

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

PATRICIA ANN GREEN, administrator)	CIVIL ACT. NO. 3:00CV00049
of the Estate of HERMAN MICHAEL GREEN,)	
Deceased,)	
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
FORD MOTOR CO. <i>et al.</i> ,)	
)	
Defendants)	JUDGE JAMES H. MICHAEL, JR.

I.

Before the court are the parties' motions *in limine*. Having reviewed the motions and oppositions thereto; having heard oral argument by counsel; and for the reasons hereinafter set forth, the plaintiffs' motions shall be DENIED IN PART and GRANTED IN PART, and the defendants' motions shall be DENIED IN PART and GRANTED IN PART. Familiarity with the factual background of this case, described in the court's November 5, 2001 Memorandum Opinion, shall be assumed. Additional relevant facts shall be discussed as they pertain to each of the parties' respective motions.

II.

A. PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE "FULL SCALE BURN TEST"

The plaintiffs move to exclude evidence relating to Ford's execution of a test intended to examine the credibility of the plaintiffs' claim that the fire started at the fuel tank of the subject vehicle rather than its engine. The plaintiffs argue that the defendants' introduction of this evidence failed to meet the deadline for the submission of rebuttal evidence under Fed. R. Civ. P. 26(a)(2)(C). In

addition, the plaintiffs assert that, because many of the test's conditions vary from those of the episode in litigation, it does not afford a fair comparison and thus may mislead the jury.

Generally, “demonstrations of experiments used to illustrate principles forming an expert’s opinion are not required to reflect conditions substantially similar to those at issue in the trial.” *Hinkle v. City of Clarksburg*, 81 F.3d 416, 424 (4th Cir. 1995). However, due to their life-like and persuasive nature, videotapes purporting to recreate events at issue in a trial must be substantially similar to the actual events to be admissible. *Id.* at 425. While the difference between a recreation, to which the substantial similarity requirement applies, and an illustration or demonstration, which is not subject to the substantial similarity requirement, may at times be difficult to determine, the practical distinction “is the difference between a jury believing that they are seeing a repeat of the actual event and a jury understanding that they are seeing an illustration of someone else’s opinion of what happened.” *Id.* (citing *Datskow v. Teledyne Continental Motors Aircraft Prods.*, 826 F.Supp. 677, 686 (W.D.N.Y. 1993)).

The test at issue involved igniting the fuel tank on an exemplar truck positioned in a manner similar to that of the subject vehicle following the accident. The video shows that the fire is concentrated toward the back rather than the front of the exemplar vehicle, contrary to the observations of eyewitnesses at the scene of the accident at issue. According to the defendants, the purpose of this test is to refute the suggestion of plaintiffs’ expert Schulz that the vehicle fire on the day of the accident originated at the subject vehicle’s fuel tank. Specifically, the defendants assert that the video at issue is “a demonstration of the principles of fire behavior and progression designed to illustrate the incorrect nature of Mr. Schulz’s testimony in this case.”

After reviewing the disputed videotape, this court is unpersuaded by the defendants’

contention that it is offered as “a demonstration of the principles of fire behavior and progression.” As the Fourth Circuit noted in *Gladhill v. General Motors Corp.*, 743 F.2d 1049, 1052 (4th Cir. 1984), “it is possible to call almost any evidence of this type ‘a demonstration to illustrate a principle.’” In this case, the test more closely resembles a recreation used to counter the plaintiffs’ theory than it does an abstract demonstration of scientific principles. From this recreation, the defendants would contend that, adopting all of the conditions asserted by the plaintiffs, the ultimate result would be a fire concentrated at the back of the vehicle rather than the front, where accident eyewitnesses observed the focus of the fire .

Generally, a reenactment is only admissible if it was made under conditions which are substantially similar to those which are the subject of the litigation. Ford’s recreation fails to reflect a number of conditions that were undisputedly present at the accident scene. Primarily, while the video shows a static truck being ignited, the accident at issue involved a dynamic event in which the truck tipped over and slid along the highway before igniting. In addition, the accident occurred on an asphalt surface while the experiment was performed on concrete. It is also noted that, unlike the exemplar truck shown in the video, the subject truck had been driving continuously for a substantial period of time before the accident.

