

1 ask.

2 The whole point of discovery -- and this is indeed a  
3 complicated matter -- is that all the discovery is completed  
4 before the filing of the dispositive motions, because I want  
5 no new information to be provided at the time of dispositive  
6 motions.

7 So I will allow perhaps in your view, Mr. Kurtz, a  
8 more extensive deposition of Mr. Osborne. Let's get him here,  
9 and let's make every effort to complete the discovery within  
10 the time limit.

11 If you need reasonably to extend the discovery date  
12 for a reasonable period of time -- and I'm not going to tell  
13 you when that is -- then I will allow that.

14 MR. KURTZ: He's not available until after July 5th,  
15 Your Honor. We know that.

16 MR. HANCOCK: Excuse me, Your Honor.

17 THE COURT: Hold on.

18 MR. HANCOCK: I apologize.

19 THE COURT: Why?

20 MR. KURTZ: He's across in England, and he's not back  
21 across to the United States until after the 5th of July.

22 THE COURT: Well, what is it that he has that he's  
23 doing that he's involved with before July that precludes him  
24 from being here?

25 MR. KURTZ: You know, I'm not sure, Your Honor.

1 THE COURT: Well, let's find that out.

2 MR. KURTZ: I'm glad to find it out. Let me ask,  
3 Your Honor, if they want to not wait until he's back across  
4 from England, who is to bear the expense of bringing him back  
5 before the 5th of July, assuming he could even make it here?

6 THE COURT: Well, let me -- Mr. Hancock has raised  
7 his hand.

8 MR. HANCOCK: Your Honor, thank you for calling on  
9 me. I'm looking, for Mr. Kurtz's benefit, at an exhibit that  
10 he produced, which is document 652, and it's labeled PEXP. I  
11 don't know why. I'll hand it to the Court, if I may. It is  
12 an e-mail from Mr. Osborne to Mr. Kurtz where Mr. Kurtz's  
13 office is saying: We need to schedule your deposition. When  
14 are you available?

15 This is dated April 21, so within a fairly recent  
16 period of time. And Mr. Osborne's response is "Kerry, any day  
17 between May 21 and June 16. David."

18 So I'm struggling to understand why his having to go  
19 to England for any reason, given that he was available, and  
20 given that we've known since September that if he was going to  
21 produce a rebuttal report, the rebuttal deposition was going  
22 to have to be taken between June 5 and July 5, why he isn't  
23 here. So I would ask that he be made available. And if he  
24 has to come from England, that's really an expense the  
25 plaintiffs are going to have to take care of and that we get

1 him done promptly.

2 We were available and the defense counsel all talked  
3 amongst themselves and said we're available Saturday and told  
4 the plaintiffs that three weeks ago, because if he had other  
5 things scheduled --

6 THE COURT: And Sunday too, right?

7 MR. HANCOCK: We would be available both days, Your  
8 Honor.

9 THE COURT: Let me stop you. Ms. Lewallen also  
10 raised her hand.

11 MS. LEWALLEN: Yes, Your Honor. Thank you.

12 I would like to weigh in on this point for you, and  
13 there is one other I would like to throw in something on  
14 behalf of Spartan, whenever you're inclined.

15 But regarding Mr. Osborne, I appreciate the Court's  
16 acknowledgment that the remaining defendants need adequate  
17 time to depose this expert. I agree with Goodyear's position  
18 that the plaintiffs picked these deadlines knowing that they'd  
19 have to provide their expert rebuttal opinions by June 5, yet  
20 all the discovery about those opinions would have to be  
21 concluded by July 5.

22 So I think the onus is certainly on them to get him  
23 back here.

24 Also, it was the plaintiffs' affirmative choice to  
25 choose an expert who is so geographically unavailable for all

1 of us. And whatever that expense and whatever that logistical  
2 challenge, I think the plaintiffs have put themselves in that  
3 position, and certainly my client, Spartan, shouldn't be asked  
4 to bear that cost.

5 THE COURT: Mr. Kurtz, the last word on this.

6 MR. KURTZ: You know, Your Honor, I represent two  
7 75-year-old people who were wiped out in a motor home  
8 accident. It costs about \$4,000 to bring him back from  
9 England here for this deposition when he -- I'm looking at his  
10 e-mail here.

11 He says -- I wrote to him, and I said -- and I'll  
12 read it to you -- "What days can you appear for the deposition  
13 after the 4th? Thanks for taking the time to do the  
14 rebuttal."

15 And he responds to me: "I don't know yet. I have  
16 trials scheduled for the 13th and 16th of July."

17 So he's coming back across the pond soon after July  
18 5th. We're not going to finish discovery before July 5th.  
19 And it's just unfair that Mr. Hancock takes 350 pages of  
20 testimony, and then you ask these poor victims to spend \$4,000  
21 to bring him back so he can be deposed, you know, ten days  
22 earlier.

23 THE COURT: Let's get him back here, and it is the  
24 plaintiffs' burden to pay the costs of bringing him back here.

25 Now, anything else?

1 MR. KURTZ: Yes, Your Honor. I think that in the  
2 course of discussing the 30(b)(6) stuff, which we've resolved,  
3 that the issue that remains evading your input, Judge, is  
4 discovery on substantially similar motor homes.

5 We started our discussion with this, and you  
6 suggested that you were going to comment upon it later. And  
7 at the heart and soul of all of this is our continued waiting  
8 for information regarding the Monaco and Fleetwood failures  
9 and the full amount of warranty claims, et cetera, that were  
10 submitted regarding these other motor homes.

11 And as I've told Your Honor, Mr. Hancock is defending  
12 several of these cases involving multiple Arizona deaths. The  
13 experts have opined they're substantially similar, more than  
14 one -- in more than one way.

15 Mr. Hancock has gone down the road of cross-examining  
16 the experts about substantial similarity, and his own experts  
17 have expressed opinions about the similarity or lack thereof  
18 of both Fleetwood and Monaco. We need to complete the  
19 discovery on this topic and avoid further burden on the Court  
20 about disputes associated with it.

21 THE COURT: Mr. Kurtz, what are you looking for? It  
22 seems to me that we have been through this before and today.  
23 What am I missing? What is it that you don't have that you  
24 think is available?

25 I have told Mr. Hancock that he has to make a

1 determination whether or not the information you're asking for  
2 may be available concerning reports of failures.

3 MR. KURTZ: No. And I understand that, Your Honor,  
4 and I think the Court and I are on the same page. You've  
5 ruled that they're substantially similar for discovery. We've  
6 been through that. You've asked Mr. Hancock to discern if  
7 there's additional information that could be provided and to  
8 assess its burden.

