

2001

Whitehead v. American Motors Sales Corporation : Unknown

Utah Supreme Court

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Jackson Howard; Leslie W. Slauch; Howard, Lewis, and Petersen.

Patricia W. Christensen; Kimball, Parr, Crockett, and Waddoups.

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Howard, Lewis & Petersen
Attorneys and Counselors at Law
120 East 300 North Street
Post Office Box 778
Provo, Utah 84603

19695

Jackson Howard
S. Rex Lewis
Don R. Petersen
Craig M. Snyder
John L. Valentine
D. David Lambert
Fred D. Howard
Leslie W. Slauch
Kevin J. Sutterfield
F. Richards Smith, III

Area Code 801
Telephone 373-6345
Telefax 377-4991

s:butler.lws
Our File No. 11,110

December 6, 1989

Mr. Geoffrey J. Butler
Clerk, Utah Supreme Court
332 State Capitol Building
Salt Lake City, Utah 84114

FILE
DEC 3 1989

Clerk, Supra

RE: Whitehead v. American Motors Sales Corporation
Case No. 19,695

Dear Mr. Butler:

Pursuant to Rule 24(j) of the Rules of the Utah Supreme Court, we hereby advise the Court of the following pertinent and significant authorities which came to our attention subsequent to the submission of our briefs.

Lee v. Volkswagen of American, Inc., 688 P.2d 1283, 1290 (Okla. 1984). The case holds that the exclusion of tests conducted by the defendant while admitting industry standards and models from different cars than the type involved in the accident, and other claimed cumulative errors, were within the court's discretion, and any error was so slight as to be harmless. The decision is relevant to the issues argued in Point I of Petitioner's Brief on Rehearing.

Viehweg v. Thompson, 103 Idaho 265, 647 P.2d 311, 317 (Ct. App. 1982). The case holds the exclusion of evidence is prejudicial only in it "results in a failure of proof on a material point that otherwise could have been established" Schmidt v. Farmers Elevator Mutual Insurance Co., 208 Kan. 308, 491 P.2d 947, 951 (1971). The case holds that the exclusion of testimony was not prejudicial where "most of the ground had already been covered" in other testimony of the witness, and the facts are otherwise shown. These decisions support the argument in Point I of Petitioner's Brief on Rehearing, and particularly on pages 14-20, that AMC/Jeep was not prejudicially prevented from challenging plaintiff's evidence.

Workman v. McIntyre Construction Co., 617 P.2d 1281, 1284-85 (Mont. 1980). The case illustrates the prejudicial nature of a defendant failing to disclose films prior to trial. The decision is relevant to the discovery arguments made on pages 23 to 32 of Petitioner's Brief on Rehearing.

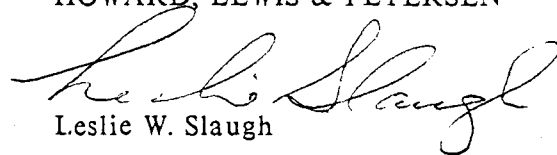
Loevsky v. Carter, 773 P.2d 1120, 1123 n.6 (Hawaii 1989), citing Brandt v. French, 638 F.2d 209 (10th Cir. 1981). This case states that rulings on the admis-

Mr. Geoffrey J. Butler
Case No. 19,695
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Page 2

sibility of films should be made only after the court has viewed the films. The decisions are relevant to the issues raised on pages 21-23 on Petitioner's Brief on Rehearing.

Sincerely,

HOWARD, LEWIS & PETERSEN



Leslie W. Slauch

lws

cc: Pat Christensen

DEC 3 1989

JACKSON HOWARD (1548) and
LESLIE W. SLAUGH (3752) for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW

120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991

s:white-af.lws
Our File No. 11,110

Attorneys for Plaintiff-Respondent

IN THE SUPREME COURT
OF THE STATE OF UTAH

STEPHEN WHITEHEAD and
DEBORAH WHITEHEAD,

Plaintiffs and Appellee,

vs.

AMERICAN MOTOR SALES CORPORATION
and JEEP CORPORATION, LARRY
ANDERSON, VARIABLE ANNUITY LIFE
INSURANCE COMPANY,

Defendants and Appellants.

**AFFIDAVIT OF
LESLIE W. SLAUGH**

Case No. 19,695

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

Leslie W. Slaugh, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for plaintiff Stephen Whitehead in this matter, and assisted in the preparation of plaintiff's Petition for Rehearing and the subsequent briefs which have been filed on behalf of plaintiff.

2. It is my recollection that Jackson Howard checked out the record for our use in preparing the Petition for Rehearing during the week of February 6-10, 1989, and the record which he obtained consisted of the pleadings files, envelopes containing depositions, the transcript, and one or two envelopes containing exhibits. Only three video tapes were included in the record obtained from the Supreme Court Clerk's Office: Plaintiff's Exhibit 68, Jeep Test; Plaintiff's Exhibit 69, Peter Neumann; and Plaintiff's Exhibit 70, 1972 Jeep Commando Rollover tests. It is my recollection that the record also include a manila envelope containing certain exhibits which were listed by number on the front of the envelope. (The numbers listed did not include any of the exhibits at issue on this appeal, and I accordingly never opened the envelope.)

