

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES OF AMERICA)
Ex rel. JOSHUA HARMAN,)
Plaintiffs,) Civil Action No.
V.) 2:12-CV-0089
TRINITY INDUSTRIES, INC.)
and TRINITY HIGHWAY) Deposition of:
PRODUCTS, LLC,) DEAN SICKING
Defendants.)

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED, by and
between the parties through their respective
counsel, that the deposition of:

DEAN SICKING

may be taken before Jennifer L. Landrum, Court
Reporter and Notary Public, State at Large, at the
Law Offices of Lightfoot, Franklin & White, LLC,
400 North 20th Street, Birmingham, Alabama 35203,
on the 9th day of September, 2014, commencing at
approximately 11:30 a.m.

1 Q. And what was the definition of relevancy
2 that you utilized when making that determination
3 as to which documents you were going to produce?

4 A. Well, if you look at the supplemental
5 one, not this one, it described what I consider to
6 be relevant. To be honest with you, I had very
7 little time to look, and I was searching mostly
8 for the documents related to the informal study I
9 did. And I -- I've searched through two back-up
10 hard drives and -- and I have a third one to look
11 through. And I'm trying to find it, but I did
12 have a hard drive crash last spring, and I may not
13 be able to produce any of those.

14 Q. So you still have one other additional
15 hard drive that you need to look through?

16 A. Yeah.

17 Q. All right. So you've looked through two
18 hard drives --

19 A. Two back-up hard drives.

20 Q. You had a hard drive that I think you
21 said crashed last spring?

22 A. Right.

23 Q. Do you have any hard copies of any

1 A. Mid to late February '14.

2 Q. All right. So, had you at that
3 particular time engaged in an, as you referred to
4 it, an informal study?

5 A. Yes.

6 Q. And that was -- you testified about
7 this, I think, in your previous deposition. That
8 was based upon looking at heads that were located
9 here in this general area?

10 A. Yeah, basically.

11 Q. Did Mr. Mitchell tell you how he knew
12 that you were engaged in this particular study?

13 A. No.

14 Q. Do you know how he knew that?

15 A. I can -- I can guess.

16 Q. And tell me what that guess is.

17 MR. MOORER: Well, don't -- don't guess.

18 A. Okay. Then I don't know.

19 BY MR. SHAW:

20 Q. Do you have suspicions that you had
21 mentioned that to Mr. Artimovich?

22 A. I don't think I mentioned it to
23 Artimovich, did I? I may have, I don't remember.

1 Q. All right. Well, then --

2 A. I don't suspect.

3 Q. -- your best -- your best understanding
4 of how Mr. Mitchell knew you were engaged in that
5 particular study.

6 THE WITNESS: Should I guess?

7 MR. MOORER: Don't -- don't guess or
8 speculate. If you --

9 THE WITNESS: I'd be speculating.

10 MR. MOORER: If you know, you can say.

11 THE WITNESS: I don't know.

12 BY MR. SHAW:

13 Q. So you do not know. Did Mr. Mitchell
14 tell you how he knew that?

15 A. He did not.

16 Q. All right. Have you completed that
17 study?

18 A. Sure.

19 Q. Did you do anything with that particular
20 study, was it published; was it formulated; peer
21 reviewed, anything like that?

22 A. Absolutely not.

23 Q. Do you consider it to be scientifically

1 based or basically an informal observation?

2 A. It was an informal study that was
3 brought to a conclusion that I think is well
4 founded in science.

5 Q. Why were you doing -- we don't know the
6 results of that particular study?

7 A. What did you say?

8 Q. We don't have the results of that
9 particular study? Have they been put down where
10 we can look at them?

11 A. We have -- I have never written them up.

12 Q. All right. Why were you engaged in that
13 particular study?

14 A. Because I wanted to know if there was
15 any fire where the smoke was.

16 THE COURT REPORTER: Any what?

17 THE WITNESS: Fire where the smoke was.

18 BY MR. SHAW:

19 Q. Now at that particular time, were you a
20 consultant for Mr. Harman?

21 A. No.

22 Q. Were you working as a consultant for
23 Mr. Harman at that particular time?

1 conversation -- during this conversation with
2 Mr. Mitchell in Alabama, did you talk to him about
3 the functioning and malfunctioning of the ET-Plus?