9 I just want to be sure that there's no  
10 misunderstanding that the scope of the inquiry during the  
11 course of these depositions includes failures associated with  
12 substantially similar motor homes. It's been the subject of  
13 extensive discovery by both parties, cross-examination and  
14 expert opinions, and I can tell you, as sure as the day is  
15 long, that when I get to asking questions about it,  
16 Mr. Hancock's going to suggest that you have ruled otherwise.

17 THE COURT: Okay. Hasn't today there been  
18 identification for your purposes and to your satisfaction of  
19 what I have included within the scope? Mr. Kurtz?

20 MR. KURTZ: Your Honor, as I understand it, I thought  
21 the way I just characterized it was correct, that the Court  
22 has ruled that for purposes of discovery, Gulf Stream,  
23 Spartan, and Goodyear, that we're allowed to do discovery  
24 regarding Fleetwood and Monaco incidents based upon the  
25 record, and that Mr. Hancock is to undertake further

1 evaluation about the availability of data associated with  
2 those incidents, including warranty information, claim  
3 information, litigation information.

4 THE COURT: As long as that information relates to  
5 the design tire. 4

6 MR. KURTZ: Yes, Your Honor, I understand.

7 THE COURT: Or other tires that were used as or were  
8 represented to be suitable substitutes.

9 MR. KURTZ: Yes.

10 THE COURT: Any question?

11 MR. HANCOCK: Yes, Your Honor. This is the point I  
12 asked earlier to be heard on, and it doesn't concern the  
13 ruling you made with respect to warranty claims. It does  
14 concern the matter that was raised in the pleadings, which  
15 concerns other tire litigation.

16 And I would like to be heard very briefly on that  
17 before you rule.

18 THE COURT: All right. Go ahead.

19 MR. HANCOCK: Your Honor, up until today, you had  
20 said no, we're not looking at other motor homes. - 1/2

21 And the problem is that we responded to discovery  
22 back in December. It's request for production number four.  
23 They wanted every piece of paper available concerning every  
24 case involving any litigation of other motor homes and this  
25 tire.

1           The problem is that this tire -- and it is this spec  
2           tire -- was involved in an unrelated fashion on two different  
3           product recalls with Fleetwood and Monaco experiences.

4           THE COURT: That's the most important adjective,  
5           unrelated accidents, unrelated, I presume, design tires. Is  
6           that correct?

7           MR. HANCOCK: No. Let me be heard on that, if I can  
8           just take two minutes, Your Honor.

9           THE COURT: Unrelated. That's the question.

10          MR. HANCOCK: That's correct.

11          THE COURT: What does that mean?

12          MR. HANCOCK: What that means is this, Your Honor:  
13          There has been not one shred of evidence produced to you at  
14          all that says that those experiences, the Monaco and Fleetwood  
15          litigation, bears any connection to this.

16                 We produced 400 pages of materials voluntarily,  
17          without any order from the Court, back in December on those  
18          experiences. What those -- And you haven't seen any of those  
19          provided by the plaintiffs. There's a reason for that.

20                 The documents show that Fleetwood, the competitor of  
21          Gulf Stream, unbalanced and overloaded their vehicle. In  
22          other words, they built too heavy a vehicle. They recalled  
23          their vehicles to make adjustments in the suspension and  
24          replaced tires because they thought they had overloaded the  
25          front and damaged the front tires.



1           Our tires were on their vehicle. Nothing by  
2 Fleetwood ever said and there's anything wrong with Goodyear's  
3 vehicle -- with Goodyear's tires, nothing.

4           The Monaco experience is, again, a competitor, and  
5 Monaco has our tires on a number of their vehicles. They did  
6 a vehicle placard recall.

7           The Court will know that the placard is the thing  
8 that's on your vehicle that says this size tire and this  
9 inflation pressure. The Monaco folks on some but not all of  
10 their vehicles with Goodyear tires, including this tire,  
11 goofed, and their placard said to keep it at too low an  
12 inflation pressure for the weight of their vehicle. Their  
13 vehicle is not built by Spartan. It has an entirely different  
14 suspension system. And so those people have been involved in  
15 a whole lot of litigation, and Goodyear's been involved in  
16 some litigation because of that.

17           THE COURT: Okay. What information do you have,  
18 Mr. Kurtz, that Goodyear knew or should have known of this  
19 litigation such that they had an obligation to change or to  
20 give notice to the public?

21           MR. KURTZ: Several things. I'll start with the one  
22 most recently discovered.

23           In 2000, summer of 2000, Goodyear testified that the  
24 G159 of this specific size was a defective tire in motor home  
25 applications.

1 THE COURT: In all motor home applications?

2 MR. KURTZ: In all motor home applications. Goodyear  
3 promptly terminated that deposition, acquired the transcript,  
4 and willfully destroyed it. And that's in front of Your  
5 Honor. That's where I would start.

6 I would then go on to tell Your Honor that in the  
7 Fleetwood -- I don't know. Mr. Hancock always talks about --

8 THE COURT: I'm sorry, Mr. Kurtz. Whose deposition  
9 was taken? That happened to be a deposition of somebody from  
10 Goodyear?

11 MR. KURTZ: Yeah. It was Kim Cox, Your Honor, was a  
12 30(b)(6) deponent in the United States District Court federal  
13 court case of Phillips versus Goodyear. She was deposed in  
14 the summer of 2003 before the Haegers got hurt. And she  
15 testified in reference to a 30(b)(6) topic about other  
16 Goodyear failures, that Goodyear had determined the G159 of  
17 this size tire was defective when used on all motor homes.

18 And then that deposition was acquired by Goodyear's  
19 counsel, at the instruction presumably of Goodyear as an  
20 entity, and willfully destroyed.

21 THE COURT: Well, how -- If it was -- How did this  
22 information surface? How is it that you determined or you  
23 learned of this?

24 MR. KURTZ: To tell you, Your Honor, the information  
25 was found by another lawyer in town, attorney you're familiar

1 with, Your Honor, Tim Casey, used to be with Snell & Wilmer,  
2 defense lawyer, now also with one of these Goodyear cases that  
3 Mr. Hancock is defending.

4 And Mr. Casey came across the information and  
5 presented it to me. He acquired the court reporter's letter,  
6 which I've given to the Court and disclosed to all the  
7 parties, which verifies the acquisition of the transcript and  
8 its subsequent destruction by Goodyear.

9 And that new evidence of course we have a subpoena  
10 issued to the court reporter that's going to be served on them  
11 today, and we've noticed Goodyear's attorney's deposition in  
12 this case. But that's where we began.

13 THE COURT: Let me stop you.

14 Kim Cox, what is or was her position with Goodyear in  
15 2006 that gave her the authority to make this representation,  
16 assuming --

17 MR. KURTZ: She was the -- She's on the litigation --  
18 some litigation team, as I understand. But she was the  
19 designated representative, the 30(b)(6) deponent for Goodyear,  
20 speaking on behalf of the corporation, when she made the  
21 statement.

