

Eastern District of Kentucky

FILED

JUN 10 2015

AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
(at Covington)**

ESTATE OF STEPHEN D. COX
By Martha Jean Cox, Administrator
40 Ron Place
Germantown, Ohio 45327

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Case No. 15-88-WOB-CJS

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and

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MARTHA JEAN COX
40 Ron Place
Germantown, Ohio 45327

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and

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DOUGLAS E. COX
40 Ron Place
Germantown, Ohio 45327

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Plaintiffs,

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v.

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RUSTY WALLACE
RACING EXPERIENCE
73 Patterson Avenue
Pawtucket, Rhode Island 02860

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and

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SITYS, LLC
73 Patterson Avenue
Pawtucket, Rhode Island 02860

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and

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MARK EBERT

39 Warren Street

Plainville, Massachusetts 02762

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and

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CASEY L. SATCHWELL

Carroll County Detention Center

800 Clay Street

Carrollton, Kentucky 41008

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and

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JOHNATHAN CROY

c/o Rusty Wallace Racing Experience

73 Patterson Avenue

Pawtucket, Rhode Island 02860

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and

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RUSTY WALLACE, INC.

322 Rolling Hill Road, Suite B

Mooresville, North Carolina 28117

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and

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RUSTY WALLACE RACING, LLC

322 Rolling Hill Road, Suite B

Mooresville, North Carolina 28117

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and

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KENTUCKY RACEWAY, LLC

1 Speedway Drive

Sparta, Kentucky 41086

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and

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KENTUCKY SPEEDWAY

1 Speedway Drive

Sparta, Kentucky 41086

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and

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SPEEDWAY MOTORSPORTS, INC.
5401 East Independence Boulevard
Charlotte, North Carolina 28212

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and

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JOHN DOES 1 THROUGH 5

*

Defendants.

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**COMPLAINT FOR INJURIES, WRONGFUL DEATH,
DECLARATORY JUDGMENT, AND OTHER RELIEF
JURY DEMAND ENDORSED HEREON**

Now come Plaintiffs, by Counsel, and for their Complaint against Defendants, state as follows:

INTRODUCTION

1. As set forth more fully below, the claims herein are asserted as the result of Defendants' willful and wanton/grossly negligent conduct in operating the "Rusty Wallace Racing Experience" at the Kentucky Speedway on September 14, 2014, which directly and proximately resulted in severe injuries, pain, suffering, and ultimately the death of Stephen D. Cox at the age of 30 years.

2. As alleged more fully below, Defendants wrongfully placed an amateur driver, with no racing experience, in a poorly equipped and maintained race car at an outrageously, inadequately operated activity, both on September 14, 2014 and prior thereto.

3. Equipment used in the subject race car and assembly materials were out of date and inadequate, the head support was cracked, and the restraint systems were expired, together with other gross inadequacies.

4. Defendants failed to properly install the steering wheel on the race car provided to Stephen D. Cox, **which came off of its shaft in Stephen's hands while he was traveling at a speed in excess of 100 mph**, and in the horrifying moments before the crash, a panic-stricken Stephen desperately struggled to reattach the steering wheel and control the race car. The steering wheel was found next to the seat of the race car, alongside Stephen's leg after the fatal crash.

5. Stephen D. Cox's crash was at least the third documented case of the steering wheel falling off while amateurs were driving Defendants' race cars in Defendants' "driving experience".

6. The head and neck support ("HANS") device in the race car provided to Stephen D. Cox was improperly utilized and attached, **resulting in the precise fatal injury that the HANS device was designed to prevent.**

7. Defendants knowingly placed an improper four-inch thick pad between Stephen D. Cox and the seat back, placing him in an unsafe position within proximity of dangerous objects, including the structural support tube where he struck his head.

8. Ensuring proper utilization and attachment of equipment was the direct responsibility of Defendants' employees and/or agents, including Casey Satchwell, who was not qualified by background or training, and who Defendants knew or should have known was unsuitable to trust with the safety and well-being of participants.

9. The event occurred on the Kentucky Speedway, a location which was totally inappropriate for this activity, which was dangerous in its design and surface, and which lacked protection afforded by Steel and Foam Energy Reduction ("SAFER") barriers on the inside wall which was struck by the subject race car.

10. The willful and wanton/grossly negligent actions and omissions of the Defendants, in violation of safety statutes, public policy and even the most minimal safety standards applicable to operation of the subject race car, resulted in the tragic crash, costing Stephen D. Cox his life.

11. Stephen's fatal injuries were extreme and severe, including multiple and extensive fractures to the base of his skull, spine, femur, tibia, fibula and ankles, together with numerous catastrophic acute internal injuries.

12. After a full week of efforts to save his life, Stephen D. Cox died surrounded by his family, after what was supposed to have been a fun day on the race track.

13. Defendants should not be permitted to continue their pattern of substandard operation and safety, as there is an evident public interest in the physical safety and protection of the public.

14. Stephen D. Cox's death is at least the third death in the U.S. in the past year at a race track hosting a so-called "driving experience", in which amateurs are permitted to get behind the wheel of high-powered vehicles.

INTERESTED PARTIES

15. Stephen D. Cox ("Stephen"), a native of Germantown, Montgomery County, Ohio, and resident of Decatur, Adams County, Indiana, died on September 21, 2014, as a result of the injuries suffered as a direct and proximate result of Defendants' wrongful actions.

16. Plaintiff Martha Jean Cox ("Jean Cox") is the mother of Stephen D. Cox, the Administrator of the Estate of Stephen D. Cox, as appointed by the Probate Court of Montgomery County, Ohio, and a resident of Germantown, Montgomery County, Ohio.

17. Plaintiff Douglas E. Cox ("Doug Cox") is the father of Stephen D. Cox, and is a resident of Germantown, Montgomery County, Ohio.

18. Stephen D. Cox is also survived by siblings Sarah Miller, Nathan Cox, and Rachel

Maas, together with multiple nieces and nephews.

19. Defendant SITYS, LLC, conducts the subject business as Defendant “Rusty Wallace Racing Experience”, which at all times relevant herein, operates as a business entity organized under the laws of the State of Rhode Island, with its principal place of business located at 73 Patterson Avenue, Pawtucket, Providence County, Rhode Island 02860.

20. Defendant Mark Ebert, who resides at 39 Warren Street, Plainville, Norfolk County, Massachusetts 02762, was and is, at all times relevant herein, the owner of “Rusty Wallace Racing Experience”, and is individually responsible for control, hiring, management, and the willful and wanton/grossly negligent conduct of the subject “Rusty Wallace Racing Experience.”

21. Defendant Casey L. Satchwell was, at all times relevant herein, an employee and/or agent of Defendants, who currently resides at Carroll County Detention Center, 800 Clay Street, Carrollton, Carroll County, Kentucky 41008.

22. Defendant Johnathan Croy was, at all times relevant herein, an employee and/or agent of Defendants.

23. Defendant Rusty Wallace, Inc., was and is, at all times relevant herein, a corporation organized under the laws of the State of North Carolina with its principal place of business located at 322 Rolling Hill Road, Suite B, Mooresville, Iredell County, North Carolina 28117, which is also involved in the operation of “Rusty Wallace Racing Experience.”

24. Defendant Rusty Wallace Racing, LLC, was and is, at all times relevant herein, a corporation organized under the laws of the State of North Carolina with its principal place of business located at 322 Rolling Hill Road, Suite B, Mooresville, Iredell County, North Carolina 28117, which is also involved in the operation of “Rusty Wallace Racing Experience.”

25. Defendant Kentucky Raceway, LLC, conducts business as Defendant Kentucky

Speedway, was and is, at all times relevant herein, a business entity organized under the laws of the State of Kentucky, with its principal place of business located at 1 Speedway Drive, Sparta, Gallatin County, Kentucky 41086.

26. Defendant Speedway Motorsports, Inc., was and is, at all times relevant herein, a corporation organized under the laws of the State of North Carolina with its principal place of business located at 5401 East Independence Boulevard, Charlotte, Mecklenburg County, North Carolina 28212, which conducts business operations as Defendant Kentucky Speedway and Defendant Kentucky Raceway, LLC.

27. Defendants John Doe 1 through 5, were and are, designees, agents, servants, employees, administrators, staff and/or representatives of Defendants who have engaged in wrongful conduct to be identified and determined who may be identified as discovery progresses.

28. The wrongful actions as alleged herein were undertaken by the designees, agents, servants, employees, administrators, staff and/or representatives of Defendants (collectively, as a group or as a sub-set of the group, the “Defendants” hereinafter).

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction under 28 U.S.C. §1332 insofar as there is complete diversity of citizenship between Plaintiffs and each Defendant, and the amount in controversy far exceeds the jurisdictional limit, exclusive of interest and costs; additionally it has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

30. Plaintiffs are residents of the State of Ohio.

31. Venue is proper in this District under 28 U.S.C. § 1391 insofar as a substantial part of the events giving rise to these claims occurred in Sparta, Gallatin County, Kentucky,

within the Eastern District of Kentucky.

32. At all times relevant to this action, Defendants were authorized to do business within the State of Kentucky and derived substantial revenues in Kentucky.

FACTS

A. September 14, 2014

33. On September 14, 2014, Decedent Stephen D. Cox (“Decedent” or “Stephen”) and his father, Doug Cox, traveled to Kentucky Speedway in Sparta, Kentucky to allow Stephen to participate in a “driving experience” offered by “Rusty Wallace Racing Experience.”

34. Stephen had asked his father, Doug, to go with him to the “driving experience”, and “take lots of pictures” (e.g., Figure 1).



Figure 1

35. Stephen, the second oldest of Jean and Doug Cox’s four children, was a 30 year old pharmacist at the time of his death, having completed a six-year pharmacy program, leading to a Doctor of Pharmacy (Pharm.D.) degree from The Ohio Northern University Raabe College of

Pharmacy, graduating in May 2009 as depicted in Figure 2.



Figure 2

36. Stephen received a voucher as a present for his birthday for the “Rusty Wallace Racing Experience,” which was purchased online.

37. Defendants charge amateurs to “ride-along” and/or drive professional race cars on professional race tracks.

38. The “Rusty Wallace Racing Experience” transports its race cars from location to location across the country, comparable to a mobile amusement ride traveling from one fair/carnival to another.

39. The “Rusty Wallace Racing Experience” is in fact not a race or a competitive event.

40. Stephen was an amateur driver, with no experience driving a race car, and the subject race car provided to him by Defendants as part of the “experience” was an actual NASCAR race car.

41. On the day of the “driving experience”, drivers were given a brief “driver orientation”, in which Defendants primarily utilized the time to emphasize getting the “maximum

performance” to “get the most” out of the “driving experience” and repeatedly attempted to sell a “race car damage limitation policy” to cover any damage to the race car.

42. There was no discussion or explanation of the purported “waivers”/“releases” during the “driver orientation”.

43. At about 10:45 A.M. on September 14, 2014, as Stephen drove around the Kentucky Speedway track, the race car he was driving veered to the left and slammed into the lower, interior concrete wall on “Turn 1” at Kentucky Speedway, at a speed of approximately 102-111 mph.

44. After the crash, no law enforcement agency was called by Defendants to the “Rusty Wallace Racing Experience” or the Kentucky Speedway, no independent investigation immediately ensued, and the race car and debris were quickly removed from the track to allow others to continue driving.

45. The subject race car was immediately shipped to the headquarters of the “Rusty Wallace Racing Experience” in Pawtucket, Rhode Island.

46. The Gallatin County, Kentucky Sheriff’s Department, with jurisdiction over the Kentucky Speedway, was only later informed about the crash by emergency medical workers.

47. Stephen’s fatal injuries were extreme and severe, including multiple fractures to his skull, spine, femur, tibia, fibula and ankles, together with numerous catastrophic acute internal injuries.