4 A. I did.

5 Q. And what did you tell him exactly about
6 that in Alabama?

7 A. I told him of the informal study I did
8 where I started monitoring the impacts when I got
9 to Alabama. Actually, the crash sites for ET-Plus
10 impacts, and I found 20 in a row that didn't
11 extrude more than four feet or three and a half
12 feet, something like that. And -- very short
13 distance, and -- and that concerned me because we
14 had very few of those in the ET -- ET-2000. When
15 we monitored the ET-2000, almost every one of them
16 extruded four to six feet or more. That's even if
17 you hit it at fairly high angle. And so, like the
18 15-degree hit we did on the crash test of the
19 ET-2000, it extruded far more than three -- three
20 or four feet.

21 And so -- so this concerned me, and so I
22 -- I got some of the heads and I cut them apart
23 and I noticed that there was scoring between the

1 top of the grail and the -- and the inside of the
2 top -- top of the feeder chute and inside of the
3 bottom of the feeder chute in the bottom of the
4 rail.

5 Q. Scoring?

6 A. Scoring.

7 Q. S-C-O-R-I-N-G?

8 A. You got it.

9 Q. Okay. What else did you find?

10 A. And that appeared to be a significant
11 source of -- of friction resistance to -- to
12 extrusion. And would -- would be a reasonable
13 explanation for why they weren't extruding very
14 far.

15 Q. Did you -- how did you obtain access to
16 these heads so that you could then cut them off of
17 the roadway?

18 A. I didn't take them off of the roadway.

19 Q. You cut them right there on the roadway?

20 A. I did not. I got them out of the scrap
21 yard.

22 Q. Where -- what scrap yard?

23 A. One of the local repair places.

1 Q. You're talking about after they had been
2 removed from the roadway --

3 A. Correct.

4 Q. -- by the Alabama DOT or whoever does
5 it?

6 A. They do it via contract, so it was one
7 of the contractors.

8 Q. Oh. Which contractor did you utilize to
9 obtain these heads?

10 A. I don't remember.

11 Q. Who directed you to that contractor?

12 A. It would have been a fellow with -- with
13 the Alabama DOT, the Birmingham District.

14 Q. And I think you told me earlier that
15 your motivation was doing this was to determine if
16 there was any -- if there was any -- where there
17 was smoke there was fire?

18 A. If there was any fire with this smoke.

19 Q. With the smoke, okay. I said it
20 backwards, I apologize. Now, you were at one
21 time inventor of the ET-2000, correct?

22 A. I think I still am.

23 Q. Received -- received royalties for that

1 is is when Mr. Mitchell came to Alabama there was
2 no nondisclosure agreement in place, correct?

3 A. There was no nondisclosure agreement in
4 place.

5 Q. In fact, there wasn't one being talked
6 about at that time?

7 A. That's correct.

8 Q. All right. What was the name of the
9 scrap yard or holding yard that you went to in
10 connection with your informal study?

11 A. I got it from the -- from the
12 contractor, so I don't know.

13 Q. What's the contractor?

14 A. I don't remember.

15 Q. Okay. We don't remember the contractor,
16 nor do we remember the scrap yard?

17 A. There is only one. It's a contractor.
18 He does it.

19 Q. Okay. So it's the same spot? Where is
20 it geographically located?

21 A. Mobile.

22 Q. All right. Where in Mobile, Alabama is
23 it located?

1 A. I don't know.

2 Q. All right. Do you have any records that
3 would help you determine, in connection with your
4 study, the contractor's name, location of the
5 scrap yard, anything of that nature?

