

1997

# Lynn B. Astill v. Leesha Clark : Brief of Appellant

Utah Court of Appeals

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John Edward Hansen; Scalley & Reading; Paul S. Felt; Ray, Quinney & Nebeker; attorneys for appellee.

Samuel King, David J Friel; attorneys for appellant.

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## Recommended Citation

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UTAH COURT OF APPEALS  
BRIEF  
UTAH  
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DOCKET NO. 970180 CA

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IN THE UTAH COURT OF APPEALS

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LYNN B. ASTILL,

Plaintiff/Appellant,

LEESHA CLARK,

Defendant/Appellee.

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\*  
\*  
\*  
\*  
\*  
\*

Appellate Court No.: 970180

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ADDENDUM TO BRIEF OF APPELLANT

---

Appeal from orders of the Third Judicial District Court, Judge Pat B. Brian from jury verdict and from order denying motion for new trial.

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Telephone: (801) 532-1500

**FILED**

**JUN 04 1997**

**COURT OF APPEALS**

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IN THE UTAH COURT OF APPEALS

---

LYNN B ASTILL,

Plaintiff/Appellant,

LEESHA CLARK,

Defendant/Appellee

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Appellate Court No 970180

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ADDENDUM TO BRIEF OF APPELLANT

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Appeal from orders of the Third Judicial District Court, Judge Pat B Brian from jury verdict and from order denying motion for new trial

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ADDENDUM  
INDEX OF EXHIBITS

<u>NO.</u>	<u>EXHIBIT</u>
------------	----------------

- |    |   |
|----|---|
| 1. | Order denying new trial   |
| 2. | Judgment on Verdict   |
| 3. | Independent Medical Evaluation Order                            |
| 4. | Order re: Rebuttal Witnesses - Findings & Conclusions           |
| 5. | M.U.J.I. 27.5 ( R. 130)   |
| 6. | B.A.J.I. - Plaintiff's Requested Instruction No. 17 (R. 93, 94) |
| 7. | David Lord affidavit  |
| 8. | Leonard Hardle affidavit with Exhibits                          |

Tab 1

FILED DISTRICT COURT  
Third Judicial District

AUG 22 1996

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SCALLEY & READING  
Attorneys for Defendant  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870

By B. Young Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

LYNN B. ASTILL,	:	ORDER ON MOTION FOR NEW TRIAL
	:	AND OTHER RELIEF
Plaintiff,	:	
vs.	:	Civil No. 950902307PI
LEESHA CLARK,	:	Judge Pat Brian
	:	
Defendant.	:	

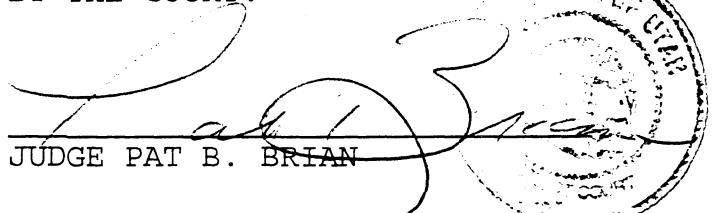
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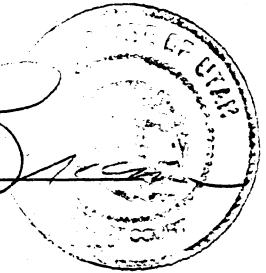
Plaintiff Lynn B. Astill's motion for a new trial and other relief came for hearing before the Court on May 31, 1996. Plaintiff Lynn B. Astill was represented by Samuel King of King, Friel, Colton & Hardy. Defendant Leesha Clark was represented by John Hansen of Scalley & Reading and Paul Felt of Ray, Quinney & Nebeker. The Court, having reviewed and considered all the evidence, the corresponding memoranduma of points and authorities submitted by the parties, having heard the oral arguments of counsel, having taken the matter under advisement and being duly advised in the premises, and good cause appearing therefor, it is hereby

ORDERED that Plaintiff's Motion for a New Trial and Other Relief is hereby denied.

DATED this 22 day of August, 1996.

BY THE COURT:

  
JUDGE PAT B. BRIAN



MAILING CERTIFICATE

I hereby certify that on the 12<sup>th</sup> day of August, 1996,  
I mailed, postage prepaid, a copy of the foregoing Order on Motion  
for New Trial and Other Relief to the following:

Samuel King, Esq.  
David J. Friel, Esq.  
2120 South 1300 East, No. 301  
Salt Lake City, Utah 84106

Robin Jacks

Paul S. Felt  
Ray, Quinney & Nebeker  
79 South Main Street  
Salt Lake City, Utah 84145

Robin Jacks



Tab 2

FILED DISTRICT COURT  
Third Judicial District

PAUL S. FELT (A1055)  
RAY, QUINNEY & NEBEKER  
Attorneys for Defendant  
79 South Main Street  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500

MAR 5 1996  
By Becki Adams  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----ooOoo-----

LYNN B. ASTILL,	:	
	:	
Plaintiff,	:	JUDGMENT ON JURY VERDICT
	:	
v.	:	
	:	
LEESHA CLARK,	:	Civil No. 950902307PI
	:	Judge Pat B. Brian
Defendant.	:	
	:	

-----ooOoo-----

This action came on regularly for trial on Tuesday, February 6, 1996, in Salt Lake City, Utah, before the Honorable Pat B. Brian, Third District Judge, sitting with a jury. Plaintiff Lynn B. Astill, appeared by her attorneys, Samuel King and David Friel of King, Friel & Colton; and Defendant Leesha Clark, appeared by her attorneys, Paul S. Felt of Ray, Quinney & Nebeker and John E. Hansen of Scalley & Reading.