In addition to the absence of accident conditions not in dispute, the plaintiffs challenge Ford’s omission of certain wind and weather conditions, and the fact that, in contrast to Schulz’s theory, Ford ignited the gasoline directly instead of the resulting vapor cloud. As the Fourth Circuit has noted, “the requirement of similarity is moderated by the simple fact that the ‘actual events’ are often the issue disputed by the parties.” *Hinkle*, 81 F.3d at 425. Because the parties dispute the origin of the fire and the wind conditions at the time of the accident, it would be expected that a reenactment

of the defendants' version of the accident would vary from that of the plaintiffs. However, the reenactment now before the court is intended to recreate the plaintiffs' version of the accident in an effort to show that the plaintiffs' version does not result in the same flame concentrations observed at the scene of the actual accident. Ford's failure to include in its experiment significant conditions not in dispute is by itself a sufficient basis for the exclusion of the burn test. However, any probative value Ford's experiment provides is further diminished by its failure to replicate the conditions the plaintiffs state were present at the accident scene.

Because this court finds that the conditions present in Ford's burn experiment were not substantially similar to those present at the time of the accident, the plaintiffs' motion to exclude the experiment shall be granted. Based on this ruling, it is unnecessary to address the plaintiffs' claim that submission of the burn demonstration was untimely.

B. PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE THE "PUNCTURE TESTS"¹ AND ALL RELATED TESTIMONY AND EXHIBITS OF DEFENDANTS' EXPERT, EDWARD M. CAULFIELD

In support of his opinion that a fuel tank shield provides no additional benefit in protecting from puncture a fuel tank of the type used on the subject vehicle, Ford's expert Edward M. Caulfield performed a series of "puncture tests" on exemplar fuel tanks. The plaintiffs move, pursuant to Fed.

¹ Note that, originally, the plaintiffs also sought the exclusion of evidence relating to Caulfield's "leak tests." At the hearing on this matter, the defendants indicated that they will not be submitting the "leak test" at trial, and thus the plaintiffs subsequently withdrew their motion to exclude the "leak test."

R. Evid. 403 and related case law, to exclude the “puncture tests” and all related testimony and exhibits. The plaintiffs argue that the conditions of the “puncture tests,” namely, the amount of force present, are not substantially similar to those of the accident.

In his deposition, Caulfield stated that the puncture testing involved setting the exemplar tank in a “Baldwin type test machine” with “two heads” that “close down” to push gradually an object into the tank until it is punctured. (Caulfield Dep. at 46-48.) In contrast to Ford’s burn test, Caulfield’s description of the “puncture tests” indicates that these tests more closely resemble “demonstrations of experiments used to illustrate principles forming an expert’s opinion” than they do a recreation. *Hinkle*, 81 F.3d at 424. This court feels that, in viewing Caulfield’s “puncture tests,” the jury will understand that they are seeing an experiment offered to illustrate general physical principles regarding the use of shields to protect vehicle fuel tanks from puncture, rather than a repeat of the actual event at issue.² For this reason, the substantial similarity requirement should not apply to the “puncture tests,” and dissimilarities between the actual and experimental conditions will go to the weight of the evidence rather than its admissibility. *See Hinkle*, 81 F.3d at 424. Thus, the plaintiffs’ motion shall be denied.

C. PLAINTIFFS’ MOTION *IN LIMINE* TO EXCLUDE THE TESTIMONY OF DEFENDANTS’ EXPERT, PATRICK J. MCGINLEY

The plaintiffs move to exclude the testimony of defendant U-Haul’s expert, Patrick J. McGinley, who is offered as an expert witness regarding the origin of the fire. The plaintiffs argue that McGinley’s testimony fails the standard for the admissibility of expert opinions set forth in Fed.

² Nevertheless, to ensure that the jury properly understands the nature of the “puncture tests,” the court will instruct the jury that the tests are not intended to be a recreation of the events at issue.

R. Evid. 702. This court concludes that, while McGinley's testimony regarding how generally the fire could have started in the engine compartment and spread to the truck's cabin is admissible, his opinion that the fire in fact started in the engine compartment must be excluded.