6 A. Not the best of my recollection. In
7 fact, I think, actually, the contractors hauled
8 them up to Birmingham for me.

9 Q. So the contractors brought them to you?

10 A. Yeah.

11 Q. Did you pay them to do that?

12 A. No. They were coming up here anyway.
13 They had contracts in Birmingham.

14 Q. And did you talk to them on the phone?

15 A. Yes.

16 Q. And who did you talk to?

17 A. I don't remember.

18 Q. So what happened to the heads once they
19 were brought up here to you?

20 A. I cut them apart.

21 Q. And what did you do with them after
22 that?

23 A. I gave them to my lawn -- to my -- to

1 the guy that mows my lawn. He -- he asked if he
2 could scrap -- scrap them for me. I said, sure,
3 go ahead.

4 Q. How many heads did you give to him?

5 A. Three.

6 Q. What's the name of the guy that mows
7 your yard?

8 A. Oh my God, I don't know.

9 Q. You don't know the name of the --

10 A. I know the name of the -- of his -- of
11 his boss, the guy who hires him.

12 Q. And who would that be?

13 A. That would be Biscuit. His name is
14 Biscuit. I'm going to come up with this. Jason
15 Humphries.

16 Q. Jason Umphries?

17 A. Humphries.

18 Q. Humphries.

19 A. Goes by the name of Biscuit. He's a
20 firefighter in one of the local communities.

21 Q. Did anyone assist you in cutting open
22 these heads?

23 A. No.

1 the ET-Plus in February of 2013 when you were
2 meeting with them?

3 A. The subject never came up, and I --

4 Q. You certainly didn't volunteer it to
5 them?

6 A. No, I did not.

7 Q. All right. Did you tell the --
8 Mr. Marchase --

9 A. Mr. Marchase.

10 Q. -- Marchase --

11 A. Marchase.

12 Q. -- Mr. Marchase or Mr. Leonard that you
13 were engaged in a study of a product of someone
14 that you were going to meet with about business
15 opportunities?

16 A. No.

17 Q. Have they ever told you that they wished
18 you had disclosed that to them?

19 A. No.

20 Q. Even as we sit here today?

21 A. No.

22 Q. Did you take any pictures or a video of

23 any of the study that you conducted?

1 A. I took pictures.

2 Q. Where are those photographs?

3 A. We're trying to find them on the hard
4 drive.

5 Q. All right. Have you brought them here
6 with you today?

7 A. If I had found them on the hard drive,
8 I would have brought them here with me today.

9 Q. So you haven't brought any of them here?
10 You haven't been able to find any of them?

11 A. I haven't been able to find any of them.

12 Q. All right. How about any notes from
13 that particular study, have you produced those?

14 A. They're -- they're with the pictures in
15 the same file.

16 Q. All right. So they're no longer -- at
17 least as of today, we've been unable to locate
18 those?

19 A. That's correct.

20 Q. All right. And am I correct that you
21 don't intend to publish this study or put it into
22 formal circulation for peer review or however it
23 works in the scientific community?

1 A. Correct.

2 Q. And on each of these locations, your
3 measurements are of 14 and three-quarters for the
4 first impact and 15 and an eighth for the second
5 impact --

6 A. Correct.

7 Q. -- for the feeder chute?

8 A. Correct.

9 Q. All right. Where are those measurements
10 as we sit here today? We have that written down
11 anywhere where we can see that?

12 A. Well, we can go do it again if you'd
13 like, but no, I don't have them. They're on the
14 notes that are on -- that we lost on the hard
15 drive crash.