3. On February 15, 1989, I visited the clerk's office for the Utah Supreme Court with the intent of checking out the films offered by AMC/Jeep. The person I spoke to check the records available to her and informed me that the films were not in the Supreme Court Clerk's Office, and suggested that I contact the district court clerk's office.

4. On February 17, 1989, I spoke with various individuals in the clerk's office for the Fourth District Court of Utah County, including Karen Hegerhorst, the Chief Deputy Clerk. She and others stated to me that they had searched the exhibit register and the exhibit vault, and were unable to locate the exhibits. At about the same time, I also called Janet Lambert, who was the court clerk during the trial, for help in locating the exhibits. She was not aware of any reason why the exhibits would not have been in the exhibit vault.

5. On December 4, 1989, I reviewed portions of the transcript at the Supreme Court clerk's office, and also intended to examine certain exhibits. I discovered that the manila envelope which I had remembered being with the other parts of the record was not there.

6. On December 5, 1989, Jackson Howard, in my presence, called the Supreme Court clerk's office to locate exhibit 98. The individual with whom he spoke indicated that she would call back.

7. Later on December 5, we were called back by Chris James, a deputy clerk with the Fourth District Court of Utah County, who stated that the exhibits were at the district court clerk's office in Utah County.

8. At approximately 12:30 p.m. on December 5, Jackson Howard and I examined the exhibits at the district court clerk's office. We discovered among the exhibits four additional video tapes, including Plaintiff's Exhibit 82, Defendant's Exhibit 95, Defendant's Exhibit 96, and Defendant's Exhibit 218, and numerous other exhibits, including Defendant's Exhibit 130.

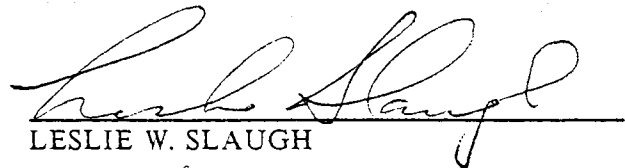
9. Chris James stated to me that the exhibits were apparently not located earlier because they were never entered in the register of actions. She further stated that some other attorneys reviewed the exhibits approximately one month ago.

10. On December 5, 1989, at approximately 4:30 p.m., Jackson Howard and I telephoned Pat Christensen to advise her that we had located the exhibits in question. She stated to us that she had been aware from statements in Appellee's Reply to Appellants' Answer to Petition for Rehearing, dated April 13, 1989, that we had been unable to locate the exhibits. She also stated that she had been aware that the

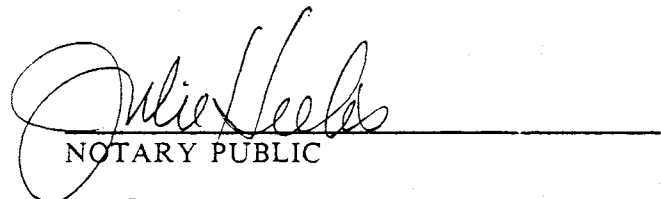
exhibits were at the district court clerk's office, and that she had recently reviewed the exhibits.

11. Except as otherwise indicated, I have personal knowledge of each of the facts stated herein.

DATED this 6th day of December, 1989.


LESLIE W. SLAUGH

SUBSCRIBED and sworn to before me this 6th day of December, 1989.


NOTARY PUBLIC

My Commission Expires:

May 12, 1990

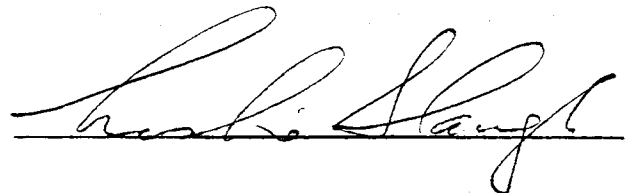
Residing at:

Provo, Utah

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand-delivered to the following this 6th day of December, 1989.

Patricia W. Christensen
KIMBALL, PARR, CROCKETT & WADDOUPS
185 South State #1300
Salt Lake City, Utah 84111



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JACKSON HOWARD, for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84601
TELEPHONE: 373-6345

DEC 3 1980
JP

Attorneys for Plaintiffs

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

DEBORAH WHITEHEAD and
STEPHEN WHITEHEAD,

Plaintiffs,

vs.

LARRY ANDERSON, VARIABLE
ANNUITY LIFE INSURANCE
COMPANY, and AMERICAN
MOTOR SALES CORPORATION
JEEP CORPORATION,

Defendants.

MOTION IN LIMINE

Civil No. 53,046

COME NOW the plaintiffs and move the Court to prohibit the de-
fendants American Motor Sales Corporation and Jeep Corporation from
introducing any evidence pertaining to certain interrogatories here
tofore propounded to the defendants in which the defendants have
failed and purposely refused to answer in defiance of the Court's
rulings and in contemptuous disregard of the rights of the liti-
gants and the Court. In support of this motion, the plaintiffs
allege:

1. On May 5, 1981, the plaintiffs submitted certain Interrogat-
ories to be answered by the defendant American Motors. The
defendant AMC filed a spurious response on July 13, 1981, the

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6348

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substance of which was that they refused to answer Interrogatories 4 through 58, and the answers that were given were specious and purposely deceptive. As a result of those irresponsible answers, the plaintiffs filed a motion to compel answers on July 6, 1981. That motion was never ruled upon by the Court.