48. Stephen was removed from the race car by first responders, then later flown from the crash scene by medical helicopter to University of Cincinnati Medical Center, in Cincinnati, Ohio.

49. After a full week of efforts to save his life, Stephen D. Cox died from his injuries

on September 21, 2014 at University of Cincinnati Medical Center.

50. An independent police investigation of the crash did not begin until a month after the crash, as a consequence of the Defendants' failure to notify authorities, following the request of the local prosecutor's office, and after representatives of the Decedent's family repeatedly sought an investigation.

B. Investigation of the Stephen D. Cox Crash

51. Because no independent investigation occurred immediately following the crash, Stephen's grieving family was left with only questions:

- (1) What caused the crash?
- (2) Why were Stephen's injuries so severe despite "Rusty Wallace Racing Experiences'" claims of "maximum enjoyment with minimum risk"?

i. Description of the Collision

52. The subject race car that was provided by Defendants to Stephen D. Cox was a Generation 4 Chevrolet Stock Car (Car No. 23), owned and maintained by Defendants.

53. After crossing the Kentucky Speedway start/finish line after circling the track, the race car provided by Defendants to Stephen D. Cox departed from its line of travel and steadily headed toward the inside of the track wall, impacting the interior concrete track wall near "Turn 1" at Kentucky Speedway. (Figure 3)

54. Following the aforementioned impact, the mangled race car slid across the track toward the outside wall and impacted the SAFER barrier (which did not exist on the interior wall) near the beginning of Turn 1, as depicted in Figure 3.

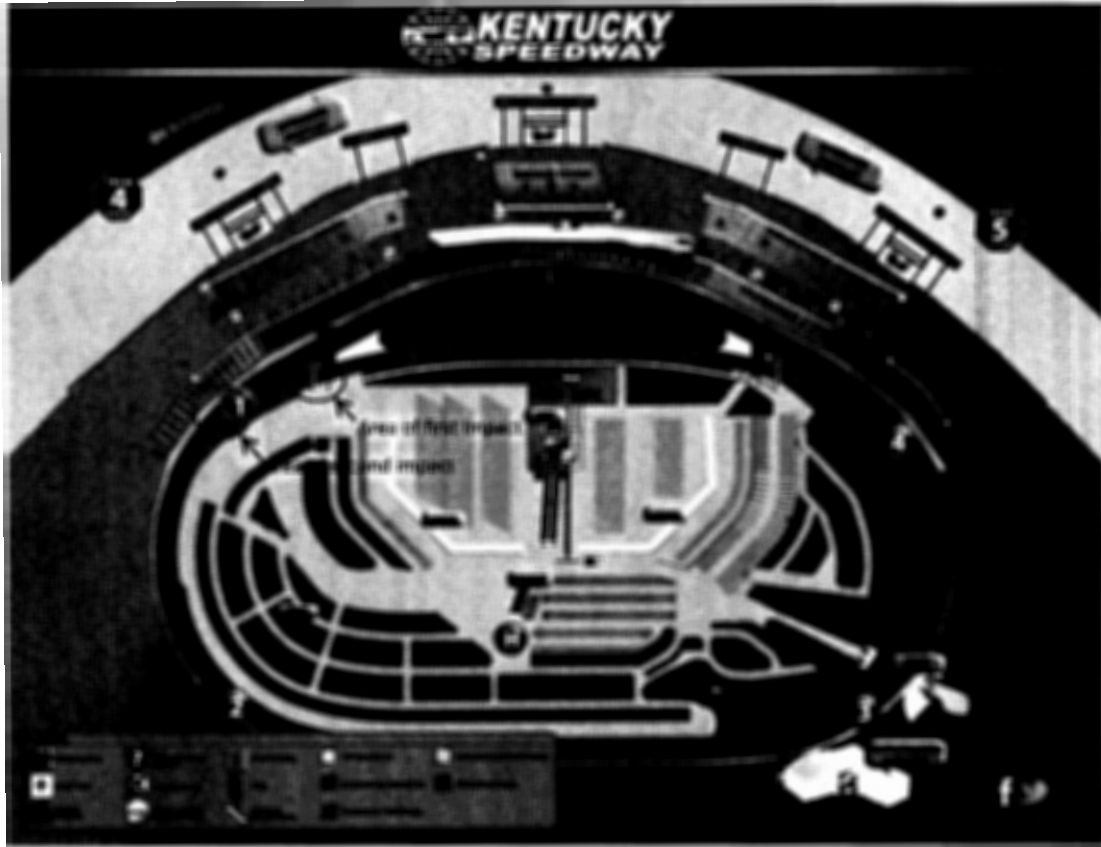


Figure 3

55. After the second impact, the subject race car traveled down the track toward the infield, coming to its final rest past the yellow line on the lower interior portion of the track.

ii. Crash Analysis

56. The crash consisted of two significant impacts:

- (1) The first impact occurred when the front left corner of Stephen's race car impacted the concrete track wall near its end at pit exit; and,
- (2) The second impact occurred when the left rear corner of Stephen's race car impacted the SAFER barrier at the outside wall near the beginning of Turn 1.

57. Two skid marks are visible, leading up to the first impact point, with the inside mark stopping at the interior track wall. (Figure 4)

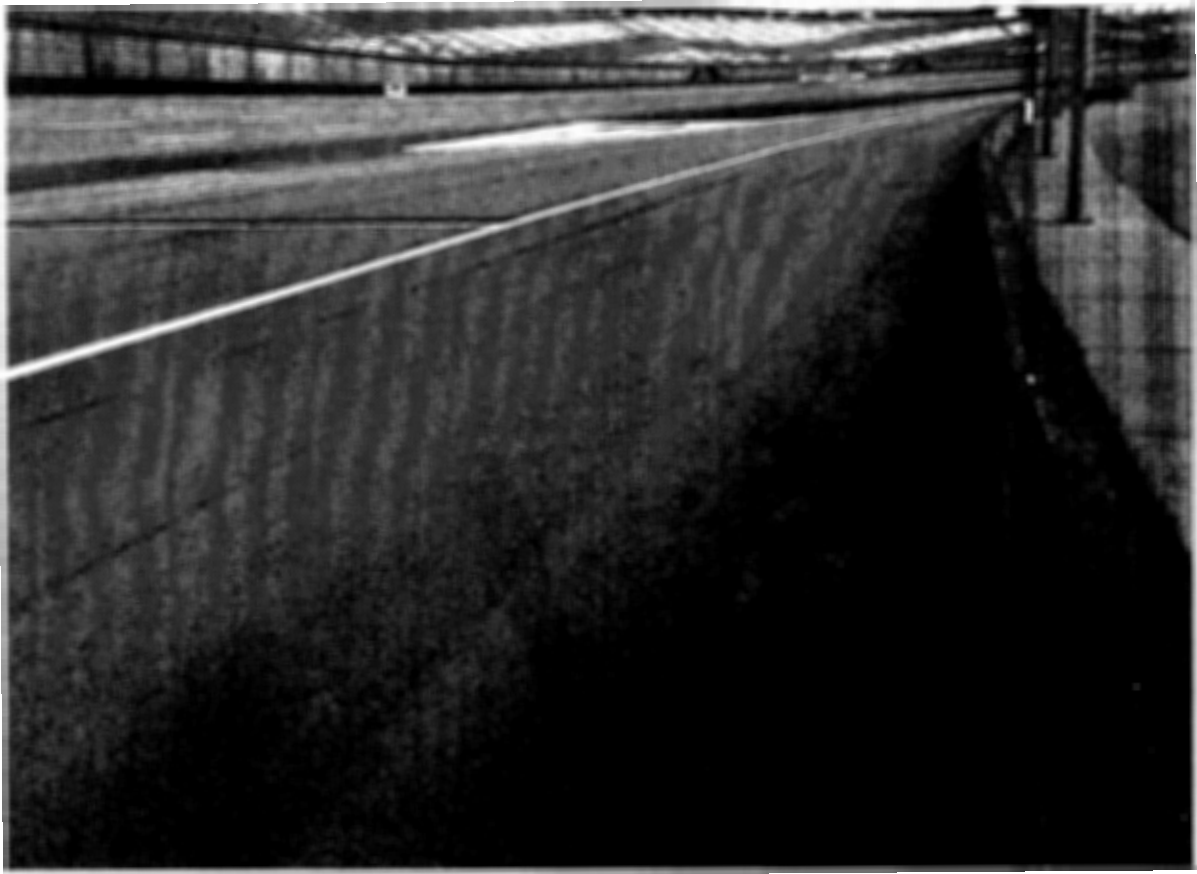


Figure 4

58. No other pre-impact tire marks associated with this crash were found.

59. The evidence indicates that the front wheels were braking heavily and that there was no loss of vehicle stability pre-impact.

60. Scuff/slide marks lead from the first impact with the interior track wall to the second impact with the SAFER barrier at the outside wall and continue past the second impact point, as depicted in Figures 5-6.



Figure 5



Figure 6

61. A fluid trail indicates the path of the race car as it slowly rolled down the track to its final point of rest.

62. Heavy impact damage to the left front corner from the first impact was evident on the race car driven by Stephen D. Cox. (Figures 7-9)