22 And when she made the statement, it's my  
23 understanding the deposition was then terminated and  
24 subsequently destroyed. So she's picked by Goodyear to speak  
25 to the topic.

1 THE COURT: Mr. Hancock.

2 MR. SHELY: Your Honor, excuse me. This is Bob  
3 Shely, and I wonder if I might weigh in for one minute on one  
4 incident that may be relevant to this discussion.

5 THE COURT: I will allow you in a moment. Let me ask  
6 Mr. Hancock first.

7 MR. HANCOCK: You know, let me answer all of those  
8 questions. Your Honor, it's a time-worn tactic to come  
9 running in at the last minute with some new huge emergency.  
10 It's not Ms. Cox. It's Mr. Cox.

11 Mr. Cox is not on any litigation team. He is now  
12 retired as an employee and in 2003 was somewhere to talk about  
13 warranty claims or adjustments. His deposition was minor  
14 enough that the parties started it and then never finished it  
15 because they went to mediation instead.

16 They then settled the case. The question in that  
17 case -- which I was not involved in but was over in California  
18 but didn't involve a Gulf Stream motor home -- was what do we  
19 do with a half-finished deposition transcript?

20 Because Goodyear never did cross-examination. And it  
21 is a custom and practice when you settle a case, they just  
22 said, well, we'll just pretend the deposition never happened,  
23 because nobody after the case is settled wants to go back and  
24 finish questioning the witness, either the plaintiff who  
25 didn't finish or the defendant who never asked a question.

1 THE COURT: Where is Mr. Cox?

2 MR. HANCOCK: I have no idea, sir -- ma'am. He's  
3 retired. I asked my client that, and they said we'll try and  
4 track him down. But now, again, Your Honor, with only a few  
5 days left, we suddenly have deposition notices put out  
6 sua sponte in California without subpoena power jurisdiction  
7 for the court reporter, for the lawyer who represented  
8 Goodyear, for everybody but Mr. Cox, in order to ask did he  
9 say something.

10 THE COURT: Let me ask you: Do you have reason to  
11 believe that he said all motor homes? Do you have reason to  
12 believe that?

13 MR. HANCOCK: Absolutely not, Your Honor. And  
14 without divulging attorney-client privilege, I can tell you I  
15 have the exact opposite understanding. And there is no  
16 record. We've checked.

17 MR. KURTZ: Your Honor, if it please the Court, I  
18 have the declaration -- Mr. Abernethy has it there in his  
19 possession -- which I'm pleased to provide Your Honor  
20 regarding his investigation and his discussions associated  
21 with his representation. And they are in striking contrast to  
22 Mr. Hancock's avowals.

23 THE COURT: When did you learn about this?

24 MR. KURTZ: June 1st.

25 THE COURT: Of this year?

1 MR. KURTZ: Yes, ma'am.

2 THE COURT: Okay. Now, let me hear from counsel on  
3 the line. I'm sorry. I forgot who.

4 MR. SHELY: It's Bob Shely, Your Honor.

5 THE COURT: Yes. Thank you.

6 MR. SHELY: Since our last hearing, I have gone back,  
7 per the Court's order, and tried to find out what litigation  
8 history Gulf Stream has on its motor homes with this tire.  
9 And the history is minimal. One case, the Haegers. I think  
10 there may be one other case, kind of a one-off case. We're  
11 not even sure what the nature of the tire failure was. It was  
12 this G159 tire on a motor home. And there may be -- I'm doing  
13 the details on it -- one other one, which I think occurred  
14 after the Haegers' incident. And I'll have more details on  
15 that today, I hope.

16 Mr. Kurtz, I think, represented to the Court last  
17 time that there were, you know, approximately 14 lawsuits  
18 outstanding against us. And I called Mr. Kurtz after the  
19 hearing and said, gee, I don't know anything about 14  
20 lawsuits.

21 In fact, there are not 14 lawsuits. Apparently  
22 Good -- Goodyear had apparently 14 claims, which it produced a  
23 list of. And maybe one of those turned into one of the  
24 lawsuits that I'm talking about here.

25 But the reason -- And I don't mean to revisit the

1 similarity argument, but I think it's important to understand  
2 the context in which this case is being argued is the context  
3 of the Monaco and the Fleetwood cases where there appeared to  
4 be some sort of weight or design issue on those particular  
5 coaches that led to this unusual claims history. Gulf Stream  
6 does not have that history. There has not been a series of  
7 defective tire claims made against Gulf Stream on these cases.

8 And that's why our concern, the defendants' concern  
9 collectively, about getting off into Monaco and Fleetwood is  
10 so wide afield, because Gulf Stream is not going to -- we're  
11 going to produce documents to Mr. Kurtz this week on what we  
12 have. But Gulf Stream does not have that type of litigation  
13 history, the kind of, you know, sporadic, one-off type cases  
14 that happen, you know, regularly in anybody's -- in  
15 anybody's -- in any corporation's career.

16 But we don't have the type of recall, we don't have  
17 the history, we don't have anything that's akin to what Monaco  
18 and Fleetwood had.

19 THE COURT: Okay. Mr. Kurtz --

20 MR. KURTZ: Yes, Your Honor.

21 THE COURT: -- it seems that at a starting point,  
22 fundamental to all of this is what was said and by whom.

23 And it seems that you have only identified, at least  
24 as of today, that Mr. Kim Cox may have made a representation  
25 that there was a failure of the G159 tire on all motor homes.

1 I am going to allow some discovery concerning that  
2 particular issue before I consider expanding the discovery  
3 into other motor homes like Monaco and Fleetwood.

4 So is that understood, Mr. Kurtz?

5 MR. KURTZ: I can understand -- I understand what you  
6 said, Your Honor. I'm just -- I think -- Here's my concern  
7 with it, quite frankly, Your Honor, is we're sitting here in a  
8 discussion over the telephone with -- where your decisions are  
9 premised on the avowals of counsel without regard to evidence  
10 in the record.

11 And you're making an evidentiary ruling, with all due  
12 respect, Your Honor, where you're having to display a certain  
13 level of confidence in the absence of documents.

14 I previously briefed this for the Court with the  
15 documents, with the Bates stamped ranges of the evidence that  
16 is presented to you, so that when I spoke, it would have  
17 efficacy which would support and you would understand that  
18 they weren't opinions.

19 What happened in Monaco and Fleetwood involved  
20 thousands of these tires that were killing people. It was in  
21 Monaco there was no weight issue at all. They pulled all of  
22 the tires, this subject tire, off those coaches because of the  
23 failures in the field.

24 That's been concealed from the Court, but in 29  
25 separate lawsuits involving Gulf Stream, Monaco, Fleetwood,



1 there are dead people all over America, and they're still  
2 dying.

3 Mr. Casey's case in Arizona involves a decapitation  
4 that happened on Christmas this year with this tire on the  
5 same motor homes on the same axles with the same tires.