2. Almost a year after the plaintiffs' motion to compel answers and responses, the defendant AMC filed, belatedly on August 16, 1982, additional specious answers to the Interrogatories, none of which addressed the questions and all of which were patently frivolous and deceptive. The plaintiffs, through a series of three subsequent motions to compel, eventually obtained a hearing before the Honorable Allen B. Sorensen on October 29, 1982, wherein he heard part of the plaintiffs' motion and continued the balance of the plaintiffs' arguments and motion to December 7, 1982. The latter of which hearing was never held.

It is the plaintiffs' position and the plaintiffs are entitled to a ruling from this Court that the defendants cannot introduce any evidence pertaining to questions 4 through 58 of the May 5, 1981, interrogatories which the defendants have failed to answer.

3. Plaintiffs further will object to any defenses to the claims of the plaintiffs based upon an evaluation of the length of the wheel base of the Jeep Commando automobile or its resistance to rollover, based upon the defendants' refusal to answer questions 21 and 22. The defendants have repeatedly refused to answer ques-

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET

P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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tions concerning handling characteristics and qualities of its Jeep Commando automobile on the basis that giving such a response or answer was oppressive and overly burdensome. The defendants should not now be allowed to offer any such information in defense of the plaintiffs' contention.

4. The plaintiffs, on September 15, 1981, subsequently submitted a First Set of Interrogatories to Jeep Corporation and an identical set of Interrogatories to American Motors which constituted the second set of Interrogatories to American Motors. In response to those Interrogatories, Jeep Corporation answered the same on August 16, 1982. The answers of Jeep Corporation on that date were totally specious.

Specifically, the plaintiffs believe that defendants cannot introduce any evidence at this time pertaining to question 16 of plaintiffs' September 15, 1981, interrogatories regarding design, planning and manufacture of the Jeep Commando automobile for reason that defendant AMC contends that it has no plans or blue prints by which it can identify this Jeep. The plaintiffs are further entitled to an order barring any testimony or evidence which the defendants in response to questions 17, 18, 19 and 20 contend is not available or unknown to them.

At the hearing referred to above on October 29, 1982, Judge Sorensen heard part of the questions and made an order concerning part of the responses. The following sets forth questions asked by plaintiffs, answers given by defendants, the Court's order

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6348

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requiring defendants to answer the questions, and supplemental answers given by defendants.

QUESTION NO. 2: With regard to all Jeep Commando vehicles manufactured by Jeep Corporation for model years 1966-72, please furnish the number of all owner reports or consumer complaints from all sources either received by Jeep Corporation or of which Jeep Corporation is aware alleging injury or fatality as a result of the malfunction or lack of (1) a safety roll bar; (2) non-rigid cab enclosures, including both non-rigid roofs and doors; or (3) general instability causing roll-overs. Include all reports or complaints, whether or not they have been verified by Jeep Corporation.

ANSWER: This interrogatory is overly broad and burdensome and the settlement information may be privileged. It is not limited to the particular model year nor to defects necessarily at issue alleged in this case. Moreover, the information requested is not indexed by us in a manner to make the information available in the form requested. However, if plaintiffs believe that there has been a case relevant to the instant matter and can identify further by owner name, date, and vehicle identification number, defendant will attempt to search for a record.

ORDER OF THE COURT: "All right. I will make an order. I will give you ninety days to get it. If it's not done -- that is ninety days -- if it's not done in that time, I will sustain ob-

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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jections to any evidence from your client on the issue raised that that evidence touches upon. How's that?" * * * (Page 3 of Transcript) * * * "I will have you give them all available information or reasonably retrievable information as regards the model 1972 only. Now that is all I can do, Mr. Howard." (Page 10 of the Transcript)

In response to question 2, the defendant filed a supplemental answer to interrogatories on January 3, 1983. To the same question, the defendant then answered:

SUPPLEMENTAL ANSWER NO. 2: Defendant objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiver of these objections, defendant will make available a list compiled from existing records of consumer communications received as of October 16, 1979, alleging injury as a result of an accident in which a 1972 Commando vehicle overturned.

MOTION: The plaintiffs move the Court to deny the defendants any right to introduce any evidence pertaining to Interrogatory No. 2 and specifically evidence regarding the safety of or lack of safety of the Commando automobile as affected by (1) roll bars, (2) roofs and doors and (3) general instability causing rollovers on the basis they have failed and refused to answer the Interrogatory repeatedly and have purposely defied the order of this Court.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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QUESTION NO. 3: With respect to each owner report or consumer complaint referred to in answer to the previous interrogatory, please identify the contents of each and every document in accordance with the definitions preceding these interrogatories.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "I will have you answer interrogatory number three to the same extent and the same limitations as I have made on interrogatory number two, Mr. Howard." (Page 10 of the Transcript)

SUPPLEMENTAL ANSWER NO. 3: See response to Interrogatory 2.

MOTION: The plaintiffs contend that the defendant's response to this interrogatory is totally specious and contemptuous. The defendant should be denied any right to respond to any issue raised by Interrogatory No. 3.

QUESTION NO. 4: Specify what investigations Jeep Corporation undertook in regard to each of the accidents, injuries and/or fatalities, identified in answer to interrogatory no. 2.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "Why can't I make the same order on interrogatory number four with the limitation I have placed on your required answer to interrogatory number two?"