After hearing the evidence, the instructions of the Court, and listening to the arguments of counsel, the jury retired to consider a Special Verdict and subsequently returned the Special Verdict as follows:

1. Was the defendant, Leesha Clark, negligent as alleged by plaintiff?

ANSWER: Yes   X   No       

2. Was defendant's negligence a proximate cause of the injuries or aggravation of prior injuries or conditions sustained by the plaintiff?

ANSWER: Yes        No   X  

3. If you have answered Questions 1 and 2 "Yes", state the amount of special and general damages, if any, sustained by the plaintiff as a proximate result of the injuries complained of. If such questions were not answered "Yes", do not answer this question.

Special Damages:

A. Past Special Damages	\$ <u>          </u>
B. Future Special Damages	\$ <u>          </u>
General Damages:	\$ <u>          </u>
TOTAL	\$ <u>          </u>

DATED this 8th day of February, 1996.

Richard Roethel

Foreperson


The Court having reviewed the Special Verdict and having found it to be in the proper form, pursuant to the instructions given to the jury by the Court, it is hereby:

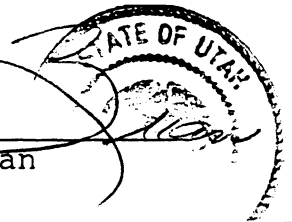
ORDERED, ADJUDGED AND DECREED that the Complaint against Defendant Leesha Clark is hereby dismissed with prejudice and upon the merits, no cause of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is awarded her costs in this matter.

DATED this 5 day of <sup>March</sup>~~February~~, 1996.

BY THE COURT:

  
\_\_\_\_\_  
Honorable Pat B. Brian  
District Court Judge



APPROVED AS TO FORM:

---

Samuel King  
David J. Friel  
KING, FRIEL & COLTON  
Attorneys for Plaintiff

Tab 3

FILED DISTRICT COURT  
Third Judicial District

NOV 13 1995

By Becki Adams  
Deputy Clerk

PAUL S. FELT (A1055)  
RAY, QUINNEY & NEBEKER  
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Salt Lake City, Utah 84145-0385  
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260 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone (801) 531-7870

Attorneys for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----ooOoo-----

LYNN B. ASTILL,	:	ORDER GRANTING DEFENDANT'S
	:	MOTION TO COMPEL PLAINTIFF TO
Plaintiff,	:	SUBMIT TO A PHYSICAL
	:	EXAMINATION WITHOUT HER OWN
v.	:	CHIROPRACTOR PRESENT
LEESHA CLARK,	:	Civil No. 950902307PI
	:	
Defendant.	:	Judge Pat B. Brian
	:	

-----ooOoo-----

Defendant's Motion to Compel Plaintiff to Submit to a Physical Examination Without Her Own Chiropractor Present was heard on Monday, October 30, 1995 at the hour of 1:30 p.m. before the Honorable Pat B. Brian with Samuel King and David Friel appearing on behalf of the plaintiff, Paul S. Felt of Ray, Quinney & Nebeker and Wesley D. Hutchins of Scalley & Reading appearing on behalf of defendant. The court having reviewed the memoranda of counsel and good cause here appearing,

010030

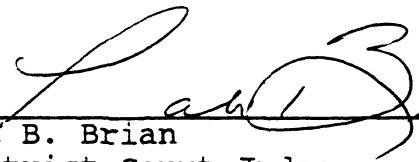
IT IS HEREBY ORDERED:

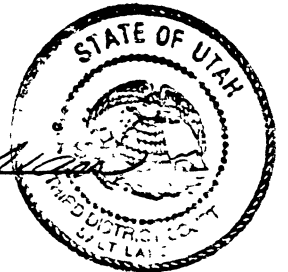
1. Defendant's Motion to Compel Plaintiff to Submit to a Physical Examination Without Her Own Chiropractor Present is granted and plaintiff is compelled to submit to a physical examination by Dr. Nathaniel Nord without having any chiropractor or family member present. No video taping of the procedure will be allowed.

2. Plaintiff may have a neurologist of her choosing present at her independent medical examination. If plaintiff chooses to do so, she must notify defendant's counsel no later than 10:00 o'clock a.m. on October 31, 1995.

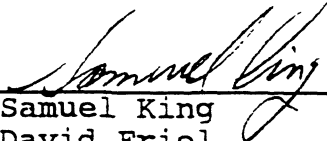
DATED this 13 day of November, 1995.

