair this engine under the warranty
17 even if it was based on -- even if the failure was based
18 solely on a manufactured part defect?

19 A. My initial belief was that a part that was
20 supplied and fitted by EPR that subsequently failed would
21 have been a warranty issue. After the phone call I had
22 with Mr. Wilson where he explained that part failures were
23 not covered under the warranty, he made his position clear
24 that he was under no obligation to fix the engine, and
25 effectively, the warranty was now done. There was no

1 warrantable issue. I was free to do, effectively, as I
2 wished to do on the engine. He offered his assistance,
3 but it wasn't conditional on any form of warranty.

4 Q. Okay. Let me ask you a couple of questions about
5 Matt Pool.

6 A. Yeah.

7 Q. After he did the dyno work for you here in
8 America --

9 A. Uh-huh.

10 Q. -- did you keep in contact with Mr. Pool?

11 A. Yes, I did.

12 Q. What was the purpose of that?

13 A. To update him with the, obviously, when I got
14 the engine back and installed it. Obviously, he worked on
15 the electronic side of the engine. He had an engine of a
16 similar spec that was built roughly around the similar
17 kind of time, so it was a similar conversation that I
18 would have with people that I would talk to on the Owners
19 Club.

20 Q. So you developed a rapport with him kind of like
21 you did with Mr. Wilson?

22 A. Yeah, that's fair to say.

23 Q. Did the two of you come up with a conclusion that
24 you're asserting here today that there was a clearance
25 issue that caused this failure?

1 A. After I conducted certain parts, well, all parts
2 of the investigation, every time I got a result that I
3 thought showed -- Well, I mean, the report from King
4 Bearings said that it was a machining and assembly --

5 MR. HURLEY: Hold on. Excuse me.

6 Your Honor, we'd move to strike because he's
7 obviously about to testify about hearsay matters.

8 MR. MATOUKA: Your Honor, he's answering the
9 question he's asked about this that's relevant to the
10 answer at this point.

11 MR. HURLEY: No, he's not. My question
12 was --

13 THE COURT: Hang on a second. I'll go back
14 and let me look at the question. Just stop talking for a
15 second, please.

16 Can you read back the question, please.

17 (Court Reporter read back last question.)

18 THE COURT: Okay. That question doesn't ask
19 for what someone told you. It asks whether or not you
20 have a conclusion.

21 MR. MATOUKA: Your Honor, respectfully, it
22 asked if he and Mr. Pool came to that conclusion.

23 THE COURT: Well, the answer would be what,
24 "yes" or "no"?

25 MR. HURLEY: I believe so.

1 THE COURT: It wouldn't be a explanation of a
2 theory because that wasn't asked to give the explanation
3 of a theory. So that would be the next question that you
4 might object to if you were -- if he asked it, but we're
5 not quite there yet.

6 THE WITNESS: Can you repeat the question,
7 please.

8 Q. (BY MR. HURLEY) Did you and Mr. Pool work
9 together to come up with a theory that you're asserting
10 here today that there was a clearance issue that caused
11 the failure of your engine?

12 A. No, we did not work together to come up with a
13 conclusion. The conclusion came as a result of my
14 investigation.

15 Q. And you passed along that entire investigation to
16 Mr. Pool?

17 A. Incrementally, as each stage of the
18 information -- sorry -- each stage of the investigation I
19 did and the results that came back from that, did I share
20 them with Mr. Pool? Yeah, I did, because it's an engine
21 that he knows, he had worked on. And it's not that -- He
22 had an understanding. You know, there's only really three
23 people in the world that know about the full experience.
24 That's me, Mr. Pool, and Mr. Wilson. We've all had
25 conversations throughout this four-year period or however

1 long it was from commissioning to final failing.

2 Q. So what was your point in giving Mr. Pool that
3 information? Because you were buddies or because you were
4 seeking his advice or something else?

5 A. I found the information to be interesting and
6 discussion-worthy.

7 Q. And so you had discussions with him about it?

8 A. Discussions insofar as this is information that
9 has been -- or these are the conclusions that have been
10 provided to me or these are the measurements that have
11 been provided to me, and these are the causes of failure
12 that have been given to me by other people.