MR. JENSEN: That is fine."

SUPPLEMENTAL ANSWER NO. 4: See response to Interrogatory 2. Defendant further objects to this interrogatory to the extent it

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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seeks information protected from disclosure as work product and by the attorney-client privilege.

MOTION: The plaintiffs contend that the defendant's response to this motion and the Court's order is contemptuous and the defendant should be denied any right to put on any testimony concerning investigations it has made regarding accidents, injuries or fatalities.

QUESTION NO. 5: Specify with particularity the results of Jeep Corporation's investigation into the accidents, injuries and/or fatalities identified in answer to interrogatory No. 2.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "I will make the same order with the same restrictions I have made on interrogatory number two. We are making some progress here. I don't know whether we are making error or not." (Page 11 of the Transcript)

SUPPLEMENTAL ANSWER NO. 4: See response to Interrogatory 2. Defendant further objects to this interrogatory to the extent it seeks information protected from disclosure as work product and by the attorney-client privilege.

MOTION: Plaintiffs move the Court to deny the defendants any right to introduce evidence pertaining to the results of Jeep's investigation into accidents, injuries or fatalities related to their Commando automobile.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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QUESTION NO. 6: Identify all lawsuits, both pending and closed by title, court, location and docket number in which Jeep Corporation is or was a defendant against allegations of malfunction or failure of the types listed in interrogatory no. 4, involving Jeep Commando vehicles for the model years 1966-73.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "My order will stand. Now the same thing on number six. I will require you to answer number six with the same restrictions I have placed on your answer to number two. I have taken care of all of them, haven't I?" (Page 11 of the Transcript)

SUPPLEMENTAL ANSWER NO. 6: Defendant objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence.

Without waiver of these objections, defendant states that based on a review of records systematically maintained there were no lawsuits served as of October 16, 1979 in which it was alleged that a 1972 Commando overturned.

MOTION: The plaintiffs move the Court to deny the defendant any right to identify any litigation to which the defendant was a party or to introduce any evidence resulting from any investigations or developments contained therein, on the basis that the defendant has purposely and contemptuously refused to answer the questions of the plaintiffs.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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QUESTION NO. 7: Identify all claims, both pending and closed, by name and address of the claimant in which Jeep Corporation was requested to pay damages because of allegations of malfunction or failure of the types indicated in interrogatory No. 2.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "Seven is the same." (Page 11 of the Transcript)

SUPPLEMENTAL ANSWER NO. 7: Defendant objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence.

Without waiver of these objections, defendant states that based on a review of records systematically maintained there were no claims made as of October 16, 1979 in which it was alleged that a 1972 Commando overturned.

MOTION: Plaintiffs move the Court to prohibit the defendant from introducing any evidence pertaining to the question raised in interrogatory no. 7.

QUESTION NO. 8: State what amount, if any, Jeep Corporation paid on each of the claims identified in the previous interrogatory.

ANSWER: See answer to Interrogatory No. 2.

ORDER OF THE COURT: "Eight is the same." (Page 11 of the Transcript)

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778

PROVO, UTAH 84603
TELEPHONE: 373-6345

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4 SUPPLEMENTAL ANSWER NO. 8: Defendant further objects to this
5 interrogatory on the grounds that it seeks information that is pro-
6 tected from disclosure by public policy.

7 MOTION: Plaintiffs move the Court to prohibit the defendant
8 from introducing any evidence pertaining to the question raised in
9 interrogatory no. 8.

10
11 QUESTION NO. 9: State the name and address of all persons or
12 groups of persons at Jeep Corporation and Kaiser Jeep Corporation
13 who participated in the design, manufacture and sale of the Jeep
14 Commando automobile for the model years 1966-73.

15 ANSWER: This defendant will state that many of the thousands
16 of components that went into the Jeep Commando were changed during
17 the years 1970-73 and that it has no record of who would do the changes.
18 Some changes were done by vendors to Jeep Corporation, and neither
19 Jeep Corporation nor American Motors has access to such records.
20 All changes were done by or with the approval of Jeep Product
21 Engineering.

22 ORDER OF THE COURT: "I don't know. But give him the infor-
23 mation, Mr. Jensen, limited the same as I have limited on inter-
24 rogatory number two. He is not going to be able to use it on a
25 trial, but it might be relevant in a question of settlement."
26 (Page 12 of the Transcript)

27 SUPPLEMENTAL ANSWER NO. 9: Defendant objects to interroga-
28 tory on the grounds that it is overly broad, unduly burdensome

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778

PROVO, UTAH 84603
TELEPHONE: 373-6345

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and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiver of these objections, defendant states the Director of Engineering during 1970 and the early part of 1971 while the 1972 model year Jeep Commando was being developed was F. A. Stewart. The Plant Manager of the Jeep Toledo plant during the 1972 model year was Werner Jean. American Motor Sales Corporation had responsibility for sales for the 1972 model year.

MOTION: Plaintiffs move the Court to prohibit the defendant from introducing any evidence pertaining to the question raised in interrogatory no. 9.