BY THE COURT:

  
Pat B. Brian  
District Court Judge



APPROVED AS TO FORM:

  
Samuel King  
David Friel  
Attorneys for Plaintiff



Tab 4

FILED DISTRICT COURT  
Third Judicial District

APR 16 1996

By Becke Young  
Deputy Clerk

JOHN EDWARD HANSEN, #4590  
SCALLEY & READING  
Attorneys for Defendant  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

LYNN B. ASTILL,	:	FINDINGS OR FACT AND
	:	CONCLUSIONS OF LAW
Plaintiff,	:	
vs.	:	Civil No. 950902307PI
LEESHA CLARK,	:	Judge Pat Brian
Defendant.	:	

---

Jury trial in the above-captioned matter was held on February 6-8, 1996, the Honorable Pat Brian presiding. David J. Friel of King, Friel & Colton appeared on behalf of Plaintiff. Paul S. Felt of Ray, Quinney & Nebeker and John E. Hansen of Scalley & Reading appeared on behalf of Defendant. During the course of the trial, Defendant objected to the Plaintiff's calling of two rebuttal witnesses after the close of Defendant's case. The Court, having rendered its decision after considering each parties' respective arguments, now makes and enters the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. On or about June 6, 1994, a rear-end automobile collision occurred between Plaintiff and Defendant.

2. Defendant's deposition was taken on May 24, 1995, during which she testified that she was travelling at a low speed when she collided with Plaintiff.

3. The Court held a Scheduling Conference on September 14, 1995 at which time the Court ordered Plaintiff to identify her witnesses by November 15, 1996. A Court Order was entered thereafter which so stated.

4. On November 15, 1996, Plaintiff identified her witnesses, including:

"6. West Valley Auto Body

a. Plaintiff's husband took her vehicle to this shop for a damage estimate.

b. Plaintiff's counsel will provide the name of this mechanic as soon as possible."

6. On January 2, 1996, over a month before trial, Defendant formally identified Newell Knight as an expert witness in Defendant's Designation of Expert Witnesses.

7. Plaintiff failed to take Mr. Knight's deposition or to obtain any other form of discovery from Mr. Knight, including Answers to Interrogatories.

8. Plaintiff thereafter submitted a letter to Defendant's counsel wherein she supplemented her witness list to include "David Lord either as a direct or rebuttal witness."

9. At trial, Plaintiff failed to call any expert witnesses during her case in chief to establish the speed of the collision between Plaintiff and Defendant.

10. Defendant's expert, Mr. Knight, testified at trial that the Defendant's speed at the time of collision was three to four miles per hour. Mr. Knight based his conclusions on the photographs of the vehicle's bumpers, the lack of movement of Plaintiff's vehicle, the absence of any skid marks and the absence of any injury to Defendant resulting from the collision.

11. After the defense rested its case, Plaintiff attempted to call expert witnesses David Lord (accident reconstructionist) and Mr. Hardle (a mechanic) to testify for the first time in rebuttal.

12. Plaintiff's counsel knew before trial that the defense was going to challenge Plaintiff's account of speed of the accident and assumed that Defendant's expert, Newell Knight, "was going to put the speed around three to four miles an hour." Partial Trial Transcript at 68. This was confirmed when Plaintiff's counsel heard Defendant's opening statement. Id.

CONCLUSIONS OF LAW

1. The speed of Defendant's vehicle has been an issue since the beginning of this litigation and Plaintiff could have and should have reasonably anticipated Defendant's evidence before trial and could have and should have called her expert witness in her case in chief to meet Plaintiff's prima facia burden.

2. Plaintiff's expert witnesses should be and are excluded from testifying in rebuttal because Plaintiff improperly withheld them until after the defense rested.

DATED this 16<sup>th</sup> day of April, 1996.

BY THE COURT:

  
Honorable Pat Brian  
District Court Judge



MAILING CERTIFICATE

I hereby certify that on the 10<sup>th</sup> day of April, 1996, I mailed, postage prepaid, a copy of the foregoing Findings of Fact and Conclusions of Law to the following:

Samuel King, Esq.  
David J. Friel, Esq.  
2120 South 1300 East, No. 301  
Salt Lake City, Utah 84106

Paul S. Felt, Esq.  
Ray, Quinney & Nebeker  
79 South Main Street  
Salt Lake City, Utah 84145

John Edward Hansen, Esq.  
Scalley & Reading  
261 East 300 South, Suite 200  
Salt Lake City, UT 84111



---

FILED DISTRICT COURT  
Third Judicial District

APR 16 1996

By Becke Young  
Deputy Clerk

JOHN EDWARD HANSEN, #4590  
SCALLEY & READING  
Attorneys for Defendant  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

LYNN B. ASTILL,	:	ORDER
Plaintiff,	:	
vs.	:	Civil No. 950902307PI
LEESHA CLARK,	:	Judge Pat Brian
Defendant.	:	


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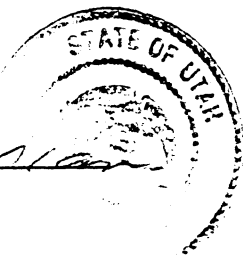
During the course of trial, on February 8, 1996, Defendant Leesha Clark's motion to exclude Plaintiff's expert witnesses from testifying as rebuttal witnesses came before this Court. Having heard argument of counsel for the parties, and being fully advised on the premises and based upon the Findings of Fact and Conclusions of law entered by the court, it is hereby

ORDERED that Plaintiff's expert witnesses are excluded from testifying in rebuttal.