6 And I submit to Your Honor that for discovery  
7 purposes, we should be allowed to go through these things and  
8 that Your Honor should reserve her evidentiary ruling until a  
9 record is created.

10 THE COURT: Well, the problem I had previously and  
11 that I still have is whether or not the axle is really  
12 relevant. I believe that I resolved previously that the size  
13 of the tire, the weight of the tire, was what was relevant.

14 And unless your expert could establish somehow that  
15 the axle was relevant to the use of this tire on this motor  
16 home, that I wasn't going to expand the discovery.

17 MR. KURTZ: Well, Your Honor, the evidence that's  
18 presented to the Court -- and Ms. Lewallen will confirm  
19 this -- is that the tires -- the way the tires end up on the  
20 motor home, the sole determinative to it and the only  
21 determinative to it is the axle rating on the coach. And  
22 that's why it doesn't matter whether it's a Fleetwood or a  
23 Monaco or a Gulf Stream. The tire operates in a certain  
24 environment, just like, you know, they don't make a tire  
25 special for a Ford Mustang.

1 THE COURT: And, well, you have an expert who will  
2 say that?

3 MR. KURTZ: They have said it, Your Honor. Spartan  
4 said it. My experts have said it both in their opinions, in  
5 their deposition, and in their rebuttal. And it's not even in  
6 dispute that the tires are selected based on the axle.

7 In fact, the only person who would say otherwise is  
8 Mr. Hancock, without any evidence presented to you whatsoever,  
9 when I have shown Your Honor the page and line and verse in my  
10 April 20th submittal and the deposition testimony by page and  
11 line that supports that that is the sole determinative for how  
12 these tires are selected. And that's why, when people get  
13 killed in a Monaco or get killed in a Fleetwood or a Gulf  
14 Stream with these same subject tires on the same axle rating,  
15 it goes to the very essence of what this dispute is about.

16 THE COURT: Ms. Lewallen.

17 MS. LEWALLEN: Thank you, Your Honor. Just a couple  
18 minutes, because this is an ongoing, perpetual issue that  
19 really will impact some upcoming depositions for my clients.

20 Your Honor has been asking about what's the evidence.  
21 Let me tell you what the evidence is. Because I agree in part  
22 that everything you're hearing from Mr. Kurtz is his  
23 supposition based on rumor and innuendo and these indirect  
24 ways he's obtaining information from other lawyers or whatever  
25 his source is.

1           Let me tell you what the evidence is in this case.

2           My client builds the chassis. My client puts the  
3           tire on the chassis in light of several criteria, including  
4           the axle rating.

5           My client ponied up a witness long ago, right out of  
6           the box, in this case, after your rulings in January. We made  
7           our witnesses available.

8           And Bryan Harris, the chief engineer for Spartan, who  
9           is the one witness in this case who has firsthand knowledge  
10          about how these things are built and who has already testified  
11          in this case under oath, Mr. Harris testified that -- and it  
12          might have been Mr. Kurtz's lack of knowledge on this subject  
13          might be because of his questioning of Mr. Harris during that  
14          deposition. I'm not really sure.

15          But I do know that the fact is that axle rating is  
16          one of many criteria, Your Honor, that affects the tire  
17          selection of any given chassis and affects the tire selection  
18          ultimately of whether that tire will remain on the finished  
19          product, meaning the box that gets put on and the ultimate  
20          product, the motor home.

21          The various factors include not only axle weight  
22          rating. That's where we start the analysis. The size of the  
23          tire. Will the tire fit within the wheel well fitment of that  
24          particular custom chassis build? What's the application or  
25          intended use of this vehicle? What is the customer's

1 preference in terms of brand of tire, Michelin, Goodyear,  
2 something else? What is the cost criteria that the customer  
3 is concerned about?

4 One important characteristic is ride characteristic.  
5 Michelins are known to have kind of a softer ride. Goodyears  
6 have sometimes more of a firm ride. Different customers have  
7 different preferences.

8 The ultimate -- what shall we say? -- expense of the  
9 end product is another consideration and, perhaps most  
10 importantly, what is the complete design criteria that the  
11 engineers have to consider? How is this particular motor home  
12 going to differ from the one next to it on the lot when you  
13 and I go to shop for RVs?

14 Because, Your Honor, this isn't like going to a  
15 Toyota lot where we see 50 Toyota Tundras that are all the  
16 same except for color and maybe a couple of niceties inside.  
17 Those niceties don't affect the weight of the vehicle.

18 In motor homes, it's a completely different analysis.  
19 It's a completely individual analysis literally per unit.

20 My client builds, for example -- Gulf Stream might  
21 order 100 but only build one at a time or five at a time for  
22 them, because what Gulf Stream wants to do with them in terms  
23 of the model, is it going to have a popout, that wall that  
24 pops out that allows you to put the bed down? Where is the  
25 fuel tank going to be? Where is the water tank going to be?

1 All of those things I've learned during the course of  
2 this case weigh some amount that affects the vehicle  
3 weighting, the vehicle performance, and the vehicle safety.

4 Mr. Harris alone has testified in this case, and he  
5 has said that he knows intimately about the Fleetwood  
6 experience. He knows about the Monaco experience, although we  
7 were not involved in it, because Monaco builds its own  
8 chassis. But we know about it.

9 He has said at his deposition -- I allowed Mr. Kurtz  
10 to ask him this question long before all of this fray started  
11 before you and took up your time.

12 Mr. Harris unequivocally testified the Fleetwood  
13 experience has absolutely nothing to do with what's going on  
14 and what you're claiming in this Gulf Stream isolated  
15 instance, nothing.

16 He explained, like I explained to you last time I saw  
17 you, about how the Fleetwood experience was an imbalancing of  
18 the weight toward the left front that Goodyear picked up on  
19 because Goodyear heard about it, contacted Fleetwood, and  
20 ultimately we were contacted.

21 How do we -- Finally the Fleetwood people came back  
22 to us saying, "Spartan, help us figure out how to fix this."

23 We worked with Fleetwood to figure out the fix.  
24 Fleetwood paid for the fix because it was Fleetwood's goof.

25 Spartan didn't do anything wrong in that case, and

1 there was nothing wrong with the tire in that case, Your  
2 Honor, because if it had been a comparable Michelin tire, Toyo  
3 tire, Cooper tire, Bridgestone tire on that left front, it  
4 also would have gone out because there was too much weight on  
5 the tire. It had nothing to do with the tire itself. It was  
6 incidental.

7 So when Mr. Kurtz is talking about death and mayhem  
8 on the roadways from these hundreds or thousands of Fleetwood  
9 incidents, I find that, frankly, very distasteful, because it  
10 intimates that at least my client could not care less that  
11 people are dying as a result of a problem that they are  
12 turning their heads to. That is absolutely not the case.