QUESTION NO. 10: Identify the plans, engineering drawings, blue prints and specifications in their completed or final form that were utilized in the production and assembly stages for the following components of the Jeep Commando automobile for the model years 1966-73:

- a. The roof enclosure;
- b. The wheel base and drive-train;
- c. The track width of both front and rear axles;
- d. Any roll bar or other protective device designed to prevent roof collapse;
- e. Steering mechanism;
- f. Stabilizer bars;
- g. Suspension systems;

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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h. Brakes.

ANSWER: Jeep Corporation is not in a position at this late date to define all changes which may have taken place. Defendant objects to this interrogatory as overly broad and unduly burdensome. There is no way with the thousands of changes in such a broad request, we could be certain we had them all, particularly in light of the fact that the interrogatory encompasses material that would never necessarily have been in the hands of this defendant and would be over 15 years old. However, without waiving our objection, we provide the attached list. If plaintiffs desire additional information and can be specific about their request, we will attempt to provide additional information. (See attached lists).

ORDER OF THE COURT: After 10 or 15 pages of argument, the exchange is as follows:

MR. JOHNSON: With regard to this interrogatory, if Mr. Jensen will put in some sort of supplemental answer what Jeep Corporation contends to be the drawing that pertains to the Command involved in this accident that is responsive to that interrogatory, that is all we want.

THE COURT: Can you limit your answer to that, Mr. Jensen?

MR. JENSEN: I don't know. I assume all the information does pertain to this. In view of Jeep's problem that they tell me in finding somebody who was there who participated in the design-

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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THE COURT: If you can't find them, tell them.

6

MR. JOHNSON: Right. That is all we ask.

7

THE COURT: Just a minute. I am talking to Mr. Jensen.

8

MR. JOHNSON: Excuse me, Judge.

9

THE COURT: Are you still trying to take this all down,

10 Mr. Roundy?

11

THE REPORTER: I am trying to.

12

THE COURT: What did you have to say, Mr. Jensen?

13

MR. JENSEN: I think what has happened, I have sent these

14

interrogatories back to these folks. They tell me they tried to

15

find somebody who was around now who knew what was going on in the

16

design of a vehicle ten, twelve, thirteen years ago, and what they

17

have done, as I understand it, is go to various areas, pull out

18

everything they could find and they have shipped it to me, and

19

they believe that all, or most, of this pertains to the design of

20

this '72 vehicle. The change orders, the specifications and so

21

forth. I suppose I dare not go any further than that. I think

22

the thing that will really help them, help me, help everybody, is

23

we tell you the best people we know, either in or out of the com-

24

pany, who were involved at that time, give them all this paperwork,

25

and they can ask them. Now was that involved and utilized in this

26

'72 Jeep?

27

THE COURT: How long will it take you to give them those

28

names and addresses?

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6348

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MR. JENSEN: I hope within thirty days, the maximum.

SUPPLEMENTAL ANSWER NO. 10: Defendant objects to this interrogatory as overly broad and unduly burdensome. There were thousands of changes during the period referred to. Many components were purchased from suppliers and defendant may not have had all engineering drawings and specifications. Further records are incomplete. Without waiving these objections, a list will be provided. If plaintiffs desire additional information and can be specific about their request, defendant will attempt to provide additional information.

MOTION: Plaintiffs move that the Court bar the defendant Jeep Corporation and AMC from offering any plans, blue prints, drawings or specifications related to the 1972 Jeep Commando automobile involved in this litigation.

QUESTION NO. 11: With regard to the documents referred to in the previous interrogatory, identify in accordance with the definitions preceding these interrogatories the names and addresses of the person, persons or group of persons who authored, prepared, supervised and approved the documents.

ANSWER: All documents were done under the supervision of or by the Jeep Product Engineering Department.

ORDER OF THE COURT:

MR. HOWARD: In regard to number eleven it's my understanding -- or number ten that he will give us -- he said he hopes

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 973-6345

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that the answer he has given us is applicable to the 1972 Jeep, and he will supply us with the name of a person within thirty days that can tell us if that is so.

THE COURT: Is that correct?

MR. JENSEN: I think that is a fair statement.

THE COURT: So ordered. Does that take care of eleven also?

SUPPLEMENTAL ANSWER NO. 11: All documents were prepared under the supervision of or by the Jeep Product Engineering Department.

MOTION: Plaintiffs move that the Court deny the defendant the right to call persons or groups of persons who may have authored, prepared, supervised or approved documents pertaining to the design and construction of the 1972 Jeep Commando.

QUESTION NO. 12: State whether Jeep Corporation or Kaiser Jeep Corporation determined the approximate or exact position of the center of gravity for any or all Jeep Commando automobiles for the model years 1966-73 inclusive, under different passenger load conditions.

ANSWER: Center of gravity figures for the Commando vehicle can no longer be found.

ORDER OF THE COURT:

MR. JOHNSON: No, what he is just saying is he is now looking for a way of bringing an expert on the stand who is going to testify to the center of gravity, saying well, we computed it

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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4 after the answers to interrogatories.