DATED this 16 day of April, 1996.

BY THE COURT:

  
Honorable Pat Brian  
District Court Judge



MAILING CERTIFICATE

I hereby certify that on the 16th day of April, 1996, I mailed, postage prepaid, a copy of the foregoing Order to the following:

Samuel King, Esq.  
David J. Friel, Esq.  
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Salt Lake City, UT 84106

Paul S. Felt, Esq.  
Ray, Quinney & Nebeker  
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Salt Lake City, UT 84145

John Edward Hansen, Esq.  
Scalley & Reading  
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Salt Lake City, UT 84111

\_\_\_\_\_



## Tab 5

INSTRUCTION NO. \_\_\_\_\_

If you find the Plaintiff will probably suffer a reduction of earning capacity, you should award the present cash value of earnings reasonably likely to be lost in the future as a result of her collision with the Defendant.

Tab 6

INSTRUCTION NO. 17

**PRESENT VALUE TABLE**

The following Table of the Present Value of \$1 per year for a Specified Number of Years is offered for use to reduce a constant annual amount for a determined number of years at a determined rate of investment return to its present cash value.

To use this table, (1) determine the constant annual amount, (2) determine the number of years it will continue, (3) determine the rate of investment return, (4) using the number of years and the rate of investment return so determined, ascertain the factor from the table, and (5) multiply the annual amount by the factor so ascertained. The result will be the present amount which, invested at the determined rate of investment return, will pay at the end of each year the determined annual amount for the number of years it is determined that such amount will continue.

This table is designed for use where the annual amount does not vary but is constant from year to year.

# PRESENT VALUE TABLE

TO USE THIS TABLE, (1) DETERMINE THE CONSTANT ANNUAL AMOUNT, (2) DETERMINE THE NUMBER OF YEARS IT WILL CONTINUE, (3) DETERMINE THE RATE OF INVESTMENT RETURN; (4) USING THE NUMBER OF YEARS AND THE RATE OF INVESTMENT RETURN SO DETERMINED, ASCERTAIN THE FACTOR FROM THE TABLE, AND (5) MULTIPLY THE ANNUAL AMOUNT BY THE FACTOR SO ASCERTAINED. THE RESULT WILL BE THE PRESENT AMOUNT WHICH, INVESTED AT THE DETERMINED RATE OF INVESTMENT RETURN, WILL PAY AT THE END OF EACH YEAR THE DETERMINED ANNUAL AMOUNT FOR THE NUMBER OF YEARS IT IS DETERMINED THAT SUCH AMOUNT WILL CONTINUE.

## 1. Present Value of \$1 per Year (Payable at End of Each Year) for Specified Number of Years\* (Compound Discount Table)