13 Q. So to be clear, Mr. Pool never came to those
14 conclusions on his own; you gave them to him?

15 A. Can you repeat the question, please.

16 Q. So to be clear, Mr. Pool never came to these
17 conclusions on his own; you gave them to him?

18 MR. MATOUKA: Objection. Calls for
19 speculation as to how Mr. Pool reached those conclusions.

20 MR. HURLEY: Your Honor, I think my question
21 is: He never had the discussion with him. He simply gave
22 him those conclusions.

23 THE COURT: Can you rephrase your question?

24 MR. HURLEY: Yes, Your Honor, I will.

25 Q. (BY MR. HURLEY) You said you provided Mr. Pool

1 with all these conclusions, correct?

2 A. No, I passed on the information and conclusions,
3 so...

4 Q. So information and conclusions?

5 A. It's very difficult to answer without mentioning
6 a report that I'm not allowed to report. There were some
7 documents that I got that had a firm conclusion. I shared
8 those conclusions. There were also things, measurements
9 that were taken that I would share those measurements
10 and --

11 Q. Did you --

12 A. -- a conclusion. I had my conclusion. He had
13 his conclusion. Whether they were identical, I'd have to
14 refer back to the messages.

15 Q. And so when you said you had your conclusion, did
16 you provide him with that conclusion?

17 A. Did I provide -- I don't know how I could provide
18 him. I could share what I believed to be a conclusion. I
19 don't know how I can provide him with a conclusion.

20 Q. Well, what's wrong with the word "provide"?

21 A. Because "provide" infers that I'm giving him
22 information for him to then act on.

23 Q. Is that not the case?

24 A. No, it was a conversational point of sharing.

25 Q. So, again, let me ask this question then: Why

1 were you -- why were you sharing this information with
2 him?

3 A. Because as I say, Mr. Wilson had knowledge,
4 experience of this engine, knew it failed. It was a point
5 of conversation that -- with somebody who I know who knew
6 the engine.

7 Q. So was it just buddies chatting?

8 MR. MATOUKA: Objection, Your Honor. Asked
9 and answered. They've been over why these conversations
10 happened at least three times now.

11 MR. HURLEY: Because the problem is that he's
12 changing his -- his testimony.

13 THE COURT: Overruled.

14 Q. (BY MR. HURLEY) So was this just buddies
15 chatting?

16 A. "Buddies chatting" is very broad. Is it somebody
17 who I had a rapport with and got on with who I thought
18 would be interested in the information I had? Yes.

19 Q. And why do you think he would be interested in
20 the information?

21 A. Because he knew the engine and he knew that the
22 engine had failed, and I knew that he was a guy who had
23 worked on this engine and had knowledge.

24 Q. At that point, did you ask him to affirm your
25 conclusions?

1 A. I don't recall.

2 Q. Did he ask you any questions about your
3 conclusions?

4 A. It's possible. Don't recall anything specific.

5 Q. In the timing of these conversations, were they
6 in real time as you were doing your investigation or was
7 it something you did after?

8 A. Did I give the conclusions to him the moment I
9 had the information to hand? I don't know. I mean,
10 there's a six-hour time difference between us, so there's
11 a bit of -- It might have happened a couple of days later
12 or a week later, or depending on work. I can't give you a
13 definitive answer on that one. It's --

14 Q. But it wasn't months later?

15 A. I don't believe so, no.

16 Q. Have you done any more -- have you sent any more
17 work to Mr. Pool after the events you just described?

18 A. I don't believe so, no. But define -- Sorry.
19 Define "any more work".

20 Q. Have you asked him to perform any service or
21 provide you any product since the failure of the engine
22 we're talking about here today?

23 A. Um, whether I -- So he is acting as my expert,
24 yeah. Whether the request came from me or from my
25 attorney, I can't remember.

1 Q. Did your ongoing dialogue with him about this
2 issue, did it have anything to do with the fact that he
3 was involved in the first -- or the dyno run here in
4 America?