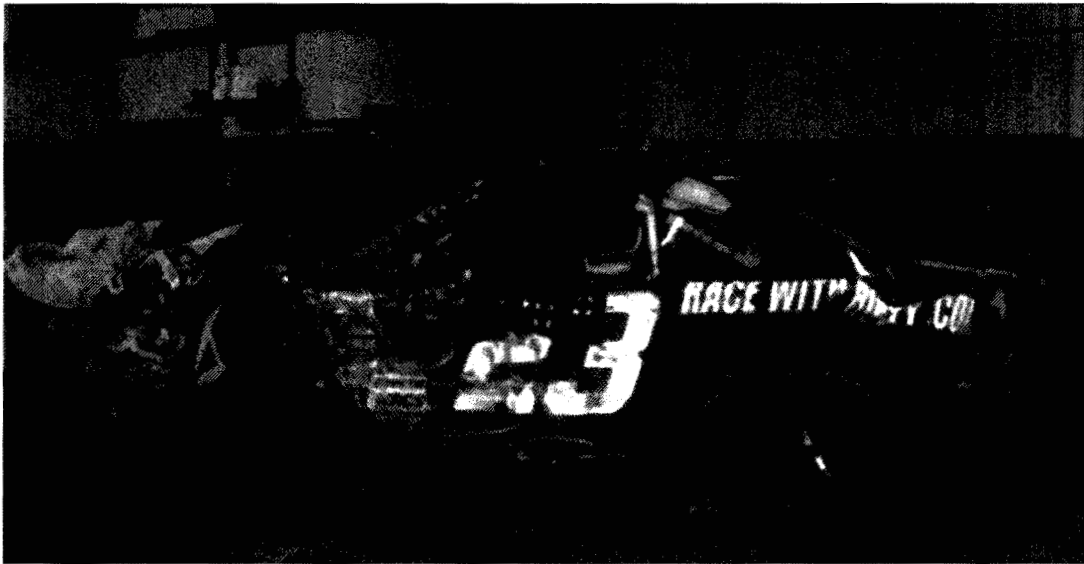


Figure 7

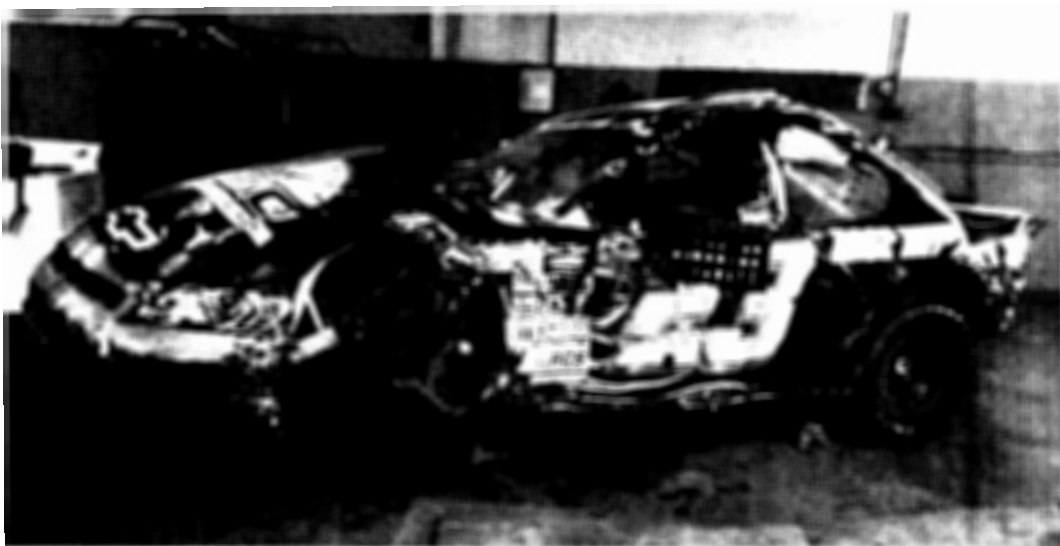


Figure 8

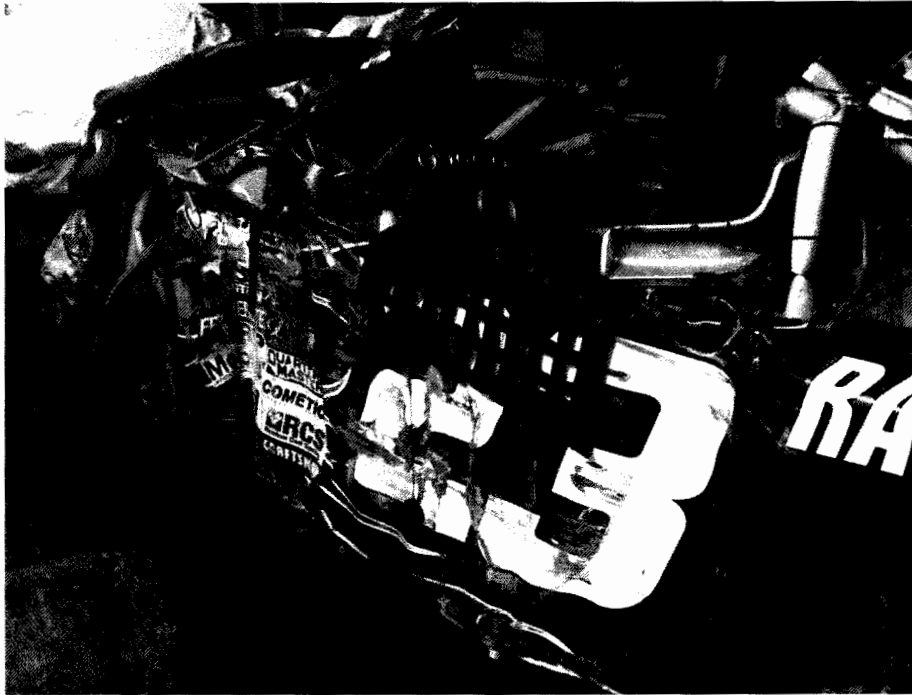


Figure 9

63. The damage to the subject race car extends back to the left rear wheel due to the race car rotating clockwise into the wall during impact.

64. The left front wheel of the race car is displaced inward and rearward, and is not free to rotate due to the damage.

65. The rear left corner of the race car exhibits damage from the second impact, with only minor damage to the frame.

66. The race car speed at the start of braking before the first impact was 102-111 mph.

67. The race car speed at the point of first impact was 95-104 mph.

68. The impact angle at first impact was 27.2 degrees.

69. Delta-V (Δv) is a measure of the severity of an automotive collision, defined as the change in velocity between pre-collision and post-collision trajectories of a vehicle.

70. The Delta-V for the aforementioned first impact was 44-48 mph.

71. Delta-V has traditionally been used as a measure of crash severity and predictor for

occupant injury for vehicular crashes.

72. The subject race car speed at the point of the second impact was 16-18 mph, with an impact angle of 32.0 degrees, and a Delta-V of 10-11 mph.

iii. Cause of the Crash

73. The steering wheel came off of the steering shaft while Stephen was driving at a speed in excess of 100 mph, leaving a terrified amateur driver desperately struggling to reattach the steering wheel and maintain control.

74. The location of the first impact and the path leading up to that location are consistent with Stephen D. Cox losing the ability to control the steering of the race car after the exit of the start/finish line curve.

75. The steering system in the subject race car is made up of several components, including the steering wheel, quick release hub, quick release spline, steering shaft, and steering column.

76. The subject steering wheel is designed to be bolted to the quick release hub and the steering shaft is designed to be bolted to the quick release spline.

77. The quick release system allows the race car steering wheel to be removed from the steering shaft in order to assist with driver ingress/egress.

78. When properly installed, the quick release system locks the steering wheel to the steering shaft.

79. The quick release system can be installed in an unlocked position which still allows steering torque to be transferred from the steering wheel to the steering shaft, however, separation of the steering wheel from the steering shaft is possible when in the unlocked position.

80. Not only did Defendants fail to lock the steering wheel in place, it was put on the shaft upside down/backwards on the subject race car, in a reverse dish position. (Figures 10-11)



Figure 10



Figure 11

81. Following the crash, the tachometer face was found detached from the tachometer and hanging by internal wiring. (Figure 12)

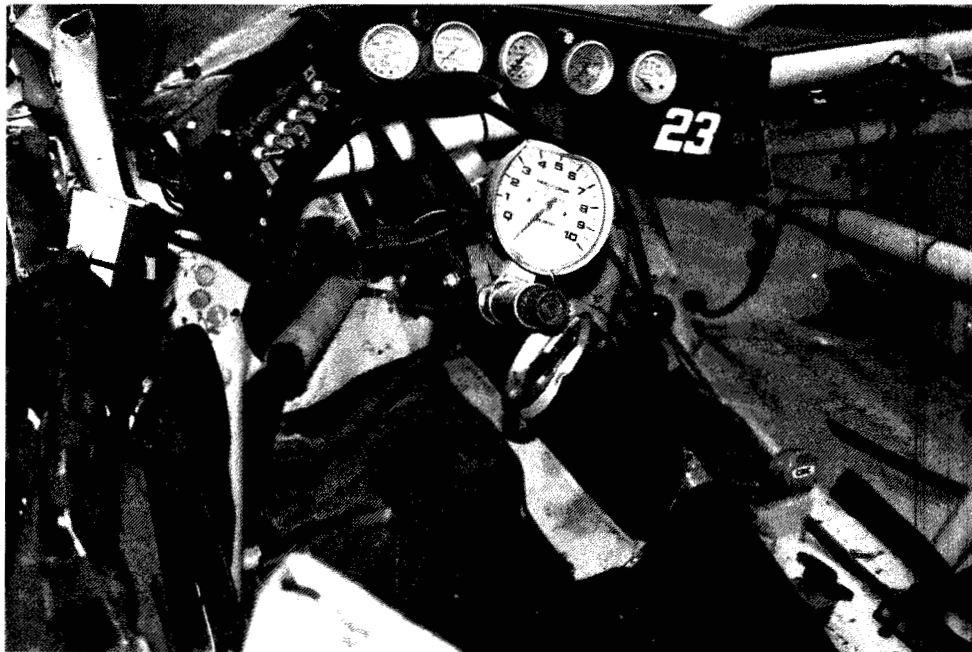


Figure 12

82. There were three points of heavy contact of the subject race car between the steering wheel and the tachometer that is mounted to the steering column:

- quick release hub (collar) with tachometer face
- steering wheel spoke with tachometer face
- steering wheel rim with tachometer mounting clamp

83. There was contact damage to the collar of the quick release hub. (Figures 13-14)

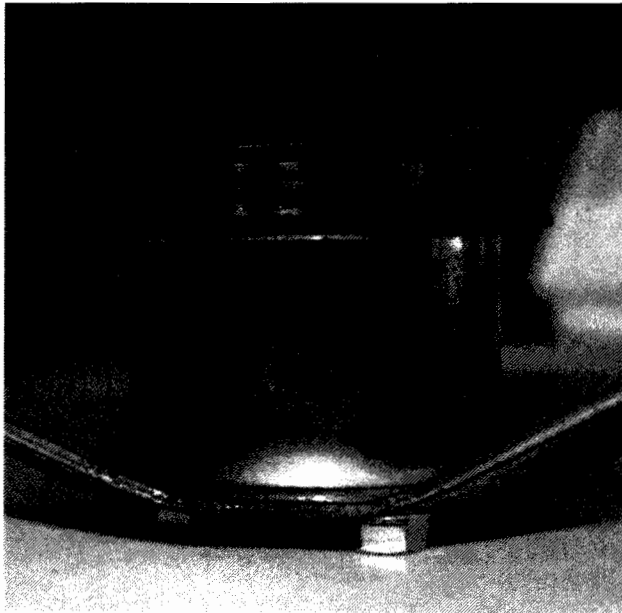


Figure 13

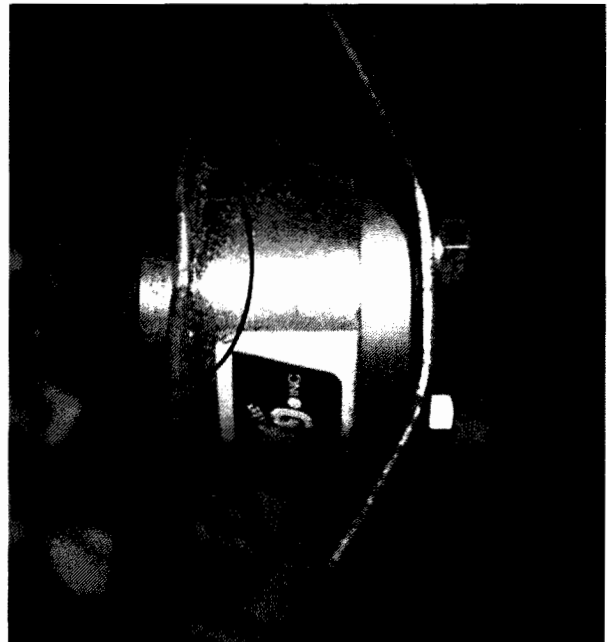


Figure 14

84. There was contact damage to the face of the subject tachometer caused by contact with the collar of the quick release hub. (Figure 15)



Figure 15

85. There was contact damage to the face of the tachometer caused by contact with the steering wheel spokes, with rust transfer on the aluminum tachometer face from the steel steering wheel spokes. (Figures 16-17)

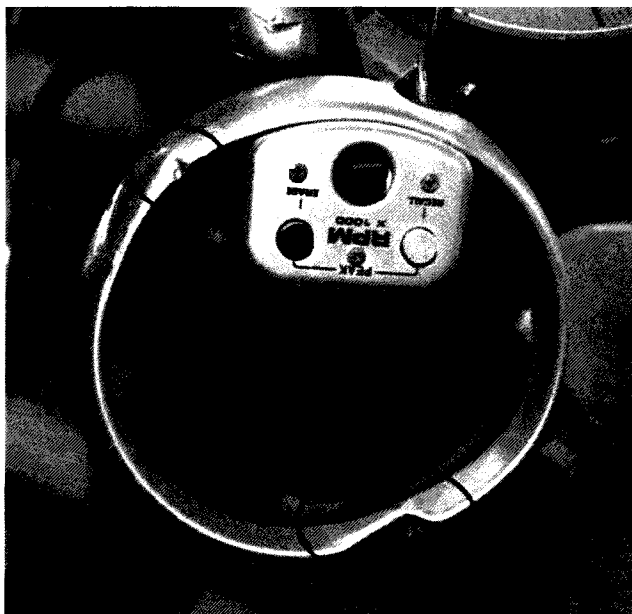


Figure 16



Figure 17

86. There was contact damage to the rim of the steering wheel, as a result of contact with the tachometer mounting clamp, i.e., there are four cuts in the steering wheel rim measuring 1/4" tall with 3/32" spacing, and the center two cuts are missing rubber. (Figure 18)