5 THE COURT: If he does that I will order he give you
6 that information ninety days before trial.

7 MR. JOHNSON: We need that now, Judge.

8 MR. JENSEN: We don't know it. We think we are going to
9 have to find --

10 THE COURT: Mr. Johnson, as I get it you are trying to
11 ask me to get Mr. Jensen to go back and prepare --

12 MR. JOHNSON: No, I can't understand the way this is
13 being presented. Jeep Corporation has three experts that they have
14 used in thirty cases throughout the United States, and in almost
15 every case that has gone to trial the same expert has testified as
16 to the center of gravity figures for the Jeep. Now for Jeep to
17 come in in this proceeding and say they don't have it and they
18 can't compute it --

19 THE COURT: Why don't you depose those experts?

20 MR. JOHNSON: Because he won't give us the names of his
21 experts.

22 MR. HOWARD: If he will tell us --

23 MR. JENSEN: I have told them the fellows we have got.
24 One is a John Haberstat out of Seattle. He doesn't know -- he
25 doesn't know where the center of gravity is in this vehicle. He's
26 going to have to find out where it is. You have got your experts
27 who have testified a hundred times against Jeep. I suppose you
28 are going to tell me they don't know at this point.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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THE COURT: If the answer stands I will sustain an objection to calling that witness.

MR. HOWARD: All right.

MR. JENSEN: May I have this clarification, Your Honor. We don't know where the center of gravity is from any source at this point on this vehicle.

THE COURT: I will hold you to this answer.

MOTION: Defendant Jeep and AMC did not supplement their answer at any time and, therefore, the plaintiffs move the Court to deny the defendant the right to call Mr. Haberstat or any other expert to testify concerning the center of gravity of the Jeep Commando as it may relate to roll over propensity or any other driving or steering characteristic of said Jeep Commando. This motion is also applicable to questions 13, 14, 15 and 16 which all relate to the center of gravity and to which the defendants have given the same specious and deceptive answer.

QUESTION NOS. 13, 14 and 15:

The defendants have not supplemented the answers to 13, 14 and 15. The basic repartee concerning these questions is as follows, after two pages of debate:

MR. JOHNSON: I wonder if we asked him for drawings as it relates to this Jeep so we could just determine the most fundamental thing. Jeep says, "Hey, we don't have any drawings." Then two weeks before trial or even at trial they come in with a

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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complete schematic on the Jeep and the plaintiffs are sitting there with their mouths wide open. Now there are certain documents that a manufacturer has to keep and has to make available. Now one of those is the center of gravity. If you leave it open so that the day before trial Havernack (stet) (Haberstat) can come in and say, "Here's my center of gravity calculations which I just happened to find in my middle desk drawer --"

THE COURT: I would sustain an objection to it.

MR. JOHNSON: Okay. What we need to know is how much time will you give them to do that? What criteria?

THE COURT: At the time of trial.

MR. JOHNSON: How much time prior to the time of trial must they give us their center of gravity calculations?

THE COURT: Three months. That is if they intend to present evidence. If they don't intend to present evidence on it, then it's moot. ***

***THE COURT: I will let that stand. That takes care of 13, 14 and 15.

MOTION: The plaintiffs are entitled to have a ruling from the Court denying the defendants any right to have any expert testify concerning the effect of a given center of gravity on the roll over propensities of the vehicle.

QUESTION NOS. 16 and 17:

16. With reference to the design and development of the Jeep

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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Commando automobile for model years 1966-73, state whether Jeep Corporation or Kaiser Jeep Corporation tested for or otherwise determined the handling characteristics and qualities of said automobiles both during the development and subsequently to the initial production of said automobiles.

17. If the answer to interrogatory No. 16 is in the affirmative, please supply the following additional information:

a. With respect to the handling qualities and characteristics of said Jeep Commando automobiles, what safety standards and criteria were utilized by Jeep Corporation or Kaiser Jeep Corporation is designing and developing said automobiles;

b. Whether Jeep Corporation or Kaiser Jeep Corporation tested for or evaluated the tendency of said Jeep Commando automobiles for the model years 1966-73 to either understeer or oversteer at different operating conditions;

c. If the answer to b above is in the affirmative, state specifically how such tests and evaluations were accomplished.

ANSWER NO. 16: Yes.

ANSWER NO. 17: See reports of tests being furnished. Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed.

ORDER OF THE COURT:

MR. HOWARD: All right. We are now to 16. That answer

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-6348

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is satisfactory.

17. "If the answer to interrogatory number 16 it is meant to be --"

THE COURT: That says 18.

MR. HOWARD: It's a mistake. They understood what it meant.

THE COURT: Does anybody object to my changing that?

MR. JENSEN: No, Your Honor.

THE COURT: By pen? Was that 16?

MR. HOWARD: Yes, Your Honor.

THE COURT: Go ahead.

MR. HOWARD: (Reading) "Please supply the following additional information:

a. With respect to the handling qualities and characteristics of said Jeep Commando automobiles, what safety standards and criteria were utilized by Jeep Corporation or Kaiser Jeep Corporation in designing and developing said automobiles;

b. Whether Jeep Corporation or Kaiser Jeep Corporation tested --"

THE COURT: I am looking at his answer. He says you have got this information.

MR. HOWARD: They don't tell us what safety standards they used. They have safety standards. They design to particular standards. I want to know whose standards they used.

THE COURT: What about that, Mr. Jensen?

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84605
TELEPHONE: 373-6348

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MR. JENSEN: These fellows are telling me a lot about what my people know and do that I don't know, Your Honor.

THE COURT: Can you find out?

MR. JENSEN: We have given the best information that I have been able to elicit from my people. The reports of tests, and there are a bundle of tests, that we say take a look, use them what you want. So as far as testing, and safety standards, the tests we have to say they're safety standard number one and it requires that the Jeep not do this or that, apparently we don't have any such records.