5 A. Sorry. Can you repeat that again?

6 Q. Your decision to chat with Mr. Pool about this --

7 A. Yeah.

8 Q. -- was it based on the fact that he was involved
9 in the dyno run here in America?

10 MR. MATOUKA: Objection. Asked and answered.
11 He literally said that earlier.

12 THE COURT: Overruled.

13 THE WITNESS: Sorry. Repeat the question
14 again, please.

15 MR. HURLEY: Third time is a charm.

16 THE WITNESS: Yeah.

17 Q. (BY MR. HURLEY) Did you provide -- did you have
18 this dialogue and provide this information that we've been
19 talking about to Mr. Pool based on the fact that he was
20 involved in the dyno run that was done here in America?

21 A. Yeah. As I just said, he had personal knowledge
22 of the engine. He obtained that personal knowledge by
23 being present and tuning the engine in America.

24 Q. Did he provide you any information in response
25 that went in to formulate your conclusion?

1 A. Um, so, I mean, he confirmed that there was a
2 disparity between the oxygen sensors when it was on the
3 dyno in America, which is something that we saw when the
4 engine was on the dyno over here. Nothing else
5 particularly springs to mind.

6 Q. Do you recall you and Mr. Pool having a
7 discussion about trying to put Mr. Wilson out of business?

8 A. No. I said that it was a possibility that it
9 might happen, but it's not something I desired.

10 Q. Why did you think it was a possibility?

11 A. Because at that point, I was -- I had started the
12 litigation, and from, you know, the damages -- my
13 understanding of how the damages work for this kind of
14 claim, that it could get expensive and that it could
15 potentially put him out of business.

16 Q. What was -- what was your understanding of
17 Mr. Pool's position on that?

18 MR. MATOUKA: Objection. Calls for hearsay.

19 MR. HURLEY: I'll withdraw, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. HURLEY) Mr. Johnson, I want to talk to
22 you a little bit about the damages you talked about
23 earlier.

24 A. Of course.

25 Q. You stated the total amount you paid Mr. Wilson

1 in this matter was about \$17,000 and some change; is that
2 correct?

3 A. That was the initial payment. I think you'd have
4 to add up all the subsequent transactions to get a total
5 amount. I believe it was in excess of 20.

6 Q. No, sir, I believe the initial transaction was
7 15,000, and the total was 17; is that not correct?

8 A. No, I don't think so, because, obviously, we've
9 got the 15,000 one, there's another invoice which was for
10 1500, there's another one which is for a thousand, there's
11 another one for a hundred. So I think when you add all
12 the invoices together, it was more than 17,000, but I
13 couldn't give you an exact number at the time.

14 Q. So let's go through them, because --

15 A. Okay.

16 Q. -- I believe we said several times that 17,000
17 was the total amount you paid him, so I'm concerned now
18 that maybe that was in error. This is Exhibit 1 to the
19 Plaintiff's. And I'm going to let you flip through the
20 first couple of invoices here because I think those are
21 the all the EPR invoices.