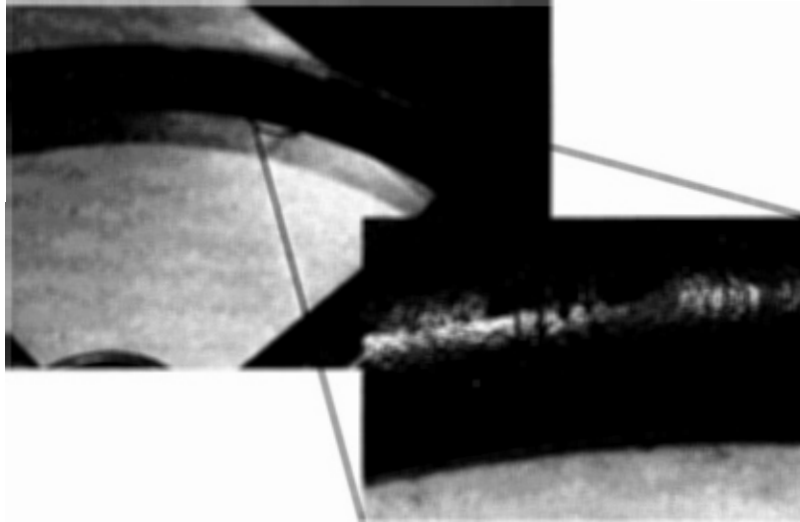


Figure 18

87. The tachometer mounting clamp had rubber embedded in two of the clamp's slots, i.e. the clamp slots measure 1/4" tall with 3/32" spacing. (Figure 19)



Figure 19

88. The aforementioned contact damage would not have been possible if the steering wheel was attached to the steering column at the time of impact.

89. The crash would not have happened but for the unthinkable detachment of the steering wheel while Stephen was moving at a speed in excess of 100 mph.

90. The first responder, who reached the scene an instant after the crash, found the steering wheel alongside the leg of Stephen D. Cox, as he demonstrated in Figure 20 below.

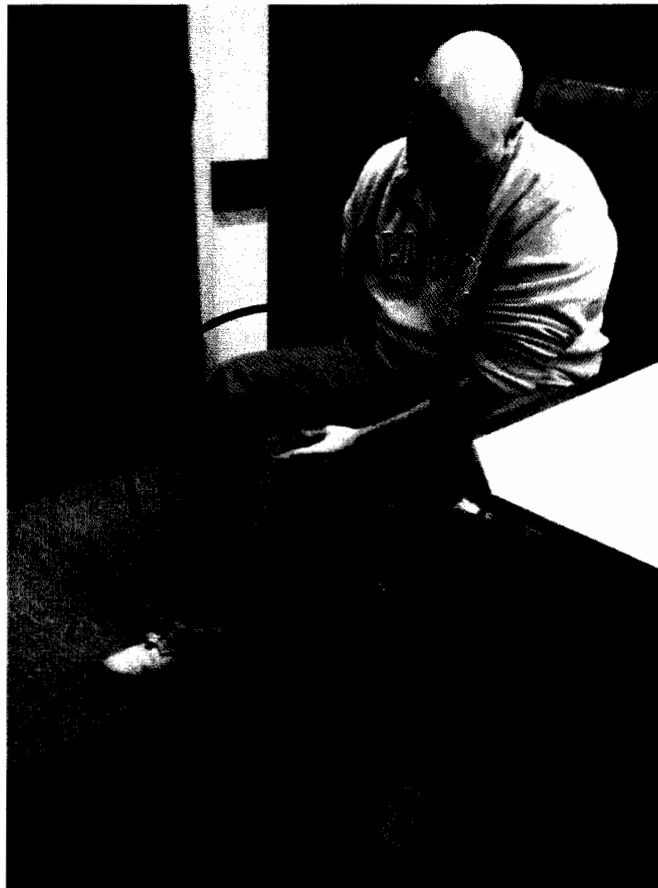


Figure 20

91. The steering wheel coming off resulted in a loss of steering control which allowed the subject race car to speed down the track banking and crash into the interior track wall.

92. The steering wheel can only become detached if the quick release lock is not properly engaged.

93. Defendants should have ensured that the steering wheel was properly attached to the steering shaft prior to allowing Stephen D. Cox to drive out onto the track.

iv. Vehicle and Safety Equipment

94. Post-crash inspection of the seat on the race car driven by Stephen D. Cox demonstrates that the left side head support is cracked and displaced outwards. (Figures 21-22)



Figure 21

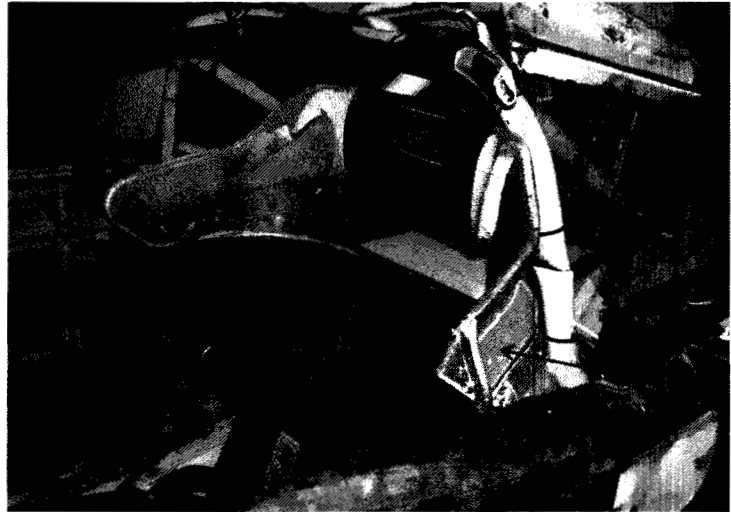


Figure 22

95. Post-crash inspection of the race car provided to Stephen D. Cox by Defendants also reveals modifications which render the seat design ineffective for safety, including a large non-SFI rated 4-inch thick pad extending from the seat bottom to about 7 inches below the bottom of the shoulder harness pass through. (Figures 23-24)

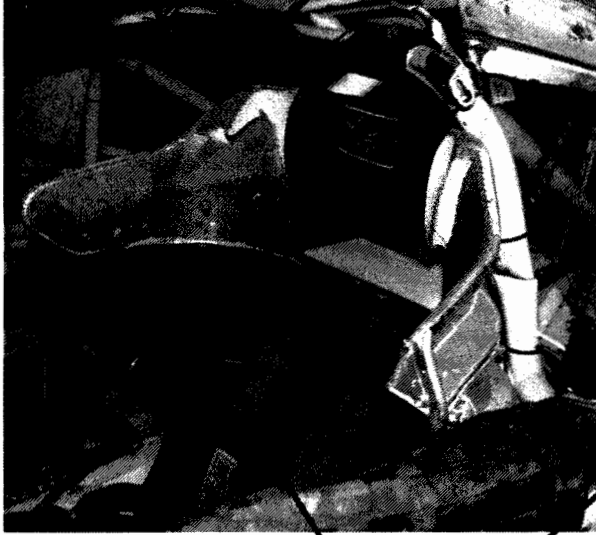


Figure 23



Figure 24

96. The A-pillar support tubes located on both sides of the subject race car are part of the roll cage structure.

97. These aforementioned tubes connect to the A-pillar approximately midway up and extend down to the upper side intrusion bars.

98. The driver side A-pillar support tube on the subject race car was intact prior to the crash. (Figure 25)



Figure 25

99. The aforementioned support tubes were cut by emergency personnel when removing Stephen D. Cox; however, inspection of the lower section of the driver's side A-pillar support tube post-impact reveals it was cracked and displaced forward in the crash. (Figure 26)

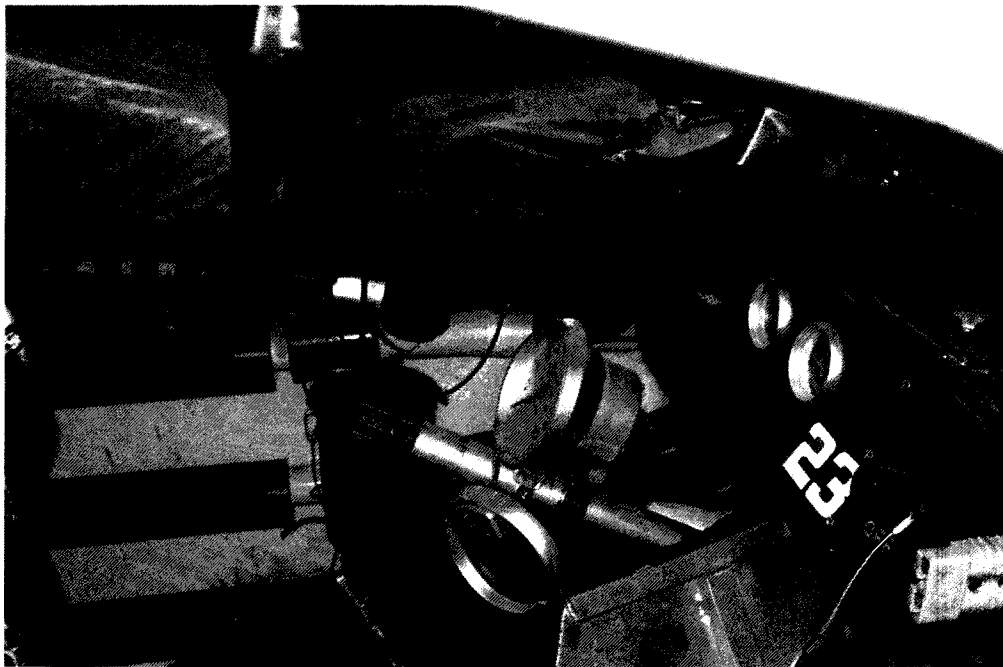


Figure 26

100. The window net was undamaged which demonstrates that Stephen's head hit the A-tube pillar, as opposed to the track wall, further indicating that he was out of position as a result of the Defendants' failure to properly position him. (Figure 27)



Figure 27

101. The helmet provided by Defendants to Stephen D. Cox exhibits post-crash damage to the lower left chin area, along with induced damage on the left side in the form of spider web cracks stemming from a kink point. (Figures 28-29)



Figure 28

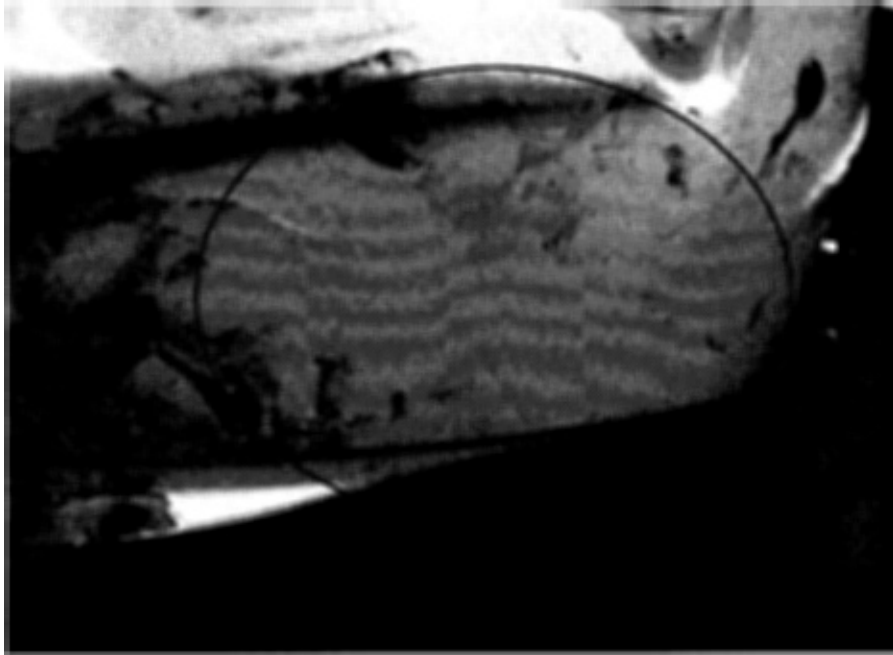


Figure 29

102. Stephen D. Cox was placed in an unsafe driver position prior to being sent out onto the track, as shown in Figure 30.