13 The concern I've had, Judge, in this case is ongoing,  
14 and I asked you about it at our last hearing, because I was  
15 concerned about how are your rulings going to impact my expert  
16 and my witnesses' subsequent depositions.

17 Bryan Harris was my Rule 30(b)(6) deponent back in  
18 February. Subsequent to his deposition, I retained an  
19 independent expert, Scott Craig, whose deposition is set for  
20 June 28.

21 Scott Craig responded or made a comment in his  
22 written expert report about the Fleetwood and Monaco  
23 experiences, which he also is intimately familiar with,  
24 because he, like Bryan Harris, is embedded in this industry  
25 and has firsthand knowledge about what's going on, unlike the

1 plaintiffs' expert, Mr. Osborne.

2           The only reason I asked Mr. Craig to even comment on  
3 the Monaco and Fleetwood issues is because the plaintiffs'  
4 expert, Mr. Osborne, had thrown this on the wall in his report  
5 that had been submitted prior to that.

6           My concern, Your Honor, is this: Scott Craig's  
7 deposition is June 28th. I'm actually going to go meet with  
8 him tomorrow because that's the only time he has to meet with  
9 me to prepare for that deposition.

10           I was not planning to have him -- to be prepared at  
11 my client's expense to testify about Monaco and Fleetwood  
12 campaigns that in all candor, Your Honor, to people embedded  
13 in this industry, it's laughable to think that they have  
14 anything to do with this isolated instance.

15           You asked what else is the evidence?

16           The evidence in this case has also come from two of  
17 my clients, Shannon Kinsey and Bryan Harris, who have  
18 testified, look, if there's a problem with this G159 on this  
19 Gulf Stream coach or any other coaches, setting aside the  
20 Fleetwood and Monaco experiences which we have identified and  
21 we understand, where is the evidence of that?

22           We don't have failures reported to us.

23           The other evidence you have in the case, Your Honor,  
24 is Scott Pullin, Gulf Stream's 30(b)(6) witness, who  
25 testified: Mr. Kurtz, we built 86 identical units to the

1 particular model that the Haegers owned, and not one of them  
2 do we have anything reported as having failed.

3 In fact, Gulf Stream's lawyers can only find two to  
4 three lawsuits they've ever had at all on any unit that  
5 utilized this tire.

6 The fact of the matter is, Judge -- and Bryan Harris,  
7 I believe, has testified about this, or if he hasn't already,  
8 he will, and Scott Craig can also attest to this under oath --  
9 this tire was widely used throughout the industry by many,  
10 many of the coach manufacturers and all three of the major  
11 chassis manufacturers.

12 If that's the case, where are the failures? +

13 All the plaintiffs can point to is the Fleetwood  
14 cases. So they want to make the Haegers' case a  
15 Fleetwood-like case, but it's not.

16 So the evidence you have, Judge, is the sworn  
17 testimony of Mr. Pullin, Mr. Harris, and Ms. Kinsey that have  
18 all consistently said there are, if you are right, if you're  
19 even right, maybe -- Let's assume for sake of argument  
20 Goodyear had all this information about a problem with the  
21 tire.

22 Why don't we see that reflected in our statistics?

23 We don't -- We can't say that we know of a problem,  
24 because, A, Goodyear's never told us of a problem; B, we don't  
25 know of a problem personally; and, more importantly, our



1 statistics don't bear that out.

2 That is the sworn testimony in this case of the  
3 people with firsthand knowledge to know.

4 The only thing on the other side of that equation,  
5 Your Honor, is supposition and guesswork by the plaintiffs  
6 based on things that are not evidence and the guesswork of an  
7 expert they found halfway across the world who has no basis to  
8 say what he's saying.

9 THE COURT: What's the source of the -- or what is  
10 the information that your expert's relying on, Mr. Kurtz?

11 MR. KURTZ: Your Honor, the -- just bundles of it.

12 I appreciate Ms. Lewallen's compassionate delivery,  
13 as I do all defendants. This is what discovery in trials are  
14 about.

15 We should start, Your Honor, with the  
16 understanding -- and the experts are all familiar with it --  
17 this tire performs so poorly in the marketplace that it  
18 completely was discontinued and pulled. They don't make this  
19 tire anymore. They quit making it after all these people were  
20 getting hurt. So it's gone.

21 And it is true that all of these people are  
22 intimately familiar with Monaco and Fleetwood, as well they  
23 should be. And that's why the quest in this case is not  
24 adrift or burdensome or anything else. They all know it. And  
25 their whole goal in this case is to make sure that the fact

1 finder doesn't know it or that the Court doesn't have an  
2 adequate record to ultimately make a well-informed decision  
3 about substantial similarity.

4 The evidence is -- and I'll read it to Your Honor,  
5 and it's what the experts rely on and what everybody  
6 acknowledges -- Mr. Harris, Ms. Lewallen's expert, testified  
7 that Spartan uses the same chassis on all of these motor homes  
8 that use this size tire.

9 They use the MM2242 chassis for all Class A motor  
10 homes which have a 12,000-pound front axle and a 19,000-pound  
11 rear axle.

12 Harris deposition, Page 60, he testifies those axle  
13 capacities dictate tire selection.

14 Harris deposition, Page 20: "The things Ms. Lewallen  
15 lists for you are really kind of smoke. Fitment is not at  
16 issue. The subject tire in this dimension is on all of the  
17 motor homes."

18 So we're just talking about one model tire that's  
19 used in the same environment, the same axles, on all the motor  
20 homes.

21 The cost and the brand is irrelevant, because I'm not  
22 looking at Michelin. I'm not looking at Toyo. I'm looking at  
23 this tire on this motor home and the thousands of times that  
24 it's had a problem and dozens of people it's killed. It is  
25 the expert testimony which is undisputed that the tire

1 environment that the tire operates on, that is, the weight and  
2 speed of the motor homes, is identical or substantially  
3 similar in every one of them.

4 And the idea -- All this emotion is designed to say  
5 if we can persuade the Court to not allow Mr. Kurtz to do the  
6 discovery, then we will have succeeded in keeping the, you  
7 know, the harsh truth from even the Court's eyes.

8 And I'm certainly entitled to reasonable discovery,  
9 Judge, because everything that I have told you is a fact.

10 Now, the Fleetwood recall, it's not just the weight  
11 issue as Ms. Lewallen says. What she cited to you for the  
12 deposition testimony is not in the deposition. That's  
13 apparently what Mr. Harris tells her.

14 But the Fleetwood recall, they had a weight problem  
15 with about one-third of the tires. 70 percent of the tires  
16 they didn't have any weight issue at all. But they recalled  
17 all of them.