RATE																
Years	3%	3½%	4%	4½%	5%	5½%	6%	6½%	7%	7½%	8%	8½%	9%	9½%	10%	Years
1	.97	.97	.96	.96	.95	.95	.94	.94	.93	.93	.92	.92	.91	.91	.91	1
2	1.91	1.90	1.89	1.87	1.86	1.85	1.83	1.82	1.81	1.80	1.78	1.77	1.76	1.75	1.74	2
3	2.83	2.80	2.78	2.75	2.72	2.70	2.67	2.65	2.62	2.60	2.58	2.55	2.53	2.51	2.49	3
4	3.72	3.67	3.63	3.59	3.54	3.51	3.47	3.43	3.39	3.35	3.31	3.28	3.24	3.20	3.17	4
5	4.58	4.52	4.45	4.39	4.33	4.27	4.21	4.16	4.10	4.05	3.99	3.94	3.89	3.84	3.79	5
6	5.42	5.33	5.24	5.16	5.08	5.00	4.92	4.84	4.77	4.69	4.62	4.55	4.49	4.42	4.36	6
7	6.23	6.11	6.00	5.89	5.79	5.68	5.58	5.48	5.39	5.30	5.21	5.12	5.03	4.95	4.87	7
8	7.02	6.87	6.73	6.60	6.46	6.33	6.21	6.09	5.97	5.86	5.75	5.64	5.53	5.43	5.33	8
9	7.79	7.60	7.43	7.27	7.11	6.95	6.80	6.66	6.52	6.38	6.25	6.12	6.00	5.88	5.76	9
10	8.53	8.31	8.11	7.91	7.72	7.54	7.36	7.19	7.02	6.86	6.71	6.56	6.42	6.28	6.14	10
11	9.25	9.00	8.76	8.53	8.31	8.09	7.89	7.69	7.50	7.32	7.14	6.97	6.81	6.65	6.50	11
12	9.95	9.66	9.39	9.12	8.86	8.62	8.38	8.16	7.94	7.74	7.54	7.34	7.16	6.98	6.81	12
13	10.63	10.30	9.99	9.68	9.39	9.12	8.85	8.60	8.36	8.13	7.90	7.69	7.49	7.29	7.10	13
14	11.30	10.92	10.56	10.22	9.90	9.59	9.29	9.01	8.75	8.49	8.24	8.01	7.79	7.57	7.37	14
15	11.94	11.52	11.12	10.74	10.38	10.04	9.71	9.40	9.11	8.83	8.56	8.30	8.06	7.83	7.61	15
16	12.56	12.09	11.65	11.23	10.84	10.46	10.11	9.77	9.45	9.14	8.85	8.58	8.31	8.06	7.82	16
17	13.17	12.65	12.17	11.71	11.27	10.86	10.48	10.11	9.76	9.43	9.12	8.83	8.54	8.28	8.02	17
18	13.75	13.19	12.66	12.16	11.69	11.25	10.83	10.43	10.06	9.71	9.37	9.06	8.76	8.47	8.20	18
19	14.32	13.71	13.13	12.59	12.09	11.61	11.16	10.73	10.34	9.96	9.60	9.27	8.95	8.65	8.36	19
20	14.88	14.21	13.59	13.01	12.46	11.95	11.47	11.02	10.59	10.19	9.82	9.46	9.13	8.81	8.51	20
21	15.42	14.70	14.03	13.40	12.82	12.28	11.76	11.28	10.84	10.41	10.02	9.64	9.29	8.96	8.65	21
22	15.94	15.17	14.45	13.78	13.16	12.58	12.04	11.54	11.06	10.62	10.20	9.81	9.44	9.10	8.77	22
23	16.44	15.62	14.87	14.15	13.49	12.87	12.30	11.77	11.27	10.81	10.37	9.96	9.58	9.22	8.88	23
24	16.94	16.06	15.25	14.50	13.80	13.15	12.55	11.99	11.47	10.98	10.53	10.10	9.71	9.33	8.98	24
25	17.41	16.48	15.62	14.83	14.09	13.41	12.78	12.20	11.65	11.15	10.67	10.23	9.82	9.44	9.08	25
26	17.88	16.89	15.98	15.15	14.38	13.66	13.00	12.39	11.83	11.30	10.81	10.35	9.93	9.53	9.16	26
27	18.33	17.29	16.33	15.45	14.64	13.90	13.21	12.57	11.99	11.44	10.94	10.46	10.03	9.62	9.24	27
28	18.76	17.67	16.66	15.74	14.90	14.12	13.41	12.75	12.14	11.57	11.05	10.57	10.12	9.70	9.31	28
29	19.19	18.04	16.98	16.02	15.14	14.33	13.59	12.91	12.28	11.70	11.16	10.66	10.20	9.77	9.37	29
30	19.60	18.39	17.29	16.29	15.37	14.53	13.76	13.06	12.41	11.81	11.26	10.75	10.27	9.83	9.43	30
31	20.00	18.74	17.59	16.54	15.59	14.72	13.93	13.20	12.53	11.92	11.35	10.83	10.34	9.89	9.48	31
32	20.39	19.07	17.87	16.79	15.80	14.90	14.08	13.33	12.65	12.02	11.43	10.90	10.41	9.96	9.53	32
33	20.77	19.39	18.15	17.02	16.00	15.08	14.23	13.50	12.75	12.11	11.51	10.97	10.46	10.00	9.57	33
34	21.13	19.70	18.41	17.25	16.19	15.24	14.37	13.58	12.85	12.19	11.59	11.03	10.52	10.05	9.61	34
35	21.49	20.00	18.66	17.46	16.37	15.39	14.50	13.69	12.95	12.27	11.65	11.09	10.57	10.09	9.64	35
36	21.83	20.29	18.91	17.67	16.55	15.54	14.62	13.79	13.04	12.35	11.72	11.14	10.61	10.13	9.68	36
37	22.17	20.57	19.14	17.86	16.71	15.67	14.74	13.89	13.12	12.42	11.78	11.19	10.65	10.16	9.71	37
38	22.49	20.84	19.37	18.05	16.87	15.80	14.85	13.98	13.19	12.48	11.83	11.23	10.69	10.19	9.73	38
39	22.81	21.10	19.58	18.23	17.02	15.93	14.96	14.06	13.26	12.54	11.88	11.28	10.73	10.22	9.76	39
40	23.11	21.36	19.79	18.40	17.16	16.05	15.05	14.15	13.33	12.59	11.92	11.31	10.76	10.25	9.78	40
41	23.41	21.60	19.99	18.57	17.29	16.16	15.14	14.22	13.39	12.65	11.97	11.35	10.79	10.27	9.80	41
42	23.70	21.83	20.19	18.72	17.42	16.26	15.22	14.29	13.45	12.69	12.01	11.38	10.81	10.29	9.82	42
43	23.98	22.06	20.37	18.87	17.55	16.36	15.31	14.36	13.51	12.74	12.04	11.41	10.84	10.31	9.83	43
44	24.25	22.28	20.55	19.02	17.66	16.46	15.38	14.42	13.56	12.78	12.08	11.44	10.86	10.33	9.85	44
45	24.52	22.50	20.72	19.16	17.77	16.55	15.46	14.48	13.61	12.82	12.11	11.47	10.88	10.35	9.86	45
46	24.78	22.70	20.88	19.29	17.88	16.63	15.52	14.54	13.65	12.85	12.14	11.49	10.90	10.36	9.88	46
47	25.02	22.90	21.04	19.41	17.98	16.71	15.60	14.59	13.69	12.89	12.16	11.51	10.92	10.38	9.89	47
48	25.27	23.09	21.20	19.54	18.08	16.79	15.65	14.64	13.73	12.92	12.19	11.53	10.93	10.39	9.90	48
49	25.50	23.28	21.34	19.65	18.17	16.86	15.71	14.68	13.77	12.95	12.21	11.55	10.95	10.40	9.91	49
50	25.73	23.46	21.48	19.76	18.26	16.93	15.76	14.72	13.80	12.97	12.23	11.57	10.96	10.41	9.91	50
51	25.95	23.63	21.62	19.87	18.34	17.00	15.81	14.76	13.83	13.00	12.25	11.58	10.97	10.42	9.92	51
52	26.17	23.80	21.75	19.97	18.42	17.06	15.87	14.80	13.86	13.02	12.27	11.60	10.99	10.43	9.93	52
53	26.37	23.96	21.87	20.07	18.49	17.12	15.91	14.84	13.89	13.04	12.29	11.61	11.00	10.44	9.94	53
54	26.58	24.11	21.99	20.16	18.57	17.17	15.95	14.87	13.92	13.06	12.30	11.62	11.01	10.45	9.94	54
55	26.77	24.26	22.11	20.25	18.63	17.23	15.99	14.90	13.94	13.08	12.32	11.63	11.01	10.45	9.95	55
56	26.97	24.41	22.22	20.33	18.70	17.28	16.03	14.93	13.96	13.10	12.33	11.64	11.02	10.46	9.95	56
57	27.15	24.55	22.33	20.41	18.76	17.32	16.06	14.96	13.98	13.12	12.34	11.65	11.03	10.47	9.96	57