Figure 30

103. The seat side head support extends improperly only to mid-helmet, behind the rear edge of the visor.

104. Casey Satchwell, an agent and/or employee of Defendants, with a continuous and extensive background exhibiting indifference to safety, drug abuse, and disrespect for the law, was unfit to undertake responsibility for the safety of others, yet he was hired by Defendants to load and buckle Stephen D. Cox into the race car. (Figure 31)

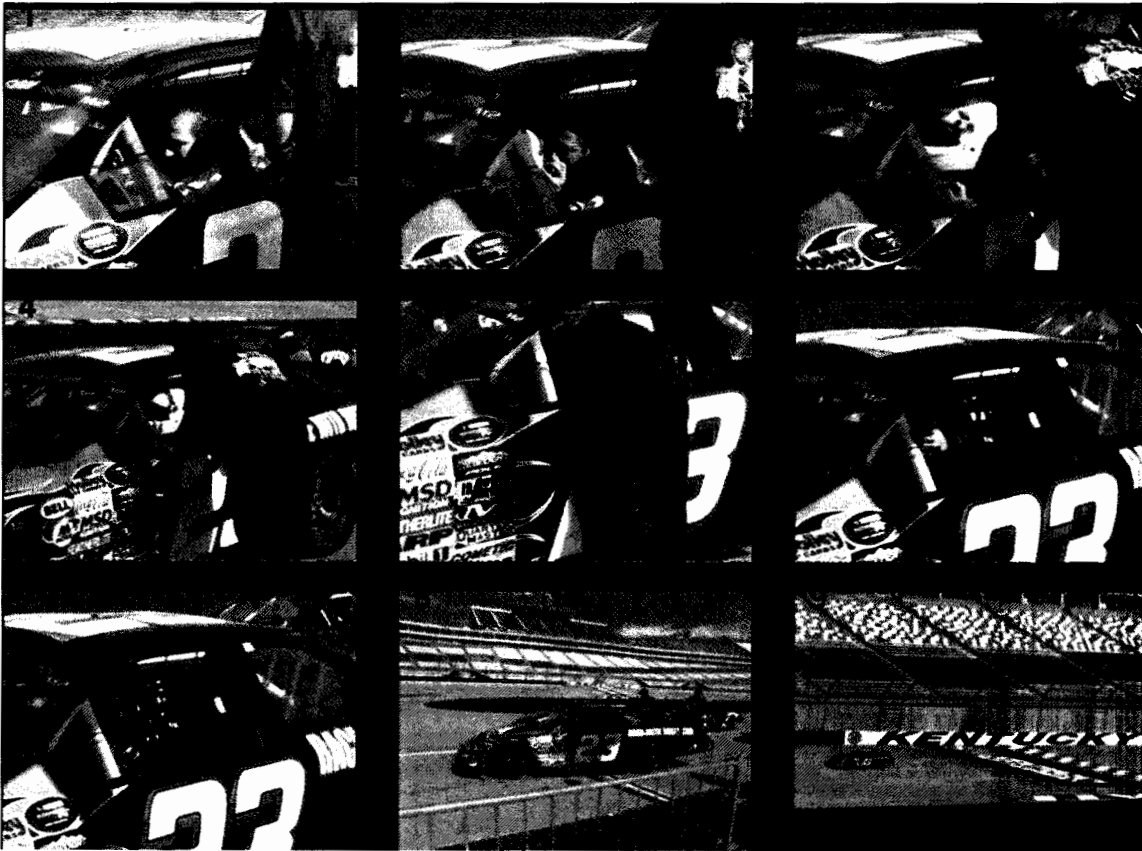


Figure 31

105. Figure 32 shows Stephen D. Cox as he entered the track at Kentucky Speedway, and depicts the left side shoulder harness and the left side of the Head and Neck Support (“HANS”) device.



Figure 32

106. The HANS device is a critical piece of safety equipment that is required in NASCAR racing.

107. The HANS device, when used properly, reduces exposure to head and/or neck injuries, such as basilar skull fractures (fractures to the base of skull), in the event of a crash.

108. Figure 32 reveals that the left shoulder harness was not routed over top of the HANS device by the Defendants, rendering the device ineffective.

109. According to Thomas Gideon, senior director of Safety, Research & Development of NASCAR, approximately six drivers were wearing a HANS device in the Daytona 500 on February 18, 2001, the day of Dale Earnhardt, Sr.'s tragic and fatal crash.

110. As a result of Earnhardt's death, that day was a turning point in the way the sport

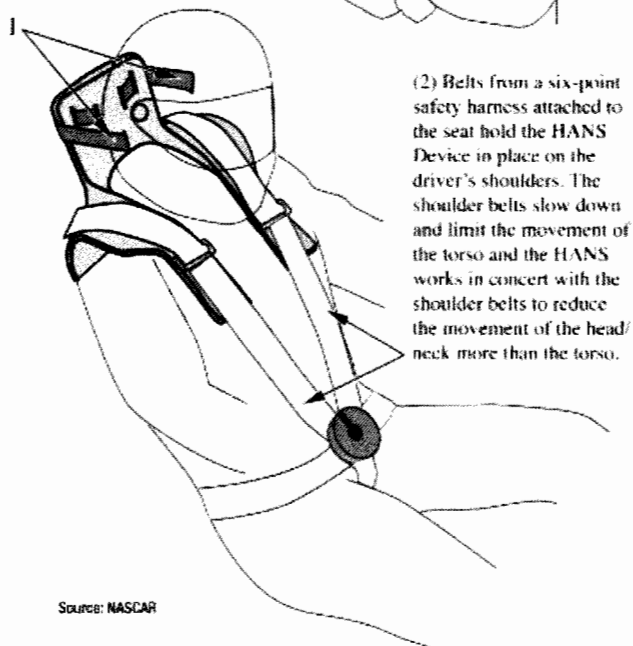
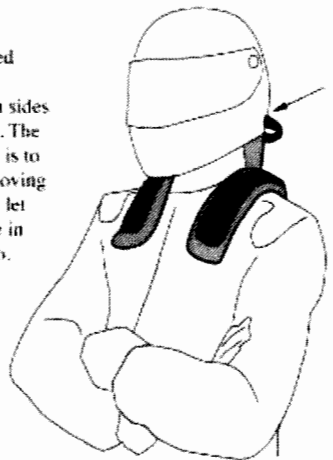
looked at the device. According to Mr. Gideon, “[t]here was a major change in the way everybody looked at what they did,” a full thirteen years before Stephen D. Cox was killed.

111. Figures 33, 34 and 35 below are diagrams that demonstrate the differences between a driver with a HANS device, and driver without a HANS device in the event of a crash:

HANS DEVICE

As part of its continuing safety initiative, NASCAR became the world's first major auto racing sanctioning body to mandate the use of an approved head and neck restraint by all drivers on every type of race circuit, beginning with the 2002 season. The HANS Device helps to reduce extreme head motion during accidents and sudden stops. The device is required for use in NASCAR's three national series – NASCAR Sprint Cup Series, NASCAR Nationwide Series, and NASCAR Camping World Truck Series – as well as its regional touring series.

(1) Tethers are attached from the collar of the HANS Device to both sides of the driver's helmet. The purpose of the HANS is to keep the head/neck moving with the torso and not let the head lead or move in opposition to the torso.

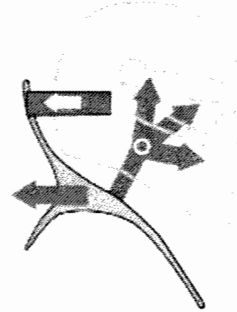


Source: NASCAR



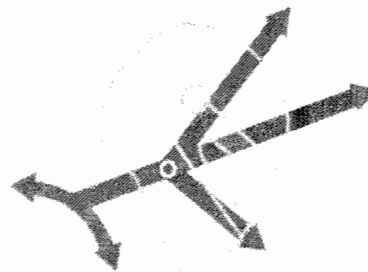
With HANS Device

Upon impact or sudden stop, the two tethers attached to a specially designed shoulder harness help keep the driver's head and neck in a stationary, upright position.



Without HANS Device

Unrestrained, the head and neck of the driver moves forward and/or to the side as the rest of his body and his car decelerate during impact or sudden stop.



NASCAR

Figure 33

■ From the January 2012 issue of *Car and Driver*

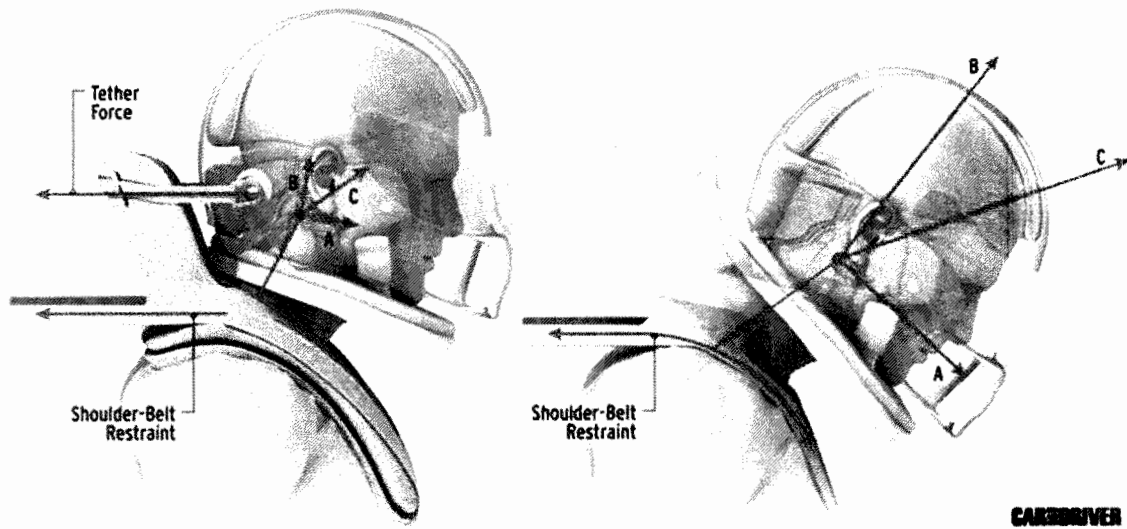


Figure 34

112. The shoulder harness is to be secured on top of the frontal head restraint. (Figure 35)

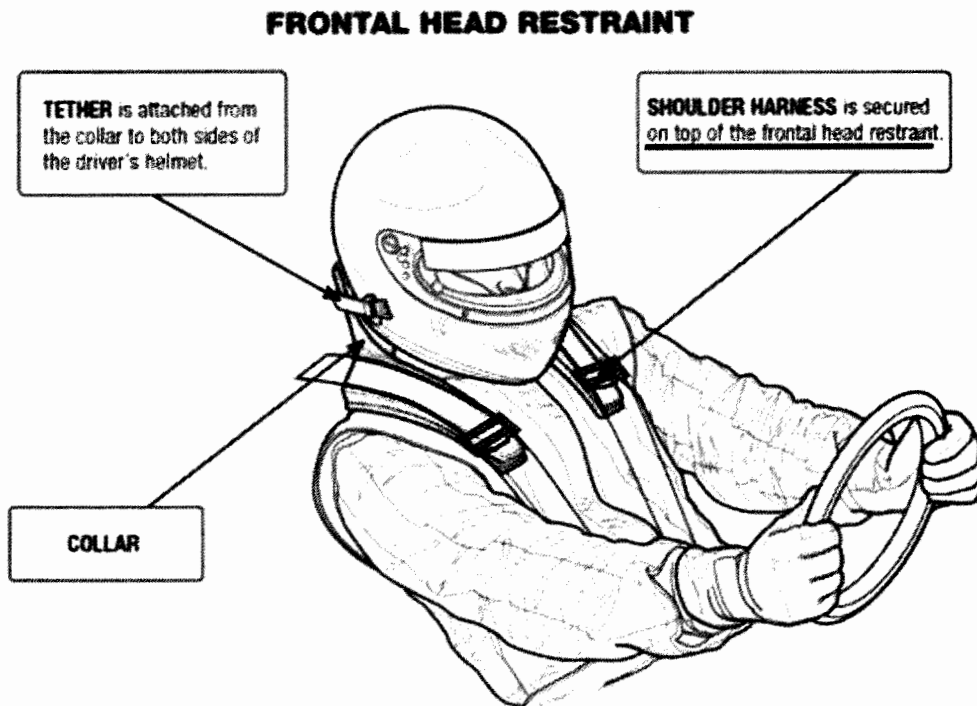


Figure 35 (Emphasis added)

113. The HANS device and shoulder harness provided by Defendants to Stephen D. Cox were improperly utilized, as shown in Figure 36, a close-up of Figure 32.