Rule 702 states that expert testimony may be admitted if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." Thus, under Rule 702, expert testimony on a matter which is clearly within the common knowledge of jurors is inadmissible because "such testimony, almost by definition, can be of no assistance." *Scott v. Sears, Roebuck & Co.*, 789 F.2d 1052, 1055 (4th Cir.1986). In fact, "evaluation of the commonplace by an expert witness might supplant a jury's independent exercise of common sense." *Id.*

McGinley's opinion that the fire originated in the engine compartment of the subject vehicle is based on the fact that (1) eyewitnesses state that the fire was most intense at the front of the truck, and (2) "photographic documentation of the engine compartment area post incident...clearly identifies the fact that the organic fuel packages within the engine compartment were consumed in this fire." (McGinley Report at 4). However, as McGinley acknowledged in his deposition testimony, the fact that fuel packages within the engine compartment were consumed only indicates that the fire was at some point in the engine compartment; it does nothing to support a determination of the fire's origin. (McGinley Dep. at 73³). Thus, the only tenable basis for McGinley's opinion is the observation of the eyewitnesses. The jurors will hear firsthand the testimony of the eyewitnesses at trial, and are entirely capable of interpreting that testimony and its implications regarding the origin of the fire

³ Q. "Well, the fact that the organic fuel packages within the engine compartment were consumed by fire is equally consistent with a fire that started elsewhere, but then got to the engine compartment; is it not?"
A. "You mean the fact that the fuel packages are burned? It just means it was a fire in the engine, that true."

without the assistance of an expert. That is, McGinley's conclusion that, because the eyewitnesses observed the fire concentrated at the front of the vehicle, the fire most likely originated at the front of the vehicle, is a commonplace, rather than an expert, evaluation.⁴

While McGinley's opinion regarding the origin of the fire should be excluded, his general description of how a fire could ignite in the engine compartment and then invade the passenger compartment is admissible. This description may assist the jury in understanding the general mechanics underlying vehicle fires and the theoretical plausibility of the defendants' assertion that the subject fire began in the U-Haul's engine compartment. Such testimony exceeds the commonplace knowledge of most jurors and McGinley is undeniably qualified to offer such an opinion. In addition, McGinley may be permitted to testify regarding alternative theoretical explanations for evidence that the plaintiffs suggest indicates the fire originated at the truck's fuel tank.

D. PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE THE TESTIMONY OF DEFENDANTS' EXPERT, RALPH NEWELL

The plaintiffs move to exclude the testimony of Ford's expert witness, Ralph Newell, pursuant to Fed. R. Evid. 702, *Daubert*, *Kumho Tire*, and other pertinent case law. Specifically, the plaintiffs

⁴ During the hearing on this matter, counsel for the defendants suggested that this court's refusal to exclude the expert testimony of plaintiffs' experts Stilson and Schulz established a benchmark prescribing the admissibility of the defendants' proposed experts. Even if such a benchmark were used to evaluate the admissibility of McGinley's testimony, the result would be the same. For example, Schulz, unlike McGinley, supports his opinion by citing evidence specifically suggesting the fire originated in the back of the truck. Schulz testifies that the burn patterns on the subject vehicle suggest the fire moved from the gas tank toward the front of the vehicle. In anticipation of McGinley's suggestion that Schulz's observation regarding burn marks could simply mean that a second fire at the fuel tank was ignited by the first fire that originated in the front of the truck, Schulz further supports his theory by citing the fact that the back of the vehicle is more severely burned than the front of the truck.

argue that Newell's analysis lacks sufficient factual support, based in part on Newell's own admission during deposition that he lacked important factual information due to the destruction of the subject vehicle. Furthermore, the plaintiffs assert that, even if the factual foundation for his opinions were adequate, Newell's testimony fails to meet the second requirement of Rule 702 because he provides no methodology with which to analyze a factual foundation.

While both parties agree that the destruction of the subject vehicle may have hindered the investigations of Ford's experts, Newell based his opinion on a sufficient factual foundation, including an analysis of the remaining vehicle parts, photographs of the vehicle prior to its destruction, and an exemplar vehicle. In fact, Newell includes in his report a detailed list of the materials he reviewed and considered in developing his opinion. In addition, Newell provided insight into his method of analysis in both his official report and deposition. For example, in support of his opinion that the fire did not begin at the fuel tank, Newell cites photographic evidence that the truck's "rubber fuel lines as well as the filler tube and combustible components that should have been destroyed had there been gasoline spilling from [the] fuel tank and burning" remained intact. (Newell Report at 3.) Furthermore, Newell notes that "the primer and paint around the violation in the tank failed to reveal any evidence of gasoline vapors burning from running liquid from the hole." *Id.* Newell also notes that, while the tires at rear drive axle of the subject vehicle were severely damaged by fire, the tires on the driver's side that were directly below the fuel tank were not destroyed. *Id.* Finally, Newell describes in some detail both in his report and in his deposition that specific burn patterns on the truck bolster his opinion regarding the origin of the fire.