Tab 7

SAMUEL KING, No. 1820  
DAVID J FRIEL, No. 6225  
Attorneys for Plaintiff  
2120 South 1300 East, No. 301  
Salt Lake City, UT 84106  
Telephone: (801) 486-3751  
Facsimile: (801) 486-3753

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LYNN B. ASTILL,	)	AFFIDAVIT OF DAVID LORD
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LEESHA CLARK,	)	
	)	Case No. 950902307 PI
	)	
Defendant.	)	Judge: Pat B. Brian

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STATE OF UTAH )  
 )ss.  
COUNTY OF SALT LAKE )

David Lord, being first duly sworn, deposes and states:

1. I am a former police officer for Salt Lake City assigned for seven years as a traffic investigator and reconstructionist. Currently, I now own two businesses in Accident Reconstruction and Cause Analysis. My curriculum vitae is attached.

2. I have read Plaintiff's Motion for New Trial. So far as it states facts relative to a Ford Taurus, and to the testimony that I was prepared to give, the Motion is factually accurate.

3. As the most frequent city driving collision is a "rear-ender", I investigated 7,000 accidents during my work for Salt Lake City. I have investigated several thousands of these types of rear-end collisions. This has continued on a frequent basis since I have been self-employed and investigating and reconstructing about 3,000 more accidents.

4. It is not uncommon for people to sustain real neck and/or back injuries in low speed rear end collisions. I am not a medical doctor. My observation is based on my dealing with, and personal knowledge of, people involved in such collisions, and my reading of material in this field relating statistics on low speed accidents to injuries caused by them, verifying the many times victims have told me of their injuries and subsequent medical confirmation of these injuries.

5. Reputable studies have shown real injuries occurring to occupants of the front car in rear end collisions at speeds as low as eight to nine miles per hour, even though the injured occupant wore a seat belt and had a head rest. These studies are consistent with my own observations and experience.

6. As I understand it, Newell Knight testified that this subject accident occurred at a speed well under eight to nine miles per hour, basing this opinion on lack of visible damage to the Taurus front bumper. He erred in that testimony.



7. The Taurus is a recent car model. All of them have front bumpers designed to absorb energy (they are called "energy absorbing" bumpers), and to absorb up to a five mile per hour impact without sustaining or imparting any structural damage. It is designed to be soft - like hitting a pillow or being hit by a pillow.

8. For the impact to deform and displace both of the Explorer's heavy steel rear bumper supports by at least an inch, indicates the Taurus struck the Explorer at a speed well in excess of five miles per hour, as the first five miles per hour would have produced no structural damage to either vehicle. Without an examination of the Taurus' strong structural bumper parts, a determination of the actual impact speed of the Taurus cannot be made. However, in view of the known damage to the Explorer bumper supports, it is obvious that the actual impact speed was well over five miles per hour.

9. The above is testimony I was prepared to give at trial of this case. I was there, waiting outside the Courtroom. I have testified in court as an expert witness many times. This case is the first time that the court has refused to allow me to attend the testimony of the opposition expert reconstructionist, and the first time when notice that I would testify was timely given, that I have not been allowed to testify as a rebuttal witness.