Green – Outline of HANS Device Blue – Outline of Radio Antenna

Figure 36

114. The HANS device utilized by Defendants was rendered ineffective due to wrongful and improper harness routing by Defendants', specifically by Casey Satchwell, who was not qualified by background or training, and who Defendants knew or should have known was unsuitable to trust with the safety and well-being of participants.

115. Defendants wrongfully and unthinkably failed to properly route the harness over the HANS device prior to allowing Stephen D. Cox to drive out onto the track.

116. As a consequence of the crash, Stephen D. Cox suffered extensive fractures to the base of his skull, the precise injury that a properly utilized HANS device is designed to prevent.

117. Deformation of the aforementioned A-pillar support tube resulted from the force of Stephen's head striking it, as evidenced by damage to the helmet.

118. The four-inch thick pad improperly placed by Defendants put Stephen D. Cox out of position in the driver's seat of the race car.

119. Defendants' use of the four-inch thick pad put Stephen D. Cox too far forward in the race car, placing his head and chest closer to dangerous contact points with the race car structure, and reducing the helmet overlap provided by the seat's side head support.

120. The aforementioned wrongful actions of Defendants were the direct and proximate cause of the crash and the death of Stephen D. Cox.

v. Expected Injuries Based on Real World Crash Data

121. After three deaths in the 2000 NASCAR season and Dale Earnhardt, Sr.'s death in 2001, NASCAR mandated the use of head and neck restraints, along with stronger seats with increased head protection starting in the 2002 season in order to address the injuries being seen, in large part basilar skull fractures.

122. Head and neck restraints (including the HANS device) are designed to prevent this characteristic fatal racing injury by minimizing the forces that load the head and neck in a crash and by reducing overall forward head motion in a crash.

123. Also starting in 2002, onboard crash recording was implemented by NASCAR in its three national series (Cup, Truck and Busch).

124. A total of 2,925 crash events were recorded for the 2002-2005 NASCAR seasons.

125. The most significant injuries sustained by drivers in these crashes have been loss-of-consciousness for brief periods of time.

126. There have been zero fatalities in any of NASCAR's national series since Dale

Earnhardt's death in 2001.

127. Based upon real world crash data as demonstrated in the spider plot (Figure 37), Stephen D. Cox's crash should not have resulted in serious or fatal injuries.

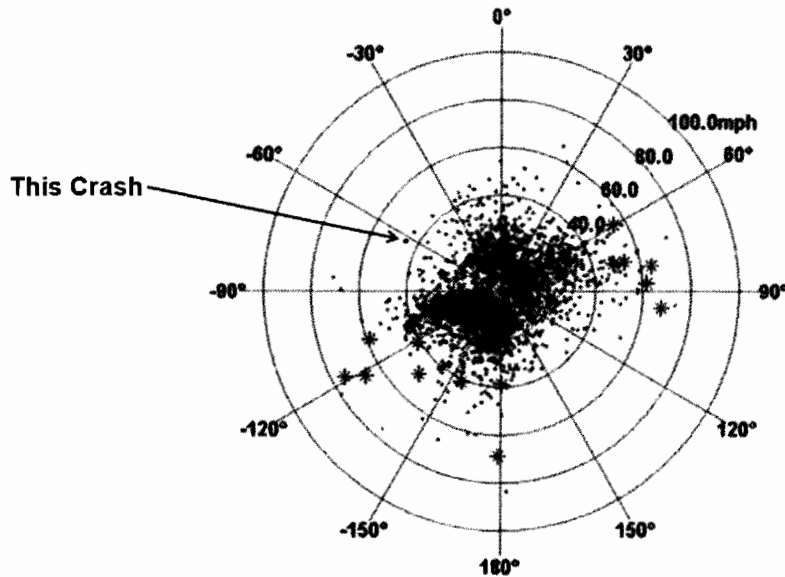


Figure 37

128. The proper use of equipment and safety devices would have prevented the injuries to and death of Stephen D. Cox.

vi. NASCAR's Exemplary Standard of Safety

129. NASCAR's rules dictate an exemplary standard of safety that must be met for all cars and drivers participating in NASCAR sanctioned events in order to help ensure the safety of the professional participants.

130. Defendants offer amateurs the opportunity to drive NASCAR race cars on real NASCAR race tracks at professional race speeds.

131. NASCAR's standards for personal safety equipment were not met by Defendants, exhibiting their willful and wanton/grossly negligent indifference to the safety of participants,

notwithstanding Defendants' claims of "maximum enjoyment with minimum risk" promised in promotional materials and even in the "waiver"/"release" itself.

132. For example, NASCAR drivers must wear a fire resistant suit, gloves and shoes meeting the SFI 3.2A/5 standard; the fire resistant suit provided by Defendants to Stephen D. Cox was inadequate and did not meet the SFI 3.2A/1 standard, and Defendants did not provide Stephen D. Cox with fire resistant gloves or shoes.

133. NASCAR seatbelts are required to meet SFI 16.5 and expire 2 years after the date of manufacture; the seatbelt provided by Defendants in the race car driven by Stephen D. Cox was manufactured in April 2010, more than 4 years old prior to the crash.

134. NASCAR requires seats to meet the SFI 39.1 standard; Defendants provided a non-SFI rated seat in the race car driven by Stephen D. Cox.

135. NASCAR requires that padding materials used on a seat must be half-inch thick or less; a four-inch thick non-SFI pad was used on Stephen D. Cox's seat, placed on the seat back by Defendants.

136. NASCAR requires that the headrest and surround assemblies provide rigid support around both sides of the helmet to the forward-most point of the helmet chin bar; the headrest and surround assemblies provided by Defendants for use by Stephen D. Cox only provided support up to approximately the midpoint of his helmet, behind the rear edge of the visor.

137. NASCAR also requires that the window nets must meet SFI 27.1 and expire two years after date of manufacture; the window net in the race car provided to Stephen D. Cox by Defendants was manufactured in February of 2006, over eight years prior to Stephen D. Cox's crash.

138. Defendants wrongfully failed to provide Stephen D. Cox, a wholly inexperienced amateur driver, with the minimum standard of safety afforded to professional race car drivers, traveling at or near the same speeds.

C. Purported “Waivers”/“Releases”

139. The so-called “waivers”/“releases” obtained by Defendants from Stephen D. Cox do not exculpate Defendants from liability.

140. There is an evident public interest in the physical safety and legal protection of the public.

141. The totality of the events surrounding Stephen D. Cox’s crash, which resulted in severe injuries and death, amount to willful and wanton conduct/gross negligence.

142. Defendants placed an amateur driver with zero experience in a race car with an improperly attached steering wheel (which came off while traveling at the speed of 100+ mph), with an improper head restraint, with a non-SFI rated seat, and a seatbelt past its expiration date.

143. Further, the equipment which was designed to keep Stephen D. Cox safe was faulty or improperly installed/utilized, including the wrongful installation of the HANS device that rendered it ineffective (resulting in Stephen suffering the precise fatal injury that a HANS device is designed to prevent) and the use of an improper four-inch thick pad between Stephen and the seat back (placing Stephen in an unsafe position and within proximity of dangerous objects).

144. The deformation of the A-pillar support beam is consistent with a driver head strike, as confirmed by Stephen’s injuries and the severe helmet damage.

145. Defendants are not exculpated from responsibility for the injuries and death of Stephen D. Cox despite the purported “waiver”/“release”, to wit:

- a. They do *not* “clearly set out the negligence for which liability is to be avoided”, as courts have routinely held is necessary. *See e.g., Hargis v. Baize*, 168 S.W.3d 36 (Ky. 2005).
- b. The hazards experienced by Stephen D. Cox (described above) were absolutely *not* clearly within the contemplation reflected in the purported “waiver”/“release”.
 - i. No person would sign a waiver or release if he/she believed that it involved waiving liability for a steering wheel falling off of a race car traveling at 100+ mph; getting into a vehicle that contained improperly utilized and faulty safety equipment; or that the company employed individuals maintaining and managing the operation who were dangerously unqualified and ignorant of basic safety procedures.
- c. Two of the purported “waivers”/“releases” were mass sign-in sheets, with everyone entering Kentucky Speedway signing one document.
 - i. There was no time allowed to read or analyze the documents.
 - ii. One of these mass sign-in sheets was handed to people driving past the security booth at Kentucky Speedway (even non-drivers signed), handed to them by the security guard, while cars entering the Speedway waited behind them.
 - iii. Participants that day were told, “Hurry up and sign these so we can keep moving.”

- d. The individually signed purported “waiver”/“release” (the only one which was not a mass purported “waiver”/“release”) does *not* even include the word “negligence”.
- e. There was clearly *not* equal bargaining power in this case, as Stephen was an uninformed individual, *not* on equal footing with Defendants.
- f. The purported “waivers”/“releases” were adhesion contracts.
- g. The purported “waivers”/“releases” do not include gross negligence.
- h. Stephen D. Cox had absolutely no knowledge, familiarity or experience with the subject activity, having *never* driven this type of vehicle before.
- i. Stephen D. Cox did not know of the unthinkable dangers surrounding this race car (as described above) or the organization.
- j. One cannot contract away liability for damages caused by that party's failure to comply with a duty imposed by a safety statute.
- k. The purported “waivers”/“releases” were not “so clear and understandable that an ordinarily prudent and knowledgeable party to it will know what he or she is contracting away; it must be unmistakable.” *See e.g., Hargis v. Baize*, 168 S.W.3d 36 (Ky. 2005).
- l. The purported “waivers”/“releases” were never explained, discussed or emphasized by Defendants or their employees.
- m. Public policy disfavors such purported “waivers”/“releases”, and this was not a sporting event for the public.
- n. The purported “waivers”/“releases” read as an advertisement, i.e., “maximum enjoyment with minimum risk”.

146. The subject event was not a race or a competition, but was essentially a traveling amusement ride and involved amateur participants.

147. The facts as it pertains to “waivers”/“releases” must be cautiously analyzed on a case by case basis. *See e.g., Coughlin v. T.M.H. Int’l Attractions, Inc.*, 895 F. Supp. 159 (W.D. Ky. 1995).

D. “Rusty Wallace Racing Experience”

148. “Rusty Wallace Racing Experience,” operated by Defendants, has been in existence for four years, and had predecessors in interest with equally deficient safety practices.

149. The individuals maintaining and managing the operation, which are Defendants’ agents and/or employees, were unqualified and ignorant of proper basic safety procedures.