MR. HOWARD: We would like to know what criteria, standards, were designed in advance for this Jeep.

THE COURT: Does this question ask that?

MR. HOWARD: Yes, certainly. With respect to handling qualities and characteristics, what safety standards and criteria. In other words, is this Jeep supposed to be able to turn in a forty foot radius at twenty miles an hour? Is that the standard of design? If it is, tell us that. If it isn't, tell us that. If this Jeep cannot turn in a forty foot radius at twenty miles an hour we need to know that. They have told the engineer, "We want a vehicle that can do thus and so."

THE COURT: Can you produce that information?

MR. JENSEN: I doubt it. It goes back to this problem. We can't even find people who were involved in the design, let alone papers that discuss what, you know -- he says they're criteria

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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There could be or couldn't be. I don't know. This kind of comment by counsel --

THE COURT: Why don't you answer by saying this information is no longer available?

MR. JENSEN: I think that is what they tried to say. "Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed."

THE COURT: That is an equivocal answer.

MR. JENSEN:" Let's try again. Let's try again. I agree

THE COURT: Don't equivocate. It's either a yes or no.

MR. HOWARD: Is the Court ordering him to answer the question?

THE COURT: You have either got them or haven't got them. You should be able to take care of 17 in thirty days.

MR. JENSEN: Yes.

THE COURT: Okay. I will give you thirty days to respond to interrogatory 17.

Are we making any progress?

MOTION: Plaintiffs move the Court that the defendant be precluded from introducing any testing on the Jeep Commando in question and further be restricted from introducing any testimony or evidence with respect to the handling qualities and characteristics of the Jeep and the applicable safety standards and criteria used by Jeep in the design of the Commando.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-8348

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QUESTION NO. 18: State whether Jeep Corporation or Kaiser Jeep Corporation ever tested for or otherwise evaluated the directional stability or handling characteristics of the Jeep Commander automobile for model years 1966-73 under impact conditions.

ANSWER: Defendant is uncertain as to what type of testing plaintiff is requesting with this interrogatory, but to the extent that it has located testing related to handling characteristics, reports of such tests are being furnished.

ORDER OF THE COURT:

" * * * I think we ought to have the same answer there. Ordered to answer within thirty days."

MR. JENSEN: May I see what is the answer?

MR. HOWARD: "Defendant is uncertain as to what type of testing plaintiff is requesting."

THE COURT: Wait a minute. I am trying to read it too.

MR. HOWARD: All right.

MR. JENSEN: I think we have answered that fully.

THE COURT: He says he's answered it.

MR. HOWARD: He hasn't located any testing. We don't know of any testing related to handling characteristics. What it says is, "Reports of such tests are being furnished." Do you have reports of such tests?

MR. JENSEN: That is what we furnished you. It's available.

MR. HOWARD: Which one?

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-8345

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MR. JENSEN: My letter to you of October 7th, item two: Eighty-six pages of various progress reports which apparently have been tentatively identified by my client as tests reports pertaining to this basic Commando vehicle.

THE COURT: That is a weaseling answer, Mr. Jensen.

MR. JENSEN: That is all they have got.

MR. HOWARD: I want to know what test they had for stability or handling characteristics. I don't think I ought to have to sort through all that. I am a lawyer. I don't know what the engineering criteria or data are. All they ought to do, Judge, is say, question 18, these are the tests that respond -- these are the answers to that question and here are the documents. Then I will go through them. If they're not, I will know it.

MR. JENSEN: I will clarify that answer.

THE COURT: Will you clarify number 18 further.

MR. HOWARD: Within thirty days?

MR. JENSEN: Yes.

SUPPLEMENTAL ANSWER NO. 18: Defendant is uncertain as to what type of testing plaintiff is requesting with this interrogatory or how it differs from Interrogatory 16, but to the extent that it has located testing related to handling characteristics, reports of such tests are being furnished. An explanation of the vehicles involved in those tests is set forth in the response to Interrogatory 17.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778

PROVO, UTAH 84603
TELEPHONE: 373-6345

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MOTION: Plaintiffs are entitled to an order of this Court barring the defendant from putting in the results of any tests it may have performed pertaining to directional stability or handling characteristics of the Jeep Commando automobile for model years 1966-73. The response of the defendants is as the Court indicated simply "a weaseling answer" and has not in any way responded to the question asked and has effectively barred the plaintiffs from discovery.

QUESTION NO. 19: If the answer to the previous interrogatory is in the affirmative, identify all such tests and/or evaluations in accordance with the definitions preceding these interrogatories.

ANSWER: See reports being furnished. Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed.

ORDER OF THE COURT:

THE COURT: Will you clarify number 18 further?

MR. HOWARD: Within thirty days?

MR. JENSEN: Yes.

MR. HOWARD: All right. 19.

THE COURT: That covers 19, doesn't it?

MR. HOWARD: Yes. The same there.

THE COURT: That takes care of 19 if he responds to my order on 18.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET

P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-0345

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SUPPLEMENTAL ANSWER NO. 19. See the reports being furnished and the explanation in the response to Interrogatory 17. Since records relating to this subject are quite old, some records relating to this subject have been discarded.