16 Q. Okay. I'm just making sure those are
17 the same notes that we're talking about.

18 A. Same notes.

19 Q. All right. So we don't have those
20 notes. And the same would hold true for the
21 photographs?

22 A. Correct.

23 Q. Did you have anybody assisting you that

1 A. I recognize the spots, but I can't --
2 can't recall exactly.

3 Q. All right. Can you provide that
4 information to your counsel --

5 A. At a later time, yes.

6 Q. -- so that we can go and check that and
7 verify that? And where would be the other --

8 A. What are you going verify?

9 Q. I'm just going to go look at it and see
10 what it looks like.

11 A. Okay, okay. I can tell you where those
12 were.

13 Q. Yeah, that's what I need to know. And
14 for the second location as well.

15 A. I can give you both of those locations.

16 Q. What's the second location?

17 A. They're both on I-65 southbound through
18 Hoover.

19 Q. Both of them through Hoover?

20 A. Correct.

21 Q. Okay. As we sit here today, though, you
22 don't know the exact location, correct?

23 A. I don't -- I don't have the outpost on

1 my -- the top of my head, but I know where they're
2 at.

3 Q. When the measurements were taking place,
4 did you -- did you -- were you measuring them --
5 these two locations, were you measuring them as --
6 with rail extruded through them immediately after
7 the collision?

8 A. Correct.

9 Q. All right. Do you have information
10 about how that collision occurred?

11 A. No.

12 Q. Okay. And do you have information about
13 how any of the collisions occurred for any of the
14 heads that you looked at that were brought to you
15 by the contractor in Alabama and from Mobile,
16 Alabama?

17 A. Of the 20 I've looked at, I could see
18 the tracks where the car approached in most cases.

19 Q. See it where?

20 A. In the grass.

21 Q. Well, I thought that you were -- they
22 were brought to you from Mobile, Alabama to your
23 house?

1 that point.

2 Q. As to all of these 20 accidents in a
3 row, can you point to me the physical location of
4 every one of these -- every one of these that you
5 looked at?

6 A. If I could find my notes, I'll be able
7 to point them out to you.

8 Q. But as we sit here today, you're unable
9 to do that?

10 A. That's correct.

11 Q. And you don't have any notes that you
12 found yet to be produced, correct?

13 A. That's correct.

14 Q. You recognize that would be relevant to
15 this inquiry?

16 A. Absolutely.

17 Q. And have you looked at your calendars
18 and all of your computer system, e-mails,
19 everything trying to find it?

20 A. I've looked through my e-mail system.
21 I -- I -- I've -- still have more work to do in
22 terms of trying to make sure that I've -- I've
23 studied all the archives.

1 A. Static testing would not be as good as
2 dynamic testing.

3 BY MR. SHAW:

4 Q. All right. Thank you. And as to all of
5 the measurements that you made on the 20 heads
6 that were on the roadside, those would be in the
7 notes that you've been unable to locate, correct?

8 A. Correct.

9 Q. And that would hold true for photographs
10 as well?

11 A. Yes.

12 Q. And it would also hold true for any
13 video if you had video?

14 A. I didn't take any video.

15 Q. Did you have any background information
16 about any of these 20 heads about how the accident
17 may have occurred?

18 A. Other than the evidence at the scene,
19 no.

20 Q. Which you don't have that now --

21 A. No.

22 Q. -- evidence on the scene, correct?

23 A. Not right now.

1 Q. Well, tell me what the evidence on the
2 scene for the 17th one you looked at was.

3 A. Well, if I find my photos I'll be able
4 to tell you.

5 Q. But as you sit here today, you can't
6 tell me?

7 A. I cannot tell you.

8 Q. Can you tell me what the evidence on the
9 scene for the fifth one that you looked at was?

10 A. No.

11 Q. Okay. When was it that you would have
12 talked to Don Graham?

13 A. '94.

14 Q. I'm sorry?

15 A. '93 or '94.

16 Q. '93 or '94?

17 A. (Witness nods head.)

18 Q. And this would've been before the
19 ET-Plus was even --

20 A. Created, of course.

21 Q. Or thought about?

22 A. Of course.

23 Q. Did you tell Steve Lawrence that you had