As this court has noted in addressing prior *Daubert* challenges in this action, of primary concern is whether the basis for an expert's opinion is sufficiently transparent to allow the opposing

party to utilize the adversary system to rebut that expert's testimony through cross-examination and the presentation of contrary evidence if such evidence exists. Newell provides a detailed explanation of the basis for his opinion, and thus he shall be permitted to testify and the plaintiffs' motion shall be denied.

E. PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE TESTIMONY OF DEFENDANTS' EXPERT, PHILIP J. STENGER

The plaintiffs move to exclude the testimony of defendants' expert Philip J. Stenger on the basis that Stenger's designation was untimely and that his opinions do not assist the trier of fact. Stenger has been designated as an expert in the fields of meteorology and climatology to rebut the testimony of plaintiffs' expert Schulz regarding wind direction at the accident scene.

Fed. R. Civ. P. 37(c)(1) states, in pertinent part, "[a] party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed." Thus, Rule 37(c)(1) generally provides for the "automatic" exclusion of witnesses and information that were not disclosed despite a duty to do so under Rule 26(a) or Rule 26(e)(1). See 8A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2289.1 (2d ed. 1994). Nevertheless, exclusion should not apply if the failure to disclose was "substantially justified" or "harmless."

The district court is given broad discretion in determining whether a disclosure violation is justified or harmless under Rule 37(c)(1). See *Hinkle v. City of Clarksburg*, 81 F.3d 416, 426 (4th Cir. 1996); *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999). Nevertheless, in making such a determination, a district court may be guided by the following

factors: (1) the prejudice or surprise to the party against whom the evidence is offered, (2) the ability of the party to cure the prejudice, (3) the extent to which introducing such testimony would disrupt the trial, and (4) the moving party's bad faith or willfulness. *See Woodworker Supply*, 170 F.3d at 993; *See also Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 2001 WL 1104486 at 35 (4th Cir. 2001).

In considering the aforementioned factors in conjunction with Rule 37(c)(1), this court finds that the exclusion of Stenger's testimony under Rule 37(c)(1) would be inappropriate. While the defendants' late disclosure of Stenger as an expert witness was not entirely excusable, some leniency is merited due to the fact that plaintiffs' expert Schulz did not reveal his opinion regarding wind and weather conditions until his deposition. Furthermore, because notice regarding Stenger's testimony was given to the plaintiffs well before trial, it does not appear that the plaintiffs have been unduly prejudiced by the introduction of the testimony at issue.

In addition to seeking the exclusion of Stenger's testimony on the basis that his designation as an expert was untimely, the plaintiffs argue that Stenger should be excluded from testifying because his opinion will not be helpful to the jury. Specifically, the plaintiffs assert that Stenger's testimony is unnecessary to rebut Schulz's testimony regarding wind conditions at the accident scene because the defendants will have an opportunity to cross-examine Schulz. Furthermore, the plaintiffs argue that Stenger's premise regarding the variable nature of weather conditions is within the common knowledge of the jury.

This court finds absurd the plaintiffs' argument that, because the defendants have an opportunity to cross-examine Schulz, Stenger's testimony is unnecessary. Surely the plaintiffs do not feel that their opportunity to cross-examine the defendants' expert witnesses regarding the origin of

the fire renders their right to present contrary expert testimony unnecessary. Furthermore, Stenger's interpretation of meteorological data at the time of the accident is unlikely to be within the common understanding of the jury.⁵ While the plaintiffs argue that the basis for Stenger's opinion lacks credibility, such a deficiency should go to the weight of the testimony rather than its admissibility. Thus, the plaintiffs' motion shall be denied and Stenger shall be permitted to testify.

F. PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF CERTAIN PAST CONDUCT BY PLAINTIFFS' EXPERT, MICHAEL J. SCHULZ

The plaintiffs move for an order excluding all evidence arising from or relating to (1) untruthful statements that plaintiffs' expert Michael J. Schulz made and any suspensions imposed on him arising from his alleged inappropriate relationship with a minor while employed as a police officer in Cedarburg, Wisconsin, and (2) allegations made by Schulz's former employer, John Kennedy & Associates, that he stole from the company. The plaintiffs argue that the admission of such evidence would contradict the Fourth Circuit's strict interpretation of Fed. R. Evid. 608(b) and the overriding protection of Fed. R. Evid. 403.

Rule 608(b) states, in pertinent part, the following:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of

⁵ In fact, Stenger's interpretation of meteorological data is more appropriately the subject of expert testimony than Schulz's opinion regarding wind direction based on photographic evidence that smoke from the fire at issue was billowing in a certain direction. Nevertheless, Schulz's opinion regarding wind direction at the time the photograph was taken is acceptable as it is ancillary to the primary subject of his testimony.

another witness as to which character the witness being cross-examined has testified.

The advisory committee notes to Rule 608(b) suggest that in determining whether to permit cross-examination concerning specific instances of conduct, the district court should be guided by the “overriding protection” of Rule 403. Rule 403 states that, “although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

The defendants cite instances in which Schulz lied under oath regarding his alleged conduct at prior places of employment. Under Rule 608(b), the defendants should be permitted to cross-examine Schulz regarding these instances as probative of his character for truthfulness or untruthfulness. However, such cross-examination should be limited to the fact that he has lied under oath, and should not address specifically Schulz’s conduct, real or alleged, while employed by either the Cedarburg, Wisconsin police department or Kennedy & Associates. The probative value of the specific instances of conduct at issue is outweighed by the prejudicial effect such information would likely have if revealed to the jury, and thus plaintiffs’ motion shall be granted with regard to those specific instances of conduct..

G. PLAINTIFF’S MOTION *IN LIMINE* TO BAR LARRY F. RAGAN FROM TESTIFYING FOR THE DEFENDANTS AS AN EXPERT WITNESS

The plaintiffs move for an order barring defendants’ expert Larry F. Ragan from testifying as an expert for Ford on the grounds of bias. Specifically, the plaintiffs argue that Ragan’s many years of employment with Ford, in addition to the fact that he has testified on Ford’s behalf in numerous cases, suggests that he is biased in Ford’s favor. This argument is without merit.

The issue of witness credibility is most appropriately left to the jury, whether the witness is lay or expert. *DiCarlo v. Keller Ladders, Inc.*, 211 F.3d 465, 468 (8th Cir. 2000) (citing 3 WEINSTEIN'S FEDERAL EVIDENCE § 601.03[2][a] at 601-13 (Joseph M. McLaughlin ed., 2d ed. 2000)). That is, an expert witness's bias generally goes to the weight, not the admissibility of the testimony. *Id.* While the plaintiffs may, and should, cross-examine Ragan with regard to his potential bias in this case, evidence of his pre-existing professional relationship with Ford is an insufficient basis for exclusion and thus the plaintiffs' motion is denied.

H. DEFENDANTS' MOTION FOR LEAVE TO TAKE DE BENE ESSE DEPOSITIONS

Ford moves, pursuant to Fed. R. Civ. P. 32, for leave to take trial depositions of accident eyewitnesses Allen Gallagher, William Boyer, and David Boyer, all of whom are beyond the subpoena power of this court and do not wish to travel to Charlottesville for the trial. Ford desires to take videotaped *de bene esse* depositions of each of the eyewitnesses in their home jurisdictions because (1) the prior depositions of these witnesses were intended for discovery purposes, and were not necessarily structured in the format which Ford would like to present the witnesses' testimony at trial; and (2) because of the timing of these witnesses' depositions, Ford did not have an opportunity to examine them about the burn demonstration and its relation to what they saw on the date of the accident.

Because this court grants the plaintiffs' motion to exclude Ford's burn demonstration, the defendants' primary motivation for taking a second deposition of the eyewitnesses no longer exists. While the defendants also claim to seek a second deposition of the eyewitness in order to present such depositions in a format more conducive to a trial setting, this reason alone is an insufficient basis for

granting the defendants' motion given the costs and inconvenience taking such a deposition will impose on the plaintiffs. Thus, the defendants motion shall be, and it hereby is, denied.

I. DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE CERTAIN EVIDENCE RELATED TO THE DEATHS OF HERMAN GREEN AND ROBERT CAREY

The defendants move for an order precluding plaintiff William F. Miller, Jr., or his counsel from (1) offering testimony by witness Roger Allen Gallagher that Mr. Carey or Mr. Green made certain statements prior to his death⁶; and (2) mentioning, arguing, or introducing evidence concerning damages claims by Mr. Green or Mr. Carey or the allegation that they died as a result of the fire.⁷

Fed. R. Evid. 403 states that, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or be considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Even if the statements Green or Carey allegedly made have some probative value, such value is substantially outweighed by the prejudicial effect these statements are likely to have on the jury, and thus evidence regarding these statements should be precluded from Miller’s trial. In addition, specific details regarding the damages claims of Green and Carey, or the allegations that they died as a result of the fire, should be precluded from Millers’ trial as unduly prejudicial under

⁶ Specifically, Ford moves to exclude Gallagher’s testimony that, after the accident, he heard a man, not Mr. Miller, in the vehicle say twice, “God help me! Don’t let me burn up! God, help me.”

⁷ Note that the defendants also sought to preclude the plaintiff from publishing at trial photographs of the bodies of Mr. Green or Mr. Carey. However, at the hearing on this motion, the plaintiffs stated that they would not introduce such photographs at trial and the defendants withdrew that aspect of their motion.

Rule 403. However, general references to the fact that Green and Carey in fact died in the accident should be permitted.

J. PLAINTIFFS' MOTION TO PRESENT VIDEO DEPOSITION IN LIEU OF LIVE TESTIMONY

The plaintiffs request to present video deposition of Dr. David Drake and Thomas Green in lieu of live testimony. Because the defendants have expressed their consent to the granting of this motion, the plaintiffs' motion shall be granted.

K. DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF LOST WAGES OR FUTURE MEDICAL EXPENSES

The defendants move to exclude any evidence relating to or claim by the plaintiff Miller of future medical expenses and future lost wages or earning capacity because the plaintiff has failed to provide adequate notice of or meaningful information in support of those claims. In response, dated November 1, 2001, the plaintiff states that he does not intend to pursue claims for either lost wages or future medical expenses and therefore he will not introduce evidence on either issue. Consequently, the defendants' motion shall be dismissed as moot.

III.

To summarize, (1) the plaintiffs' Motion *In Limine* to Exclude "Full Scale Burn Test" shall be GRANTED; (2) the plaintiffs' Motion *In Limine* to Exclude the "Puncture Tests" and All Related Testimony and Exhibits of Defendants' Expert, Edward M. Caulfield is DENIED; (3) the plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert, Patrick J. McGinley shall be GRANTED IN PART, as to testimony regarding the origin of the fire in the subject vehicle, and

DENIED IN PART, as to general testimony regarding how a fire could ignite in the engine compartment of a vehicle like that at issue and then invade the passenger compartment; (4) the plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert Ralph Newell shall be DENIED; (5) the plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert Philip J. Stenger shall be DENIED; (6) the plaintiffs' Motion *In Limine* to Exclude Evidence of Certain Past Conduct by Plaintiffs' Expert Michael J. Schulz shall be DENIED IN PART, as to cross-examination addressing generally instances in which Schulz lied under oath regarding alleged conduct at prior places of employment, and GRANTED IN PART, as to references to specific instances of Schulz's conduct while employed by either the Cedarburg, Wisconsin police department or Kennedy & Associates; (7) the plaintiffs' Motion *In Limine* to Bar Larry F. Ragan from Testifying for the Defendants as an Expert Witness shall be DENIED; (8) the defendants' Motion for Leave to Take *De Bene Esse* Depositions shall be DENIED; (9) the defendants' Motion *In Limine* to Exclude Certain Evidence Related to the Deaths of Herman Green and Robert Carey shall be GRANTED IN PART, as to statements allegedly made by Green or Carey, details regarding the damages claims of Green and Carey, and allegations that Green and Carey died as a result of the fire, and DENIED IN PART, as to general references to the fact that Green and Carey in fact died in the accident at issue; (10) the plaintiffs' Motion to Present Video Deposition In Lieu of Live Testimony shall be GRANTED; and (11) the defendants' Motion *In Limine* to Exclude Evidence of Lost Wages or Future Medical Expenses shall be DISMISSED AS MOOT.