22 A. Yes.

23 Q. Could you total those up for us --

24 A. Well, they're not -- there are transactions that
25 I didn't receive an invoice for.

1 Q. I understand. But we're going to total up the
2 invoices first.

3 A. Okay.

4 Q. Could you do that for us real quick?

5 A. 1400.

6 Q. Okay. Hold on. Let me get to the next one.
7 That's a duplicate, correct?

8 A. I believe so. I mean, it's the same invoice
9 number, same date, same part, same money.

10 Q. The next one is the large proposal, slash,
11 invoice, correct?

12 A. Yeah, that's correct.

13 Q. And how much is it?

14 A. 15,614.

15 Q. That was the initial total price?

16 A. Yeah.

17 Q. Okay. Then the next one is how much?

18 A. 1725.

19 Q. So what are we to now?

20 A. I wasn't adding it up in my head.

21 Q. Okay. That's -- that's -- these invoices total
22 around \$17,000, correct?

23 A. I don't know.

24 MR. MATOUKA: Objection. He just said that
25 he didn't do the math.

1 MR. HURLEY: I'm asking him the question.

2 Q. (BY MR. HURLEY) Do these -- do these roughly
3 total \$17,000 --

4 A. Math isn't my strong point. If you give me a
5 calculator, I'll give you an exact number.

6 Q. How about -- how about we just do it together?

7 A. That's cool by me.

8 Q. So you take \$15,600.

9 A. Yeah.

10 Q. You add to it, sorry, approximately \$1400.

11 A. Yeah. That makes 17,000-ish.

12 Q. \$17,000.

13 A. Yeah. Then you got 1700.

14 Q. Then you have 1700, so that's 18,7?

15 A. Yeah.

16 Q. And then after that, there's no more invoices,
17 but you claim you made other payments to him?

18 A. Yes. I can provide transactional details for
19 those. They're in the paper.

20 Q. Why was it that you made additional payments to
21 him that weren't reflected in the invoices?

22 A. Because I never received an invoice for the extra
23 work that I asked for.

24 Q. Then why did you pay it?

25 A. Because I knew the work was being done.

1 Q. Okay. And how much do those total, roughly?

2 A. I'd have to refer back to the exhibit. It shows
3 what the numbers were.

4 Q. So the other category in your damages includes
5 your replacement car.

6 A. Yeah.

7 Q. And that is the Nissan car that was spoke about
8 earlier. I mean, I'm sorry, the --

9 A. The Suzuki.

10 Q. Suzuki car.

11 A. Yeah.

12 Q. That you drive off road.

13 A. Occasionally.

14 Q. And then that became your daily driver, correct?

15 A. Not daily driver, no. As I said, I generally
16 have a police car I get to and from work in. If I have to
17 take the train or no car available, I'll use the car to
18 get to the train station. The term "daily driving" infers
19 I use it on a daily basis. That wasn't the case.

20 Q. You also have a line item in here in your
21 disclosures that says emotional, reputational harm.

22 A. Yeah.

23 Q. For \$5,000. How do you value that?

24 A. I didn't.

25 Q. Okay. Then there's a whole different category

1 that talk about payments to third parties.

2 A. Yep.

3 Q. Who is -- is LSD --

4 A. Lloyd Specialist Developments.

5 Q. So I thought you said that Mr. Wilson paid for
6 those?

7 A. That's correct. He did.

8 Q. Okay. So that should not be in your damages
9 calculation?

10 A. That's correct, yeah.

11 Q. Okay. Then there is a line item for Abbey
12 tuning, \$714.

13 A. That's correct.

14 Q. Is that for both the actual dyno run and the
15 cutting of the oil filter?

16 A. No. There were two separate invoices.

17 Q. Okay. Who did the oil analysis?

18 A. It's a third party company -- Well, Abbey sent
19 the sample off. It's a third party company. That's on
20 the oil analysis report. I can't remember the name of
21 them off the top of my head.

22 Q. There's also a line item in your damage model
23 that says car costs per year, '21, '22, '23.

24 A. That's correct.

25 Q. What are your car costs?

1 A. So in the U.K. you have to have car insurance,
2 you have to pay a road tax, and you have to pay for a
3 yearly road worthiness inspection every year. That's what
4 those car costs are, insurance, tax, MOT.

5 Q. For a car that doesn't have an engine in it?

6 A. No, that's for the Suzuki.

7 Q. Okay. You would be paying those costs if you
8 were currently operating your Z car, but you're not, so
9 you're not paying those costs on the Z car, but you are
10 paying on the Suzuki?

11 A. Yes.

12 Q. Then, obviously, the other rather large item is
13 your storage fees.

14 A. That's correct.

15 Q. Why not -- Would you avoid those storage fees if
16 you liquidated the car?

17 A. Yeah, but why would I want to liquidate the car?

18 Q. Well, that's a good question. Why would you want
19 to keep the car?

20 A. Because all it needs is a functioning engine.

21 Q. But you've never had that functioning engine
22 repaired, correct?

23 A. No, because, as I said, it was contested, that I
24 believe this is a warranty issue, the cause of the failure
25 was due to a machining and assembly fault, which is

1 covered under the warranty, and because that was contested
2 by Mr. Wilson and EPR, that's what, despite, you know,
3 offers to try and resolve this, has led us to here. So I
4 have to -- These are components that you guys or my
5 attorney can say, "Can you produce this part?" A bit like
6 when I brought my pistons and complements. That is all
7 evidence of the state of the engine. The engine has not
8 been touched since the failure. I've preserved the
9 evidence. Can't really do anything else with the car
10 without an engine.