MOTION: Plaintiffs are entitled to have all such tests or the results of such tests barred from introduction at trial and for an order preventing and barring the introduction of any testimony or evidence related to operational directional stability or handling characteristics of the Jeep Commando.

QUESTION NO. 20. State whether Jeep Corporation or Kaiser Jeep Corporation ever tested for or otherwise evaluated the operational directional stability or handling characteristics of the Jeep Commando for the model years 1966-73 automobile under real or simulated cross wind conditions.

ANSWER: To the extent that reports of any tests related to handling have been located, they are being produced.

ORDER OF THE COURT:

MR. JENSEN: The same test. I will clarify the answer.

THE COURT: You will clarify the answer to number 20?

MOTION: The defendants did not clarify their answer. Plaintiffs are entitled to have all such tests or the results of such tests barred from introduction at trial and for an order preventing and barring the introduction of any testimony or evidence related to operational directional stability or handling characteristics

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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of the Jeep Commando. The defendants should be barred from introducing any evidence whatever concerning the operational directional stability or handling characteristics of the Jeep Commando for the model years 1966-73.

QUESTION NO. 21. If the answer to the previous interrogatory is in the affirmative, identify such tests and/or evaluations in accordance with the definitions preceding these interrogatories.

ANSWER: See reports of tests being furnished. Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed.

ORDER OF THE COURT:

THE COURT: Your response to 20 will take care of 21.

SUPPLEMENTAL ANSWER NO. 21: See reports of tests being furnished and the explanation in the response to Interrogatory 17. Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed.

MOTION: Plaintiffs are entitled to have all such tests or the results of such tests barred from introduction at trial and for an order preventing and barring the introduction of any testimony or evidence related to operational directional stability or handling characteristics of the Jeep Commando.

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-6345

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QUESTION NO. 22: State whether Jeep Corporation or Kaiser Jeep Corporation ever tested for or otherwise evaluated the aerodynamic stability of the Jeep Commando automobile for model years 1966-73.

ANSWER: Defendant is uncertain as to what type of testing plaintiff is requesting with this interrogatory but to the extent that it has located testing related to handling characteristics, reports of such tests are being produced.

ORDER OF THE COURT:

THE COURT: Well, their response, additional response, on 22 will take care of 23, won't it?

SUPPLEMENTAL ANSWER NO. 22: Defendant is uncertain as to what type of testing plaintiff is requesting with this interrogatory. The term "aerodynamic stability" is not in common use in the automotive industry and has no recognized definition in the context of automobile engineering. Wind tunnel tests are conducted for the purpose of determining air flow around the vehicle.

MOTION: The plaintiffs move the Court that the defendants be barred from introducing any evidence whatever concerning the operational directional stability or handling characteristics of the Jeep Commando of the model years 1966-73.

QUESTION NO. 23: If the answer to the previous interrogatory was in the affirmative, please identify such tests and/or evaluations in accordance with the definitions preceding these interroga-

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. Box 778
PROVO, UTAH 84603
TELEPHONE: 373-6348

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tories.

ANSWER: See tests being furnished. Due to the fact that records relating to this subject would be quite old, it is possible that some records relating to this subject have been destroyed.

ORDER OF THE COURT:

THE COURT: Well, their response, additional response, on 22 will take care of 23, won't it?

SUPPLEMENTAL ANSWER NO. 23: See response to Interrogatory 22.

MOTION: The plaintiffs move the Court that the defendants be barred from introducing any evidence whatever concerning the operational directional stability or handling characteristics of the Jeep Commando of the model years 1966-73.

QUESTION NO. 25: State whether Jeep Corporation or Kaiser Jeep Corporation ever tested for or otherwise evaluated the effect of safety roll bars in Jeep Commando automobiles for model years 1966-73 as related to the prevention of physical injuries and/or fatalities to the passengers in said automobiles in the event of roll-over or other accident.

ANSWER: No such materials have been located.

ORDER OF THE COURT:

MR. HOWARD: I don't want to get to the trial and you say we have now found out. I want them to say yes or no. They have had a year and a half to find the answer to that, Judge.

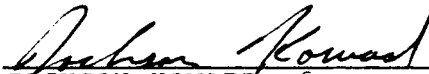
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 EAST 300 NORTH STREET
P. O. BOX 778
PROVO, UTAH 84603
TELEPHONE: 373-8345


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4 THE COURT: I will hold them to that answer. The answer
5 is "we don't know."
6

7 REMAINING INTERROGATORIES

8 The Court on October 29th did not have time to consider the
9 balance of the questions which were propounded and unanswered by
10 Jeep and AMC, however, the defendants Jeep and AMC have never given
11 adequate or appropriate answers to any of the questions which were
12 the subject of the plaintiffs' many motions to compel answers and
13 the plaintiffs are entitled to have an order of the Court barring
14 the defendants from offering any testimony inconsistent with
15 their present answers to questions 27-43, or from producing any
16 new testimony or new evidence not specifically set out to in the
17 answers heretofore given.

18 DATED at Provo, Utah, this 6 day of October, 1983.
19

20 
21 JACKSON HOWARD, for:
22 HOWARD, LEWIS & PETERSEN
23 Attorneys for Plaintiffs

24 
25 RICHARD B. JOHNSON, for:
26 HOWARD, LEWIS & PETERSEN
27 Attorneys for Plaintiffs
28