An appropriate Order shall this day issue.

ENTERED: _____

Senior United States District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

PATRICIA ANN GREEN, administrator)	Civil Action No.. 3:00CV00049
of the Estate of HERMAN MICHAEL GREEN,)	CONSOLIDATED WITH
Deceased,)	Civil Action Nos. 3:00CV00050

)	and 3:00CV00051
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
FORD MOTOR CO. <i>et al.</i> ,)	
)	
Defendants)	JUDGE JAMES H. MICHAEL, JR.

Upon consideration of: (1) plaintiffs’ Motion *In Limine* to Exclude “Full Scale Burn Test”; (2) plaintiffs’ Motion *In Limine* to Exclude the “Puncture Tests” and All Related Testimony and Exhibits of Defendants’ Expert, Edward M. Caulfield; (3) plaintiffs’ Motion *In Limine* to Exclude the Testimony of Defendants’ Expert, Patrick J. McGinley; (4) plaintiffs’ Motion *In Limine* to Exclude the Testimony of Defendants’ Expert Ralph Newell; (5) plaintiffs’ Motion *In Limine* to Exclude the Testimony of Defendants’ Expert Philip J. Stenger; (6) plaintiffs’ Motion *In Limine* to Exclude Evidence of Certain Past Conduct by Plaintiffs’ Expert Michael J. Schulz; (7) plaintiffs’ Motion *In Limine* to Bar Larry F. Ragan from Testifying for the Defendants as an Expert Witness; (8) defendants’ Motion for Leave to Take *De Bene Esse* Depositions; (9) defendants’ Motion *In Limine* to Exclude Certain Evidence Related to the Deaths of Herman Green and Robert Carey; (10) plaintiffs’ Motion to Present Video Deposition In Lieu of Live Testimony; (11) defendants’ Motion *In Limine* to Exclude Evidence of Lost Wages or Future Medical Expenses; (12) all of the oppositions thereto; and having heard oral argument by counsel, for the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED and DECREED

as follows:

1. Plaintiffs’ Motion *In Limine* to Exclude “Full Scale Burn Test” shall be, and it hereby

is, GRANTED;

2. Plaintiffs' Motion *In Limine* to Exclude the "Puncture Tests" and All Related Testimony and Exhibits of Defendants' Expert, Edward M. Caulfield, shall be, and it hereby is, DENIED;
3. Plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert, Patrick J. McGinley shall be, and it hereby is, GRANTED IN PART, as to testimony regarding the origin of the fire in the subject vehicle, and DENIED IN PART, as to general testimony regarding how a fire could ignite in the engine compartment of a vehicle like that at issue and then invade the passenger compartment;
4. Plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert Ralph Newell shall be, and it hereby is, DENIED;
5. Plaintiffs' Motion *In Limine* to Exclude the Testimony of Defendants' Expert Philip J. Stenger shall be, and it hereby is, DENIED;
6. Plaintiffs' Motion *In Limine* to Exclude Evidence of Certain Past Conduct by Plaintiffs' Expert Michael J. Schulz shall be, and it hereby is, DENIED IN PART, as to cross-examination addressing generally instances in which Schulz lied under oath, and GRANTED IN PART, as to references to specific instances of Schulz's conduct while employed by either the Cedarburg, Wisconsin police department or Kennedy & Associates;
7. Plaintiffs' Motion *In Limine* to Bar Larry F. Ragan from Testifying for the Defendants as an Expert Witness shall be, and it hereby is, DENIED;
8. Defendants' Motion for Leave to Take *De Bene Esse* Depositions shall be, and it hereby is, DENIED;

9. Defendants' Motion *In Limine* to Exclude Certain Evidence Related to the Deaths of Herman Green and Robert Carey shall be, and it hereby is, GRANTED IN PART, as to statements allegedly made by Green or Carey, details regarding the damages claims of Green and Carey, and allegations that Green and Carey died as a result of the fire, and DENIED IN PART, as to general references to the fact that Green and Carey in fact died in the accident at issue;
10. Plaintiffs' Motion to Present Video Deposition In Lieu of Live Testimony shall be, and it hereby is, GRANTED;
11. Defendants' Motion *In Limine* to Exclude Evidence of Lost Wages or Future Medical Expenses shall be, and it hereby is, DISMISSED AS MOOT.

The clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date