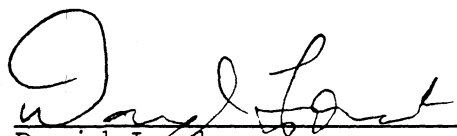
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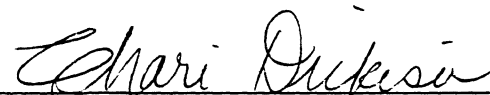
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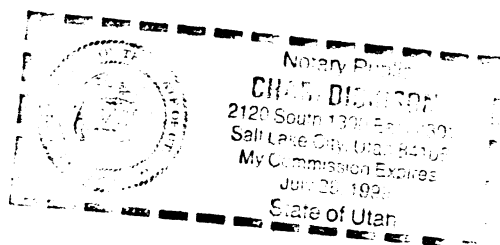
STATE OF UTAH                    )  
                                      : ss.  
COUNTY OF SALT LAKE        )

David Lord being first duly sworn on his oath, swears he is the Affiant in the above-entitled action, that he has reviewed the foregoing document and that he executes the same voluntarily, and that the same is true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
David Lord

SUBSCRIBED TO AND SWORN to before me this 8 day of March, 1996.

  
\_\_\_\_\_  
NOTARY PUBLIC



000186

David G. Lord 1996

## **RESUME**

1967-Present Director and Owner of Accident Reconstruction & Cause Analysis, a consulting company that operates in thirteen (13) states.

1985-Present Director and programmer for Computerized Accident Reconstruction, a company that operates in twenty seven (27) states and Queensland, Australia.

1966-1972 Salt Lake City Police Department, Accident Investigation Squad. Averaging 1000 investigations annually.

## **SCHOOLS and STUDY**

1961-1964 Utah Tech, Drafting and Pattern design.

1966 Salt Lake City Police Academy.

1968 Northwestern University's Accident Investigation.

1968-Present Accident Reconstruction.

Auto Accident Site Diagraming (in house).

Accident Site Investigation (in house & outside instructors).

Accident & Forensic Photography (in house & outside instructors).

Anatomical Interaction During Collision (autopsies).

Vehicular Dynamics.

Vehicular Structure, Design and Collision Analysis.

Controlled Crash Test (30) in conjunction with training.

Passenger Kinetics.

Human Factors.

Psychology of the Highway User (outside instructors).

868157

Tire Design and Construction (Goodyear Tire Company).

Road Design and Construction (as it pertains to auto accidents) Gibbons and Reed Construction and others.

Forensic Evidence Evaluation.

Surprise Intrusion Response.

Legal Issues of The 1990, admissibility of accident reconstruction evidence.

The investigation of child restraint and seatbelt injuries

### TEACHING

1967 Guest Instructor Weber College, Accident Investigation.

1967-1972 Basic, Intermediate and Advanced for SLCPD and other agencies.

1968-Present Peace Officers Standards and Training, all levels of Accident Investigation and Reconstruction, including thirty (30) controlled crash tests.

1983-1984 Salt Lake Community College, Advanced Accident Reconstruction. 6 Credit hours.

1985-Present Computerized Accident Reconstruction, Computerized Accident Investigations.

### ACCOMPLISHMENTS

Personally investigated 7000 auto accidents and consulted on an additional 3000 cases.

I was the first person certified to teach any subject at P.O.S.T., the State Police Academy.

I have participated in litigation and given expert testimony in thirteen states over the past 29 years.

I have produced twelve (12) computer graphic accident reenactment.

In 1985 I applied for and was given a copyright on a computer program that I conceived and designed. My concept is presently being used by Police Departments, Insurance Companies, Bureau of Land Management investigators, Attorneys, Civilian Consultants and Safety Supervisors in 27 states and Queensland, Australia.

Tab 8

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DAVID J FRIEL, No. 6225  
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Salt Lake City, UT 84106  
Telephone: (801) 486-3751  
Facsimile: (801) 486-3753

Attorneys for Plaintiff  
LYNN B. ASTILL

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LYNN B. ASTILL,	)	AFFIDAVIT OF LEONARD HARDLE
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LEESHA CLARK,	)	
	)	Case No. 950902307 PI
	)	
Defendant.	)	Judge: Pat B. Brian

---

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

Leonard Hardle, being first duly sworn, deposes and states:

1. I am an automobile collision repairman and have been for 16 years. I am a resident of Salt Lake County, and am the owner of an automobile repair shop whose address is 4195 South 500 West, Murray, Utah.

2. For several years I have specialized in the repair of Ford Taurus automobiles.

3. I have read Plaintiff's Motion for New Trial. So far as it states facts relative to a Ford Taurus, and to the testimony that I was prepared to give at the trial, the motion is accurate.

4. Annexed to this affidavit are photographs taken at my business by David J Friel on March 13, 1996. These photographs accurately depict the bumper and Taurus automobile I was prepared to testify about during trial to illustrate my testimony in this case. Actually, I brought part of this same bumper to court with me on February 8, 1996 and I was waiting out in the hall of the Third District Court ready to be called upon.

Judge Brian refused to allow me to rebut Defendant's expert, Newel Knight, concerning his erroneous testimony of Ford Taurus bumpers.

5. Exhibit A is a photograph of me and half of the bumper from the vehicle I was prepared to testify concerning. Exhibit B is a photograph showing major damage to the vehicle. This vehicle was totalled. I have already completed some major repair work to this pictured vehicle's front end. The front frame of this car was damaged significantly more than the picture depicts. Upon close examination it can be seen that the bumper received only a few scrapes.