11 Q. But you could have bought a whole new engine for
12 the car, right?

13 A. But I shouldn't have had to because I believe
14 this failure was as a result of a machining and assembly
15 fault by EPR, Mr. Wilson, that should have been covered
16 under warranty.

17 Q. But had you mitigated your damages by buying a
18 new engine and made this back to your normal driver, a lot
19 of these damages would have gone away, right? No need to
20 store, no need to buy a replacement car, no need to --

21 A. No need to, you know, I disagree. I think this
22 is actually a warranty issue and I shouldn't have to have
23 paid any of those costs.

24 Q. But you could have preserved the engine and you
25 could have --

1 A. How could I --

2 Q. -- warranty claim and just mitigated your damages
3 by replacing the engine and having the car usable.

4 A. No, because replacing the engine with another
5 engine of a similar spec would have cost me probably a
6 similar amount of money. To replace it with a lesser spec
7 engine, well, I'm biting my nose off to spite my face.

8 I'm paying for an engine at this
9 specification that I wanted to work. That engine, I
10 believe, from the information I received, has failed due
11 to a machining and assembly error. That is a warrantable
12 issue that's covered under the warranty, so it should have
13 been repaired by EPR, or, because I lost faith in their
14 ability because of the numerous failures that occurred in
15 the time that I had this engine, that I should have been
16 refunded, refunded my initial, which is an offer that was
17 made.

18 Q. So back to your damages though. The cost of the
19 new engine that you talked about that you went out and
20 asked for quotes on --

21 A. Yep.

22 Q. -- that would have been far less than your
23 storage costs, correct?

24 A. But, obviously, I didn't know how long this
25 process was going to take.

1 Q. But you knew that you were going to have to store
2 it.

3 A. I knew that I had to preserve the evidence for a
4 civil litigation, yes.

5 Q. But the evidence that you preserved is right here
6 in this briefcase, correct?

7 A. Parts of the evidence, not all evidence. It's
8 not the whole engine.

9 Q. So you've got the whole engine, but you didn't
10 bring it?

11 A. I wasn't requested to bring the whole engine, so
12 I didn't. Well, I mean, it's a 250-kilo thing. It's not
13 something I can put in my suitcase and bring over from the
14 U.K.

15 Q. If you knew you couldn't bring it, why preserve
16 it?

17 A. Because I thought -- I didn't know it wasn't
18 needed until the point that we have got here.

19 Q. But you knew all along it was 250 kilos?

20 A. Yeah, yeah, I knew all along. And I also
21 equally knew that a request could have been made for me
22 to bring that whole engine. I didn't know. At no point
23 was I told, "You will never have to bring the whole
24 engine." So I will preserve all the components of that
25 engine so it -- so it -- should the request come in of

1 "You need to bring the whole engine with you to the
2 States," I have that part ready to go. Yes, it would have
3 cost more and, you know, more planning would have had to
4 occur to make that happen, but the parts were there
5 available for me to do it.

6 Q. So what is your intention after this case with
7 the engine? Are you going to get it repaired?

8 A. Well, repaired depends on whether it is
9 reparable. I would have to then again approach companies
10 to see if -- how much of that engine is completely
11 salvageable or if anything needs replaced.

12 Q. And you just don't know that as we sit here
13 today?

14 A. I know what I want to do. I would like to have a
15 functioning, working engine, put it back in the car, and
16 use it.

17 Q. But you don't know if it's reparable?

18 A. I don't know 100 percent that it's reparable. I
19 believe it is.

20 Q. So I want to make sure before we conclude that I
21 understand maybe to a fine point --

22 A. Okay.

23 Q. -- what your contention is that the cause of the
24 failure was. It is your belief, based on your own
25 investigation and information you've been provided by

1 third parties, that this is solely a clearance issue?

2 A. My belief is this engine failed due to a defect
3 in the machining and assembly of the engine.

4 Q. That caused a clearance issue.

5 A. That caused the failure of the bearings.

6 Q. And do you believe that your investigation has
7 proven to you that it excludes all other possibilities
8 that could have caused this same problem?

9 A. The information that I have received in a report
10 gives a firm conclusion that is what I'm basing my opinion
11 off.

12 Q. So you don't have your own personal opinion about
13 it at all. It's all based on what third parties have told
14 you?