18 Did Goodyear pay for it?

19 I have the letter that shows Goodyear paid for it and  
20 that Fleetwood asked them to pay for it.

21 THE COURT: Okay. Hold on. How do these recalls  
22 relate to this tire?

23 MR. KURTZ: It's the same tire.

24 THE COURT: I mean, this tire under the circumstances  
25 in this case with --

1 MR. KURTZ: All of these tires, Judge --

2 THE COURT: No. Hold on. Make sure -- I want to  
3 make sure you understand.

4 With this motor home and this coach, how do they  
5 relate?

6 MR. KURTZ: Every one of these -- the subject tire, a  
7 G159 275/70R 22.5, is a tire designed for regional pickup and  
8 delivery.

9 All of these motor homes -- and this is the only  
10 class we're looking for -- are those that have 12,000-pound  
11 axles like the Haegers', those that have 19,000-pound rear  
12 axles like the Haegers'. Every one of those motor homes we're  
13 talking about was that way. And the failures on those motor  
14 homes are all involved with the same tire in the same  
15 application carrying similar loads, operating on freeways  
16 where they should never have been.

17 And it doesn't get a lot tighter than that, Judge.

18 THE COURT: Well, your expert witness has testified  
19 to this?

20 MR. KURTZ: My expert witness has specifically  
21 testified that all of the motor homes, Monaco, Gulf Stream,  
22 and Fleetwood, have the same or similar operating environment  
23 in terms of load and speed on the subject tires.

24 And the failures on the Fleetwood, Monaco, and Gulf  
25 Stream motor homes, quote, clearly indicate that the G159 is

1 an inappropriate tire for this application, closed quote.

2 THE COURT: And what's the source of his information,  
3 of his opinion?

4 MR. KURTZ: His opinion and the source of his  
5 information is the --

6 THE COURT: The source of his opinion is reliable?

7 MR. KURTZ: The design data for the tire, that it was  
8 designed for inner city use -- and he talked about this in the  
9 deposition -- the tire's the wrong tire for going at that  
10 speed. It has too much centrifugal force, so it comes apart.  
11 He looks at the failure history in Fleetwood. He looks at the  
12 design criteria of the tire. He looks at the history in  
13 Monaco and Gulf Stream and the discontinuity of the tire. And  
14 all of those support his opinion that it's the wrong fitment  
15 for this application.

16 MR. SHELY: Your Honor, it's Bob Shely. May I weigh  
17 in for one moment please?

18 THE COURT: Just one second. I want to make sure  
19 that I understand this issue, and I will allow you, Mr. Shely.

20 MR. SHELY: Thank you, Your Honor.

21 THE COURT: I need a response from both defense  
22 counsel in the courtroom first.

23 MS. LEWALLEN: Your Honor, if I may go first, I think  
24 Mr. Kurtz would never intentionally mischaracterize someone's  
25 sworn testimony, but I think Mr. Kurtz clearly misunderstands

1 Bryan Harris's testimony.

2 Bryan Harris did testify that the Mountain Master  
3 chassis was used very predominantly by Spartan with this tire.  
4 But let me explain to the Court what the Mountain Master 2242  
5 really is.

6 Remember my client, unlike the other two chassis  
7 manufacturers in the industry, is a custom chassis  
8 manufacturer.

9 What the Mountain Master 2242 is is it's a skeletal  
10 structure, Your Honor, of a certain type of chassis build.  
11 But from that skel -- But Spartan has numerous other skeletons  
12 with different names.

13 This particular skeleton, the MM2242, is one upon  
14 which a custom chassis is then manufactured.

15 So when Mr. Kurtz says, "Well, Your Honor, they've  
16 got all these Mountain Master chassis with these same  
17 identical tires, so there you have it, substantial  
18 similarity," no, there's nothing substantially similar at all.

19 And just so Your Honor is aware, my client already  
20 produced long ago and far away, before the February  
21 depositions of my clients, the data that we had related to  
22 all, because we don't specifically know what exactly Gulf  
23 Stream builds, what the box ultimately is on our chassis after  
24 we send the chassis to them.

25 We don't have the data to show Mr. Kurtz exactly the

1 specific type of model that the Haegers had and what the  
2 chassis underneath it would have consisted of and what our  
3 stat rating is related to it.

4 So what we did is we provided him the Mountain Master  
5 chassis data for all the Mountain Masters we ever made for  
6 Gulf Stream in the last ten years from I believe it was 1996  
7 to the present.

8 So that's an even bigger pool of information than the  
9 information that's germane to the Haegers' type of coach.

10 Mr. Shely's client, Mr. Pullin, later identified only  
11 86 of those units were identical to Haegers'.

12 But interestingly, Your Honor, of the 360-some-odd  
13 chassis that we ever made for Gulf Stream, we've never had one  
14 incidence of a failure, not even a sniff of a failure.

15 So Mr. Kurtz received broader information than we  
16 were even required to give, but that information is telling.

17 The chassis on this particular coach, because it is a  
18 custom chassis, if it had been made by Freightliner, Your  
19 Honor, that makes just cookie-cutter chassis, then Mr. Kurtz  
20 would have a better chance at convincing you of the  
21 substantial similarity of a chassis.

22 But my client is a custom maker. And only those 86  
23 that went to Gulf Stream for this particular chassis are  
24 substantially similar to the Haegers'. Nothing else is.  
25 Because it requires a completely new design process and

1 analysis.

2 That's why we struggle so much with this. And that's  
3 why the people who are knowledgeable say you can't compare  
4 Fleetwood vehicles on a different chassis to meaning it might  
5 have been a Mountain Master, but it's not this chassis.

6 THE COURT: Let me stop you.

7 MS. LEWALLEN: Thank you.

8 THE COURT: Why is the expert witness testimony that  
9 has been proffered by Mr. Kurtz, why is it unreliable? It  
10 seems to me that he has given an opinion that is contrary to  
11 your witnesses.

12 MS. LEWALLEN: He has given an opinion, Your Honor,  
13 and I don't doubt that what Mr. Kurtz said about his opinion  
14 is truly the opinion he gave. But it is not based on anything  
15 reliable.

16 This man has no experience in the motor home industry  
17 at all. He has no experience in the chassis design or build  
18 industry at all.

19 What he did is he looked at promotional materials or  
20 engineering data guides from Goodyear that gave general  
21 descriptions of the types of applications this tire may be  
22 compatible with, the same kind of guides that our engineers  
23 look at. But they don't look at a word description, Your  
24 Honor. An engineer who's designing a product for performance  
25 and safety has a heightened knowledge base than that.



1           He doesn't look at what Goodyear says, oh, you can  
2 use this on a FedEx truck or you can use this on a certain  
3 motor home. They look at the actual performance data of that  
4 tire and figure out from an engineering standpoint will that  
5 tire work for what we're doing?

6           Mr. Kurtz has repeatedly said throughout this case  
7 this tire was only meant for a short-term delivery service,  
8 you know, like on a FedEx truck in the city.