150. There have now been at least three documented cases of the steering wheel falling off while amateurs were driving Defendants’ race cars while participating in Defendants’ “driving experience”, with two of the three cases occurring before September 14, 2014, the day of subject crash.

151. Defendants knew or should have known about these aforementioned documented cases of the steering wheel falling off while amateurs were driving Defendants’ race cars while participating in Defendants’ “driving experience”.

152. Notwithstanding the abovementioned pattern of inadequate safety procedures, Defendants’ website and materials provided to participants of the “Rusty Wallace Racing Experience” contain advertisements and claims such as: “Due to the quality of the training and cars, damage is rare”, “maximum enjoyment with minimum risk”, etc. (Figure 38, *excerpts from “release”/“waiver” and advertising by Defendants.*)



Rusty Wallace Racing Experience and Formula Racing Experience programs are designed to provide maximum enjoyment with minimum risk.

***How FAST will I go?**

Real Fast! Every student and track is different, but we encourage you to drive the cars near race speeds.

repairs. ***Due to the safety of the cars and the quality of our instructors (if you follow their directives), damage is rare.***

capable of 155 miles per hour.

Figure 38

153. Witness comments reveal Defendants' total indifference to safety, training and vehicle equipment and maintenance.

154. The substandard safety evidence at the "Rusty Wallace Racing Experience" is reflected in reviews and descriptions throughout the internet. (Figures 39–44)



S S
Fort Walton Beach, Florida

1 review

7 helpful votes

"Nickel n Dime You till Your Wallet is EMPTY"

Reviewed February 18, 2013

Feb 2013, Pensacola Short Track, 4 Laps with Pro Driver and the expensive 22 Laps driving an old AUTOMATIC short track car that does not fit folks shorter than 5'6. **they put a booster pad and lumbar pad in to move your butt up/forward (very dangerous if anything were to happen).** Show time was 0930 however we did not get started with a track safety briefing until 1100. The '2 hour' experience turned into a 4 1/2 hour experience. Once I finally got into a car, the radio guy shouts in your ear for the ENTIRE drive. He proceeds to SHOUT at every driver on the track, all at the same time until your done. They will nickel and dime you for \$65.00 insurance, \$20.00 driver's taxes, \$100.00 for a few more laps, \$70.00 video, \$16.00 for one blurry photo...Don't purchase the video or picture package...horrible! Pictures of sky or primarily blurry photos, trust me and just do it all yourself in a rental car. Not Exciting, Not incredible whatsoever, Not even close to a real race or race car. Never do it again!

Visited February 2013

Figure 39 (Emphasis added)



M S
Charlotte, North Carolina

Contributor

★ 19 reviews

12 attraction reviews

Reviews in 12 cities

22 helpful votes

"Waste of time and money - use another company"

Reviewed October 4, 2012

After being gifted the experience in February, it took three separate visits to the track to finally have the experience. The first time I tried to go for the ride-along and I ended up waiting for over FOUR HOURS at the track before being told that they were out of time and I would have to re-schedule. On my rescheduled date I was halfway to the track before I received a call that the event was being rescheduled due to weather. Last night I finally got to ride along... after waiting at the track for more than 2 hours. After being promised 4 laps by the group, the experience only delivered 3. Here is what you need to know

-The safety equipment is old or non-existent (tears in fire suits, missing visors on the helmets, and no Hans device)

-Their cars have frequent breakdowns - (4 of the 8 broke down last night)

-The management of this company does not know how to schedule an appropriate number of people for each time slot, you WILL wait or have to reschedule if it gets too late.

-Cameras in all of the cars were broken every time I went, and the photographers had no idea who they were supposed to take pictures of.

If you want my advice, avoid doing business with this company like the plague. There are plenty of other businesses that provide this same service, and do it safer and more professionally. I did the thunder racing experience with Fast Track at Charlotte Motor Speedway and it was AMAZING - complete opposite of my experience with Rusty Wallace

Visited October 2012

Figure 40 (Emphasis added)



nterchick
Richmond, Virginia

Senior Contributor

★ 29 reviews

▲ 4 attraction reviews

🌐 Reviews in 16 cities

💡 23 helpful votes

"Very,very, very old beat-up cars"

●○○○○○ Reviewed May 11, 2014

Bought my husband the driving experience, since he'd already done the ride along with the Petty Experience at Daytona and Richmond. The **Rusty Wallace cars are junkers** in comparison to Petty's **Hoods crumpled, barely latched, cars that obviously were beaten out with hammers and just barely - plus being very old.** Seriously, a #36 M&M car??? I worried for my husband's safety just from the state of the car and tires.

He never could hear his "spotter" and ended up puttering around Richmond because he couldn't see who was around him on the track. Disappointing.

My advice, use another company. Wallace should be ashamed to put honest, hardworking people in equipment this bad.

Visited May 2014

Figure 41 (Emphasis added)



Mindy Hill-Sikora reviewed Rusty Wallace Racing Experience — 🇺🇸

Updated May 6, 2014

I don't know if the track safety people did not know what they were doing or what. The response time to accident was very very poor. They said that you have a HANS device, not at INDY you didnt. I am telling anyone that asks, not to do it. This is not just opinion, I have the video to prove my statements.



Rusty Wallace Racing Experience

Sports & Recreation

14,018 likes

Figure 42 (Emphasis added)



Mbsj12

2 reviews

Reviews in 2 cities

7 helpful votes

"Plan on a full day."

Reviewed June 1, 2012

Arrived at 230 pm for an exciting racing experience. I couldve spent the next 3 hours watching paint dry and had a better time. First we arrive and eventually found our way to the stock car racing experience. After not so exceptional customer service, we concluded that the professional driver rides were toward the front of the line. Then after offering "official" tickets to several different people who looked at me like I was crazy for having a ticket we concluded we needed a helmet.

Then it became comical. First getting into the car the driver tried to put it in gear, and said there's a problem. **The clutch was pouring hydronic oil out the bottom.** Car number two soon after goes into turn 1 and **loses the front left wheel and crashes into the wall. The safety crew returned with the 3 lug nuts that weren't tight.** Car number three, **leaking fuel out the back** didn't seem to be a big deal to the driver because all he could talk about was getting new tires. 4 new tires later and 2 laps in the track was closed down to clean up the fuel spill.

Bottom line if you want to go watch a bunch of junked up cars and lazy staff try to run a racing experience go for it. Not for me.

Figure 43 (Emphasis added)



Joel Pearson reviewed Rusty Wallace Racing Experience —

Star 1.0 out of 5 stars

Experience right until I got in the race car was good.....after in car....Different story.

Steering was so loose I was scared to drive in comers at high speed. Not my first time driving theses cars and I know a lot about how a car should feel.

LOTS o' play in steering. When steering wheel was turned took about 2-3 inches for tires to respond. The car was the #20 Dollar General Toyota. Also wind shield was so dirty that my in car camera view was blurred by a **BUG SPLATTER.** And windshield was loose in front lower left corner. **THIS CAR NEEDS SOME WORK BEFORE IT IS used again!**

I understand there was a wreck the day before, so maybe this was a backup car?????

My experience in the car left a lot to be desired.

I await your response RWRE.



Rusty Wallace Racing Experience

Sports & Recreation

30 DASH Ave.

Figure 44 (Emphasis added)

155. The pattern of willful and wanton/grossly substandard operations, and a total absence of adequate safety practices by Defendants, continues unchecked due to the complete lack of proper oversight, including at Kentucky Speedway on September 14, 2014.

156. The race car provided by Defendants to Stephen D. Cox was an attempt to make the race car “one-size fits all”, when in fact, to make the race car safe, it must be properly fitted to the specific driver.

157. The Facebook page for “Rusty Wallace Racing Experience” contains representations that the “seats and pedals” in the race cars are “not adjustable”, yet Defendants “adjusted” the race car given to Stephen to drive by placing the abovementioned four-inch thick pad behind his back, which put him in an incorrect and unsafe position. (Figure 45)



Rick Rinehart

Do you have to follow an instructor? Speed limit? Spotter?

Like · Share · Jul 26, 2014



Rusty Wallace Racing Experience

Seats and pedals are not adjustable. You will go through an instruction/safety class before hand. No instructor or pace car. All your laps are hot laps. You will listen to a spotter when your driving. Top speed is 155 mph at Chicagoland.

Like · Share · Jul 26, 2014

Figure 45 (Emphasis added)

158. The “Rusty Wallace Racing Experience” participated in by Stephen D. Cox was not a competitive racing event.

159. Drivers at the “Rusty Wallace Racing Experience” at Kentucky Speedway on September 14, 2014 were instructed, via a one-way radio by a “spotter”, to “lift and left” when another vehicle approached from behind, meaning lift off the gas and move to the inside lower part of the track to let the other individual go past, as it was not a competitive racing event.

160. The Facebook page for “Rusty Wallace Racing Experience” contains answers to

potential customers that this is not a competitive race and does not involve "actual" racing. (Figures 46-48)

Comment on Rusty Wallace Racing Experience's post



Courtney DeAlmeida

Do you just get to drive the car or actually race the other drivers?

Like · View · Sep 11, 2014



Rusty Wallace Racing Experience

Hi Courtney, you drive the cars. It's a racing experience. You will have other cars on the track with you when your doing your experience. You will be instructed by your spotter when you can pass cars. **You will not be doing "Actual" racing.** If that is something your interested in, we do offer that and it is coming up in a couple of weeks at Stafford Motor Speedway in CT. You can find out complete information on that event here <http://racewithrusty.com/2014/08/05/race-in-the-rusty-wallace-racing-experience-twin-25-shootouts-at-stafford-motor-speedway/>

Rusty Wallace Racing Experience Twin 25 Lap Shootouts at Stafford Motor Speedway

racewithrusty.com

Like · View · More · Sep 11, 2014

Figure 46 (Emphasis added)

Comment on Rusty Wallace Racing Experience's post



Anthony Milano

soo what's the 16 lapper is that actually racing each other for 16. laps

Like · View · Sep 29, 2014



Rusty Wallace Racing Experience

No Anthony, you will drive 16 laps yourself. There will be other cars on the track and you are aloud to pass, but **you will not be actually racing against other drivers.** We do offer a Real Racing experience and we just had it happen at Stafford Motor Speedway in CT. If this is something your interested in follow us on facebook and visit our website for when we offer it again next year.

Like · View · More · Sep 29, 2014

Figure 47 (Emphasis added)

Comment on Rusty Wallace Racing Experience's post



Richie Turner

Are u by yourself out there or is there actual racing with other cars?

Like · 7 · More · Jul 1, 2014



Rusty Wallace Racing Experience

Rich e you are by yourself in the cars. You will be able to pass other cars. **Actual racing no.** We do offer actual racing events but they are on short tracks and we have one coming up at STAFFORD MOTOR SPEEDWAY and Sandusky Speedway. Those events are 2 to 3 days in which you are guaranteed over 250 laps which end with two 25 Lap shootouts that you actually race in.

Like · 57 · More · Jul 1, 2014

Figure 48 (Emphasis added)

E. Kentucky Speedway

161. Kentucky Speedway is a beautiful, attractive facility of which the local public is justifiably very proud, which has a reputation among professional NASCAR drivers for having a rough surface and being difficult to drive on; yet Defendants continue to reap a financial windfall from placing amateur drivers with zero experience in powerful race cars to drive on the “Roughest Track in NASCAR.”