Exhibit C is a close-up photograph of half of the bumper on the vehicle. I sawed off the other half of the bumper and took

it to Court with me on February 8th. After the trial was completed and the Plaintiff lost, I threw the other half of the bumper away. The section thrown away was in similar condition as the other half.

6. A comparison of these photographs reveals that the bumper shows no apparent damage, while the vehicle shows very substantial damage caused by a front-end collision.

7. This bumper is essentially identical to the bumper on the Ford Taurus Defendant was driving, with the support structures in both vehicles being the same.

8. Based on my experience, the vehicle and its bumper identified in these photographs were involved in an impact of at least 15 miles an hour. My knowledge is based on inspection of over 50 damaged Ford Taurus automobiles. I understand the mechanical function and structure of the bumper and its supporting units and its ability to withstand impact, and the damages which different components of the system will show.

9. In part, the technical statements concerning the Ford Taurus and its bumper, stated in Plaintiff's Motion, was based on advice I have given Plaintiff's counsel. For that reason I am incorporating the statements of that Motion in this Affidavit.

10. If Defendant's expert, Mr. Knight, had in fact testified that a Ford Taurus bumper would remain deformed after a front-end impact of two or three miles an hour, or even twice that speed, his




testimony was absolutely wrong. The heavy front portion of the bumper is designed to "take a heavy hit" before the energy is transferred to the energy absorbing shocks in the bumper mounts. However, it is also designed to return to form after impact. Yet, to determine the damage to Defendant's Taurus in the subject accident, a person would have to get underneath the vehicle and examine the bumper structure, and its energy absorbing shocks and inner frame structure. The way to tell if the bumper has been fully compressed is to look at the energy absorbers. It will chip a bit when the bumper has been fully compressed. This is not noticeable, appearing only as a thin line, when one knows what to look for. It is my understanding that absolutely no inspection was made of the Defendant's vehicle from underneath the car and that only a visual inspection took place standing in front of the car.

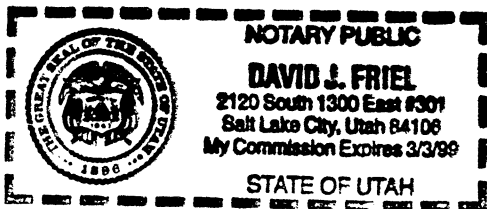
11. Having examined damage to Plaintiff's Explorer before it was repaired, and having observed the damage to its support brackets that connect the bumper to the frame, I can state with confidence that Defendant's vehicle must have been traveling at approximately ten miles per hour, not the two or three miles per hour as Defendant's expert testified to.

12. I have read the Affidavit of David Lord, and agree with that affidavit and the statements made in relation to Ford Taurus bumpers and statements made by Defendant's expert witness.


DATED THIS 13 day of MARCH, 1996.

  
Leonard Hardle  
Affiant

SWORN TO and testified to before me this 13 day of  
MARCH, 1996 by Leonard Hardle.



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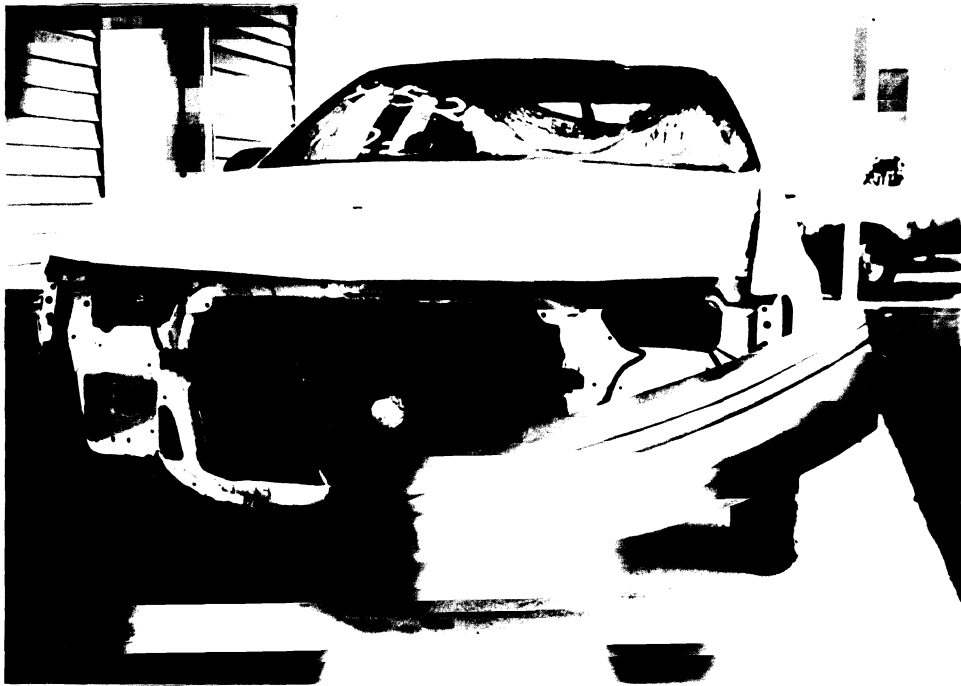
  
NOTARY PUBLIC

**EXHIBIT A**



000190

EXHIBIT B



000161

**EXHIBIT C**



000182