15 A. What third parties are telling me make complete
16 sense.

17 Q. So you did an analysis of what third parties told
18 you and you come to the conclusion that there's no other
19 possibility that could have caused the failure of this
20 engine.

21 A. I've come to the conclusion that numerous piece
22 of evidence all point to the same conclusion.

23 Q. But what you're not saying is you have not
24 excluded all other possibilities, correct?

25 A. I believe I have, yeah.

1 Q. What makes you believe that?

2 A. Because -- That's a very open question. I don't
3 really know how you want me to answer that one. It's
4 quite a --

5 Q. I want you to answer it honestly. That's how --

6 A. So, I mean, other potential causes, obviously, as
7 you said, tuning, well, from what the tuner saw, from what
8 Mr. Pool has looked at in the data log, what I've looked
9 at in the data log, everything there would suggest that
10 there wasn't a issue that would cause the failure that I
11 have seen. Obviously, the measurements that were taken by
12 two third parties --

13 Q. Let me stop you there before you go forward.

14 MR. MATOUKA: Your Honor, objection. He
15 asked the question. It was open-ended. He opened the
16 door at this point.

17 MR. HURLEY: I want to ask a question about
18 his statement before he moves on.

19 MR. MATOUKA: He's allowed to answer this.
20 He opened the door. He knew where it was going.

21 MR. HURLEY: No, I know that. I'm not saying
22 he isn't. I'm going to ask a question about what he just
23 said before we move on to --

24 MR. MATOUKA: I want him to be able to finish
25 the answer.

1 THE COURT: He can answer the question but he
2 cannot -- he cannot invade the hearsay rule.

3 MR. MATOUKA: He opened the door at this
4 point.

5 THE COURT: No, he didn't.

6 Q. (BY MR. HURLEY) All of the measurements that
7 you're talking about, that was done after the failure of
8 the engine, correct?

9 A. Yeah.

10 Q. There were no -- nobody, you or anyone else that
11 you hired other than Mitchell Wilson did any measurements
12 before the failure, correct?

13 MR. MATOUKA: Objection. Calls for
14 speculation as to whether Mitchell Wilson did any
15 measurements.

16 Q. (BY MR. HURLEY) Let me ask that question then.
17 Do you believe Mitchell Wilson did not do any
18 measurements?

19 A. That's a double negative.

20 Q. Correct me then. Tell me how I should have asked
21 the question.

22 A. I'm sorry. Your question doesn't make sense.
23 Can you repeat it, please.

24 Q. Is it your contention that Mitchell Wilson did
25 not do any measurements on the items that you believe

1 are -- were damaged? Or done incorrectly. Excuse me.

2 A. Do I believe -- do I believe that measurements
3 were made incorrectly? Yes, I do.

4 Q. But you believe he did make measurements?

5 A. Yeah, well, he would have had to have made
6 measurements at some point.

7 Q. Okay. So you do believe that he made
8 measurements. But my question is: Other than that, those
9 measurements, there were no other measurements made of the
10 parts of the engine that we're talking about.

11 A. There was no reason for me to measure prior to
12 failure.

13 Q. And failure clearly could have impacted those
14 measurements, correct?

15 A. To a degree, yeah.

16 MR. HURLEY: Thank you, Your Honor. No
17 further questions.

18 REDIRECT EXAMINATION

19 BY MR. MATOUKA:

20 Q. All right. Mr. Johnson.

21 A. Hello again.

22 Q. At any point has Mr. Wilson asked to inspect any
23 portion or part of the engine?

24 A. No.

25 Q. Did you believe you had a legal obligation to

1 preserve the evidence for that?

2 A. Yes, I did. And do.

3 MR. MATOUKA: Your Honor, I'd like to move
4 what will be marked as Plaintiff's Exhibit No. 14 into
5 evidence. I don't have a physical copy at the moment, but
6 I will present one. My understanding is that Defense has
7 no objection.

8 MR. HURLEY: Your Honor, our only objection
9 is that I do believe a physical copy has to be here to be
10 admitted into evidence and be part of the record.