9           If that's true, Your Honor, we've put G159s of  
10 exactly this type on thousands of units over the 30-year  
11 history of our company.

12           Where are the failures?

13           They're all on motor homes.

14           And so have our competitors.

15           There are literally tens of thousands if not hundreds  
16 of thousands of units out there on the road with this tire  
17 that have had no failures.

18           The failures that we've seen are the Fleetwood  
19 failures for the identified reasons, because Fleetwood goofed,  
20 and the Monaco failures, because when they put on the wrong  
21 placard, people inadvertently underinflated their tires, and  
22 as a result they had failures.

23           Mr. Osborne doesn't have evidence. He can't say I  
24 know about this. He can't say I have firsthand knowledge of  
25 anything. He can't say I've seen the evidence.

1           He's never even been to Spartan. He has no idea how  
2 a chassis is even made. So he has no idea what goes into this  
3 and what tire would be applicable and appropriate and safe for  
4 this application. Zero.

5           THE COURT: Mr. Hancock.

6           MR. HANCOCK: Your Honor, I will answer your  
7 question, but I just need to blurt something out.

8           What's at issue here is does Goodyear produce all of  
9 the protected discovery in all cases involving Monaco and  
10 Fleetwoods, and can Goodyear's witnesses who know something  
11 about that litigation be examined about it in this case, which  
12 doesn't involve a Monaco or Fleetwood, and cross-examine  
13 without Monaco or Fleetwood's lawyers present?

14           That's what's going on. What he's asking you to do  
15 is bypass protective orders entered in those cases and ask our  
16 witnesses to be cross-examined outside of those cases in  
17 matters that would be important in those cases.

18           THE COURT: Okay. Let me stop you.

19           The question that I had in January and what I ordered  
20 and forced Mr. Kurtz to provide was an expert witness who  
21 could testify that there was a substantial similarity with  
22 this lawsuit -- that is, Goodyear tires, Spartan motor homes,  
23 and the Gulf Stream coach -- to other motor homes.

24           MR. HANCOCK: Thank you, Your Honor.

25           THE COURT: And that is the question. And I hate to

1 make a and I don't intend to make a decision today about the  
2 reliability of that testimony unless on its face it is  
3 unreliable, that there's no source for the opinions that have  
4 been given by Mr. Osborne and that might be given in his  
5 rebuttal testimony.

6 What is it, Mr. Kurtz, that you anticipate or what  
7 has Mr. -- again I'm asking the same question. What is the  
8 basis of Mr. Osborne's opinion and that he will further  
9 explain or he will expand upon in his rebuttal testimony?

10 MR. KURTZ: Your Honor, Mr. Osborne's opinions are  
11 documented in extensive disclosures that go on, you know, for  
12 pages and pages and pages. So I'll do my best to summarize  
13 the --

14 THE COURT: Has he testified to similarity concerning  
15 the Monaco motor home and the Fleetwood motor home?

16 MR. KURTZ: He has repetitively, Your Honor. I think  
17 the essence of understanding Mr. Osborne's testimony,  
18 Mr. Osborne is a tire designer. He designs commercial truck  
19 tires just like this.

20 And as a designer of commercial truck tires, he needs  
21 to anticipate and understand the environments in which they  
22 operate, just like this.

23 And that's -- the extensive background for his  
24 opinion is well detailed that way. He's talking about when  
25 you make a tire that's going to run on a freeway, this isn't

1 the tire that you would use. This is a regional pickup and  
2 delivery tire. It can't take the loads and speeds at that  
3 heat. And that's why it failed in Monaco, and that's why it  
4 failed in Fleetwood, and that's why it fails in Gulf Stream.

5 THE COURT: And what is the source of his opinion  
6 other than you have said that his experience -- What  
7 experience has he had with these types of tires on these  
8 vehicles?

9 MR. KURTZ: He's got 35 years of tire design  
10 experience, including specifically designing this kind of a  
11 commercial truck tire.

12 THE COURT: Okay. I'm going to cut this short,  
13 because, as I said, I do not, as a matter -- I do not want to  
14 make this decision today. I agree with you, Mr. Kurtz, that  
15 this is not the day for me to decide whether it's reliable.

16 But I am not going to expand my ruling that I made in  
17 January unless there is, after the rebuttal testimony and  
18 deposition of Mr. Osborne, he has indicated more specifically  
19 that he has a reliable basis to expand the discovery to other  
20 motor homes such as Monaco and Fleetwood.

21 Now, perhaps this has to be proffered to me, and this  
22 has to be provided, and I want to save a lot of time. So he's  
23 going to provide a rebuttal report. I guess he already has.

24 And then I want you to proffer what he would,  
25 Mr. Kurtz, what he would testify to in the rebuttal testimony

1 that will support his opinion that this discovery should be  
2 expanded to other motor homes.

3 MR. KURTZ: Well, Your Honor, I can tell you that at  
4 this moment. What he has is he has the design  
5 specifications --

6 THE COURT: Well, I'll tell you what. Because this  
7 is so complex, I need this in writing. And in fairness to  
8 everybody, I would like to have you provide this in writing.  
9 And then I can make a decision, hopefully, without another  
10 extensive hearing. But if I need the hearing because of the  
11 nature of the issues here, I will then hold that hearing.

12 But at this point I am not going to allow and I'm not  
13 going to change my opinion concerning the scope of this  
14 discovery.

15 And this is not presaging a final ruling on the  
16 issue, but it is provided to give at least everybody some  
17 guidance as to where we are going to go from this point.

18 MR. KURTZ: Your Honor, if I may, then, I'm delighted  
19 to brief it before Your Honor. I'm about to spend the better  
20 part of probably \$100,000 time and money taking depositions.

21 There is not a reason in the world for me to take  
22 those depositions twice. And so my request, if Your Honor  
23 wants the substantial similarity thing further briefed for  
24 purposes of discovery --

25 THE COURT: Let me stop you. I do want this.

1 MR. KURTZ: I understand that.

2 THE COURT: And you're asking for an extension of the  
3 discovery, and I will allow a reasonable extension, assuming  
4 that it is necessary.

5 MR. KURTZ: If I may be specific, Your Honor, my  
6 concern is this: I agree with Your Honor. Let's be sure that  
7 there's a well-developed record for the Court's consideration.

8 But I don't want to take the depositions twice. And  
9 so what I would submit is let's identify the briefing schedule  
10 right now, extend discovery. I'll reset these depositions  
11 after Your Honor's rulings, because I will otherwise end up  
12 taking them twice. You've already ordered me to pay for  
13 bringing Mr. Osborne back from England. And I just -- It's  
14 just not fair to the Haegers that I would go through this  
15 process twice. All the lawyers involved for any other side --

16 THE COURT: All right. I agree with you. I want an  
17 expedited briefing on this issue.

18 MR. KURTZ: Okay.

19 THE COURT: And I want as much as possible all the  
20 source information that Mr. Osborne has or will have in his  
21 rebuttal testimony, in his deposition, so that I can decide as  
22 much as possible, understanding that the scope of discovery is  
23 generally much greater than the issues of the admissibility of  
24 the evidence.