11 MR. MATOUKA: We can provide one first thing
12 tomorrow morning.

13 THE COURT: I can't introduce a document
14 that's not here.

15 MR. MATOUKA: Okay.

16 THE COURT: Unfortunately. Is it something
17 you can print?

18 MR. MATOUKA: Do you have a printer?

19 THE COURT: I do have a printer.

20 MR. MATOUKA: Yes.

21 THE COURT: Come up here, both. If you want
22 to hear me tell him how to print it, that's fine.

23 (Off-the-record discussion at the bench.)

24 Q. (BY MR. MATOUKA) Mr. Johnson, would you feel
25 comfortable or confident reusing the main housing bores in

1 your current engine?

2 A. No. They need remachining.

3 Q. You went over some pictures with Mr. Hurley that
4 you had posted here on Instagram, right?

5 A. That's correct, sir.

6 Q. Were you posting those because you were excited
7 about your car?

8 A. Absolutely.

9 Q. Did Mr. Wilson ever accept that the second
10 failure could have been a result of his work?

11 A. No, absolutely not.

12 Q. Did he ever make any mention of warranty work for
13 what was subsequently discovered to be what you believe
14 the problem is?

15 A. Sorry. Can you repeat that again? Sorry.

16 Q. Sorry about that.

17 A. I got distracted by the...

18 Q. Did he ever offer to make any repairs under
19 warranty after you moved on from the bearing fault?

20 A. No.

21 Q. Mr. Johnson, I'm going to give you what's been --

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

23 THE COURT: You may.

24 Q. I'm going to give you what's been marked as
25 Plaintiff's Exhibit No. 14.

1 A. Thank you.

2 Q. Have you seen that before?

3 A. Yes, I have.

4 Q. All right. Let me get it up on the display.

5 Earlier you were talking about whether Mr. Wilson had told
6 you the engine was broken in, correct?

7 A. That's correct.

8 Q. And you mentioned some text messages.

9 A. That's correct.

10 Q. Is this the text message that you are referring
11 to?

12 A. Yes, it is.

13 Q. And is the blue your message?

14 A. That's correct.

15 Q. And can you read for me what you asked him?

16 A. "The engine run-in now" comma, "correct" question
17 mark. "So do I need to --" "So do I need to run that
18 Fuchs oil I have or can I go to synth?"

19 Q. And then he responds?

20 A. "I'd do at least one more --" I'm sorry. "I'd
21 do at least one run on more break-in oil or conventional,
22 then you can go to synth." Or "syn". Sorry.

23 Q. And this was March 10th, 2021, correct?

24 A. Yeah, that's correct.

25 Q. Was this before you had actually received the

1 engine?

2 A. I believe so, yeah.

3 Q. And so you testified that when you got it back,
4 there was still some break-in oil in it, correct?

5 A. Yes, there was, yeah. The oil pan was full
6 still.

7 Q. Okay. And so you drove it on that break-in
8 oil?

9 A. That's correct, yeah.

10 Q. Okay. Did -- You talked about the warranty
11 document with Mr. Hurley and there was some mention about
12 Engineered Performance Racing tuning your engine, right,
13 in the warranty?

14 A. Yeah.

15 Q. Did Mr. Wilson ever indicate to you that he was
16 able or willing to tune an engine?

17 A. No. He said he didn't know how to.

18 Q. Did he indicate that Engineered Performance
19 itself was capable of doing that?

20 A. No, he did not.

21 Q. So, in fact, there was no way Engineered
22 Performance Racing could tune your engine?

23 A. As far as I was aware, that's correct, yeah.

24 MR. MATOUKA: Okay. I have nothing further,
25 Your Honor.

1 MR. HURLEY: May I stand here, Your Honor,
2 because I'm not --

3 REXCROSS-EXAMINATION

4 BY MR. HURLEY:

5 Q. The Exhibit 14 that you were just handed, did you
6 have any follow-up conversations about this?

7 A. Define "follow up".

8 Q. Did you speak with Mr. Wilson about it again?

9 A. This particular subject of whether the break-in
10 had been done?

11 Q. Yes.

12 A. I couldn't answer that 100 percent conviction,
13 I'm afraid. Maybe, maybe not. We spoke for quite a while
14 afterwards.