25 I need that now, and I hope that this will either

1 limit the discovery to what I have previously stated or that  
2 it will reasonably expand the discovery if necessary. And  
3 that's my ruling.

4 MR. KURTZ: Thank you.

5 THE COURT: So we need expedited briefing. How soon?  
6 I need -- How about perhaps a week?

7 MR. KURTZ: Your Honor, I can have mine to you -- How  
8 would you like us to do it? Should I prepare -- Do you want  
9 me to submit mine and then have a response?

10 THE COURT: A response, and then I will allow you a  
11 reply. And this needs to be done on an expedited basis.

12 MR. KURTZ: I'll have mine filed with the Court by  
13 this day next week.

14 MS. LEWALLEN: Your Honor, if I might, I think that  
15 the depositions that are currently set for this coming Tuesday  
16 of four Gulf Stream witnesses might actually be impacted at  
17 least in some part by your ruling, because those four --

18 THE COURT: All right. Let's now reschedule all the  
19 depositions if necessary. And I am not going to decide today  
20 how long I am going to or how much discovery I'm going to  
21 allow beyond the middle of July. I'm going to rule on this as  
22 quickly as possible.

23 All right. So we have a response within one week by  
24 all defense counsel, a reply within one week, a decision by  
25 the Court after that, which will probably run us into July.

1           Then once I make a decision, counsel are going to  
2 confer and decide what discovery is necessary to complete the  
3 litigation in this case and understanding that it has to be  
4 done on a short -- You're all going to be on a short leash.  
5 And you're going to submit that to me, and I'm going to decide  
6 when the discovery is to be completed.

7           MR. KURTZ: Your Honor, Dave Kurtz again. Thank you,  
8 Your Honor.

9           As to the substantial similarity briefing, the only  
10 additional discovery that I think would bear upon the Court's  
11 analysis would be to have the court reporter's -- the  
12 deposition testimony of Mr. Cox and the transcript, if it's  
13 available, of the testimony of the lawyers as to what was said  
14 by Goodyear about substantial --

15           THE COURT: I'm going to allow inquiry into Mr. Cox.  
16 I don't know how much information there is at this time, but  
17 I'm going to require -- it appears to be, in this case, it  
18 only relates to Goodyear -- Goodyear to do an inquiry and  
19 provide all information about Mr. Cox's purported testimony  
20 that this tire was a problem on all motor homes.

21           MR. KURTZ: Thank you, Your Honor.

22           MR. SHELY: Your Honor, Bob Shely here. I may not  
23 have understood. Is it the Court's intention that we should  
24 go ahead with depositions scheduled for next week or --

25           THE COURT: No.



1 getting new stuff from Mr. Osborne when some of the defendants  
2 haven't had a chance to examine him and we weren't on these  
3 points, I would think it would make sense to have  
4 Mr. Osborne's deposition proceed while you're considering does  
5 Mr. Osborne have a basis or --

6 THE COURT: Let's see. The purpose of this process  
7 is for Mr. Kurtz to provide as much information -- and that  
8 includes, Mr. Kurtz, not just his opinions but the source of  
9 those opinions -- so that this Court can determine at the  
10 discovery stage not -- I'm not -- This is not presaging my  
11 final ruling on the admissibility of his testimony. But I  
12 need enough information for this Court to know that there is  
13 a, under the rule of evidence, that there is more than just a  
14 possibility that I will find his testimony on these issues  
15 reliable.

16 Now, what I didn't have and what I was concerned  
17 about in January is that, Mr. Kurtz, I didn't have this  
18 evidence, and that's why I forced you, ordered you to bring  
19 forth the expert witness testimony that would provide the  
20 basis for expanding the discovery.

21 Now, I need that now. I want that now. And I want,  
22 importantly, under the rules of evidence, understanding that  
23 the discovery is broader, but I, you know, I want to make sure  
24 you understand that there has to be enough information in your  
25 submission to establish the reliability of his testimony

1 before I expand this.

2 MR. KURTZ: Very good, Your Honor.

3 MR. HANCOCK: Your Honor, just two questions. One,  
4 are we free to approach the Court if there's new stuff in  
5 Mr. Osborne that we've not seen and we'd like an opportunity  
6 to question --

7 THE COURT: You can approach the Court --

8 MR. HANCOCK: Thank you, Your Honor.

9 THE COURT: -- if there's new stuff that you believe  
10 is unreliable.

11 MR. HANCOCK: Exactly, Your Honor.

12 THE COURT: That's the point.

13 MR. HANCOCK: Exactly, Your Honor.

14 The second question has to do with Mr. Cox. I don't  
15 know. I'm assuming we can locate him. But plaintiffs,  
16 without any consulting with anybody, have noticed up the  
17 depositions of the court reporters and the lawyers in the  
18 case. And of course the lawyers are going to have to invoke  
19 attorney-client privilege. I wonder if we could just begin  
20 with can we locate Mr. Cox -- not Ms. Cox; it's Mister -- and  
21 if he says I didn't say that and wouldn't have a basis to say  
22 that, you know, can we then talk about it, rather than launch  
23 a five-deposition travel to California, depose a bunch of  
24 lawyers over --

25 THE COURT: Who is it that will testify, Mr. Kurtz,

1 and will they assert the privilege?

2 MR. KURTZ: The answer is plaintiffs' counsel in the  
3 Phillips case will testify that Mr. -- if Mr. Cox should deny  
4 his testimony, plaintiffs' counsel will testify, as he's  
5 informed Mr. Casey, that that's exactly what was said.

6 And of course we're not going to know exactly because  
7 Goodyear grabbed the transcript and had it burned.

8 THE COURT: All right. Now, when you say that, I  
9 presume what -- your answer to my question is he's not going  
10 to assert the privilege. He's going to testify to facts  
11 rather than privileged information?

12 MR. KURTZ: That's correct.

13 THE COURT: Okay. I'm going to allow it. I'm going  
14 to allow him to take the deposition. And I'm going to order  
15 Goodyear -- I presume it's your witness -- to find this  
16 witness if you can.

17 MR. HANCOCK: If we can, Your Honor. Thank you.

18 MR. KURTZ: I would think, Your Honor, the only  
19 depositions would be Cox and Goodyear's defense lawyer, and,  
20 in the event they were to deny it, then plaintiffs' counsel.  
21 But I'm hoping that I don't encounter the denial --

22 THE COURT: Well, and both counsel know the scope of  
23 a privilege. Certainly an attorney can testify to the facts.  
24 And that's been established by the Supreme Court a long time  
25 ago. He is not required to testify to anything that's