15 Q. Did you do at least one more run on break-in
16 oil?

17 A. Yes, because it had the break-in oil still in the
18 engine.

19 Q. But he says one more run, right?

20 A. Or conventional, and the Fuchs oil that I was
21 using was conventional oil.

22 Q. So the oil you ended up using was Fuchs?

23 A. Yes, that's correct.

24 Q. And that is conventional oil?

25 A. Yes, this is.

1 Q. So how long did you run Fuchs?

2 A. I bought enough of it to be able to go through
3 the -- the running-in process that was in the break-in
4 document where it said run it "X" amount of miles, blah,
5 blah.

6 Sorry, that was disrespectful.

7 All those conditions of the break-in
8 schedule, but that was prior to agreeing with Mr. Wilson
9 that the engine would be broken in on the engine dyno. So
10 I had, basically, a large 30 liters of the stuff to use,
11 so it made sense to use it.

12 Q. So you --

13 A. It was high quality oil.

14 Q. So you used that to comply with the break-in?

15 A. Yeah, because it was conventional oil.

16 MR. HURLEY: Nothing further, Your Honor.

17 THE COURT: All right. That will be all for
18 today, ladies and gentlemen. You can accompany the
19 Bailiff out of the room. We'll start again tomorrow
20 morning at 9:00.

21 (Jury not present.)

22 THE COURT: Do we have that new exhibit? Did
23 you leave a copy up here?

24 MR. MATOUKA: Your Honor, what I'd actually
25 like to do is -- and I don't think everyone needs to be

1 here, but I want to make sure that all the exhibits we
2 brought in this morning I get up, the ones that were
3 preadmitted, obviously, and then Exhibit 8 which was
4 admitted by this Court and Exhibit 14.

5 THE COURT: You can do that off the record
6 with the Court Reporter. She'll check them with you.

7 MR. MATOUKA: Thank you, Your Honor.

8 THE COURT: Is there anything else you need
9 to do today?

10 MR. HURLEY: I don't believe so, no, sir.

11 THE COURT: 9:00 is okay tomorrow?

12 MR. MATOUKA: Yes, Your Honor.

13 THE COURT: All right.

14 MR. HURLEY: I will say, Your Honor, I think
15 we will definitely go in to Thursday now, just for
16 planning purposes. I believe it will -- I hope we will be
17 done early in the day on Thursday, but I do think we'll go
18 in to Thursday.

19 THE COURT: Okay. One thing about the
20 proposed Jury Charge, if you -- I normally work off of the
21 Defendant's charge, but I need a charge that's ready to
22 read. I like to edit off of that. So you've got one that
23 has, you know, the traditional style where it proposes
24 this and that. It has the case cites that --

25 MR. HURLEY: So we want to cut all that out

1 and just put it in a format so that it's ready to read.

2 THE COURT: I should be able to sign it, read
3 it, and then we'll edit off of that at the charge
4 conference.

5 MR. HURLEY: Okay. I will do that tonight.

6 THE COURT: You can bring yours if you want
7 or you can bring what you want to add to his or y'all can
8 work on that together, but I like to have one ready to go,
9 so when we get it ready to go, I can just read it.

10 MR. HURLEY: I'll do that tonight.

11 THE COURT: And won't have to retype it.

12 MR. MATOUKA: Thank you, Your Honor.

13 MS. OLIVER: Judge, one thing, if this does
14 go in to Thursday, I do need to leave on Wednesday after
15 court. Is that okay with the Court?

16 THE COURT: That's fine.

17 MS. OLIVER: Okay. Thank you very much.

18 THE COURT: All right. If you want to
19 explain that to the Jury or not, that would be your
20 decision. If you decide that you need to explain that or
21 want me to explain it, then y'all see if you can agree on
22 what I should say to the Jury.

23 MS. OLIVER: Okay.

24 THE COURT: If not, we'll probably just let
25 you disappear.

1 MS. OLIVER: Okay. Thank you, Judge. I
2 appreciate it.

3 MR. MATOUKA: Thank you.

4 MR. HURLEY: Thank you, Judge.

5 (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 22nd day of
17 October, 2024.

18 /s/ Pamela Waits _____
19 Pamela K. Waits, TCRR, TMR, CSR #4991
20 Expiration Date: 01/31/26
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