162. Professional NASCAR drivers frequently comment on Kentucky Speedway’s dangerous and extremely uneven, bumpy surface. (Figure 49)



Figure 49

163. Professional driver Ryan Blaney, who tested a Nationwide Series car at Kentucky Speedway, stated afterward, "I actually got a nosebleed right in the middle of practice... That'll say how bumpy this place is," and tweeted a similar sentiment. (Figure 50)

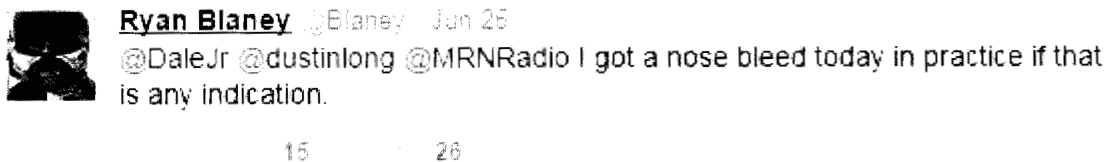


Figure 50

164. In June 2014, Blaney also stated that the start-finish line area (the area of the track where the race car provided by Defendants for Stephen D. Cox to drive began to veer left towards the interior wall) was rougher after work was done on Kentucky Speedway in an attempt to fix it and smooth it out. (Figure 51)

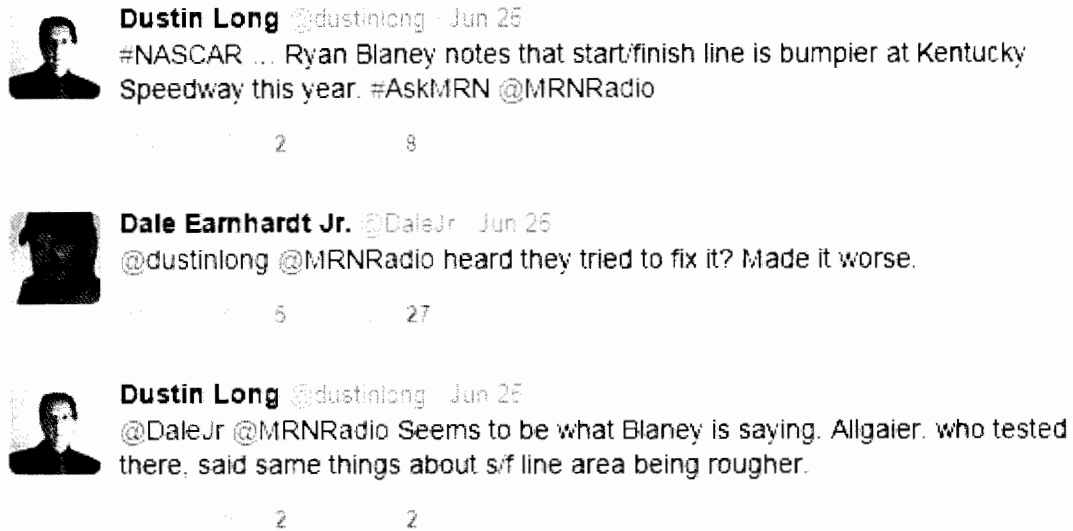


Figure 51

165. Professional NASCAR driver Tony Stewart has said, "It's really, really bumpy, so it's a struggle to get the car to go through the bumps really well."

166. Tony Stewart has further stated, "It's got a lot of bumps, so that makes it very challenging."

167. Professional NASCAR driver Clint Bowyer has stated, "The first thing you do as a driver to go around Kentucky is put a mouthpiece in because you don't want to chip a tooth."

168. In fact, Kentucky Speedway proudly promoted its 2014 Sprint Cup Series race as "The Roughest Track In NASCAR" (see Figure 52), including commercials using those very words.



Figure 52

169. On one authorized Kentucky Speedway commercial from 2014, for the Quaker State 400, the narrator says over footage of cars spinning out and crashing, “On the roughest track on the circuit, there’s nowhere to hide. The best love it, while others fear it.”

170. Stephen Swift, the Kentucky Speedway Vice President of Operation and Development, stated that the ground water beneath the racetrack coupled with the frequent “freeze-thaw” cycles produced by the Commonwealth’s ever-changing weather is the cause of the bumpy asphalt at the Kentucky Speedway in Sparta, Kentucky.

171. The Kentucky Speedway surface has been occasionally patched but has not been repaved since 2002.

172. The rougher the track, the less traction it has and the more skill required of a driver.

173. Additionally, the bumpy track strains the components of the race car, including putting added stress on improperly secured components.

174. Kentucky Speedway also lacks Steel and Foam Energy Reduction barriers (“SAFER barriers”) on the interior walls, despite having it on the exterior walls.

175. SAFER barriers are walls that use a steel front with foam in sections between the steel and concrete. (Figure 53)



Figure 53

176. NASCAR mandated SAFER barriers in the turns of all ovals by the 2005 season.

177. Since then, tracks have added SAFER barriers primarily after a crash hit walls not covered by the barrier.

178. Following Kyle Busch's injury on February 21, 2015, in which he broke his right leg and left foot in a crash at Dayton International Speedway, Kentucky Speedway general manager Mark Simendinger told the Louisville Courier-Journal that Busch's crash "ratcheted up the urgency" of adding more SAFER barriers to their own track, which had been "long considered."

179. As described above, the most severe impact in Stephen D. Cox's crash was the initial impact into the interior track wall, which did not have a SAFER barrier.

180. Defendants knew or should have known that the Kentucky Speedway was unsafe.

F. Damages

181. As a direct and proximate result of the willful, wanton, reckless, grossly negligent,

negligent, and/or other tortious conduct of Defendants, Decedent Stephen D. Cox sustained severe injuries, suffered great pain of body and mind, and ultimately suffered death.

182. Stephen D. Cox's combined medical expenses, including the medical helicopter flight and the week-long attempt to save his life, amounted to \$414,186.87.

183. The expenses for Stephen D. Cox's burial and services were \$11,009.95.

184. The loss of Stephen D. Cox's power to earn money in the future, or the amount of money that he would have earned based upon his average yearly salary until retirement at the age of 67 years old, equals approximately four million dollars, ranging in present day value between \$3,886,450.01 to \$4,255,343.90.

COUNT I

WRONGFUL DEATH

185. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

186. Plaintiff Martha Jean Cox brings this action as the duly-appointed representative of Decedent Stephen D. Cox's estate and survivors (the "Estate", hereinafter).

187. As a direct and proximate result of Defendants' conduct described above, Decedent and the Estate suffered bodily injury resulting in reasonably necessary medical and hospital services, loss of income, pain and suffering, death and funeral expenses.

188. As a direct and proximate result of Defendants' conduct described above, Decedent's survivors and family have suffered and will continue indefinitely to suffer mental and physical anguish, and a loss of consortium.

189. Through the conduct alleged above, Defendants knowingly risked the lives of unsuspecting consumers, including Stephen D. Cox, in order to continue making a profit, and their conduct was extreme and outrageous, and warrants an award of punitive damages.

COUNT II

WILLFUL AND WANTON NEGLIGENCE

190. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

191. Plaintiff Martha Jean Cox brings this claim as Administrator of the Estate of Decedent, Stephen D. Cox, for the injuries and damages sustained by Decedent prior to his death, for the benefit of the heirs, next-of-kin and estate of Decedent.

192. As a direct and proximate result of Defendants' aforementioned indifference to the consequences of their actions, their conscious and reckless disregard for the rights and safety of Stephen D. Cox, and for their willful and wanton/negligent actions, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

193. As a result, Plaintiffs are entitled to recover damages, including punitive damages.

COUNT III

GROSS NEGLIGENCE

194. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

195. Plaintiff Martha Jean Cox brings this claim as Administrator of the Estate of Decedent, Stephen D. Cox, for the injuries and damages sustained by Decedent prior to his death, for the benefit of the heirs, next-of-kin and estate of Decedent.

196. As a direct and proximate result of Defendants' aforementioned absence of care for the safety and rights of Stephen D. Cox, and overtly dangerous, reckless and grossly negligent actions, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

197. As a result, Plaintiffs are entitled to recover damages, including punitive damages.

COUNT IV

ORDINARY NEGLIGENCE

198. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

199. Plaintiff Martha Jean Cox brings this claim as Administrator of the Estate of Decedent, Stephen D. Cox, for the injuries and damages sustained by Decedent prior to his death, for the benefit of the heirs, next-of-kin and estate of Decedent.

200. As a direct and proximate result of Defendants' aforementioned actions, which were at a minimum, grossly negligent, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

201. As a result, Plaintiffs are entitled to recover damages.

COUNT V

**VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,
OSTENSIBLE AGENCY AND/OR AGENCY**

202. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

203. At all times relevant to hereto, the agents, servants, employees, administrators, staff and/or representatives of Defendants were employed by and/or acting on behalf of Defendants.

204. At all times relevant to this Complaint, the agents, servants, employees, administrators, staff and/or representatives of Defendants acted within their respective capacities and scopes of employment for the Defendants.

205. The agents, servants, employees, administrators, staff and/or representatives of Defendants willfully, wantonly, recklessly, gross negligently, and/or negligently, directly and

proximately caused, both through acts and omissions, personal injury and pain and suffering to Decedent Stephen D. Cox, as well as his death.

206. As a direct and proximate result of the willful, wanton, reckless, grossly negligent, negligent, and/or other tortious conduct of Defendants, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

COUNT VI

FRAUD

207. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

208. Defendants fraudulently induced and misrepresented to Stephen D. Cox, and those similarly situated customers, that the “Rusty Wallace Racing Experience” was safe and contained “minimum risk.”

209. The individuals maintaining and managing the operation, which are Defendants’ agents and/or employees, were unqualified and ignorant of proper basic safety procedures.

210. Defendants knew or should have known about at least two documented cases of the steering wheel falling off while amateurs were driving race cars.

211. As described throughout this Complaint, and despite all of the abovementioned safety problems and instances of substandard safety, Defendants’ website, advertisements and instructive documents claim: “Due to the quality of the training and cars, damage is rare”, “maximum enjoyment with minimum risk”, etc. (Figure 36)

212. As set forth more fully above, Defendants’ representations were materially false and misleading when made.

213. Defendants knew or should have known that the aforesaid representations were materially false and misleading when they made them.

214. Defendants knew or should have known that Defendants made these representations with the intent to induce Stephen D. Cox, and others similarly situated, to rely upon them and purchase a “driving experience” from Defendants.

215. As a direct and proximate result of Defendants’ aforementioned fraudulent actions, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

216. Stephen D. Cox, and others similarly situated, were ignorant of the facts concealed or omitted by the Defendants, based upon the misrepresentations, concealments and omissions of the Defendants, and did in fact reasonably rely upon them.

COUNT VII

WRONGFUL MISREPRESENTATION

217. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

218. The foregoing wrongful acts of the Defendants also constitute negligent misrepresentations to Stephen D. Cox and those similarly situated.

219. As a direct and proximate result of Defendants’ aforementioned wrongful misrepresentations, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

220. It was foreseeable to the Defendants that Stephen D. Cox and those similarly situated would rely on such false information and the Defendants’ false representations to their detriment.

COUNT VIII

NEGLIGENT HIRING AND RETENTION

221. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

222. Defendants were willful, wanton, reckless, grossly negligent, and/or negligent, in their hiring and retaining of all agents, servants, employees, and/or representatives of Defendants, including Casey Satchwell, the buckler who wrongfully failed to attach the steering wheel and wrongfully failed to properly route the shoulder harness over the HANS device, rendering it ineffective, and his direct supervisor, Johnathan Croy, as well as staff and other employees that were present at Kentucky Speedway on September 14, 2014, who knew or should have known that Decedent Stephen D. Cox was being placed in a race car that contained improperly utilized and faulty safety equipment.

223. Defendants hired and retained individuals as their agents, servants, employees, and/or representatives to maintain and manage the operation of “Rusty Wallace Racing Experience” and Kentucky Speedway that were unfit for the job, unqualified and ignorant of basic safety procedures.

224. Defendants knew or should have known that their agents, servants, employees, and/or representatives, including Defendants Casey Satchwell and Johnathan Croy, hired and retained to maintain and manage the operation of “Rusty Wallace Racing Experience” and Kentucky Speedway were unfit for the job, unqualified and ignorant of basic safety procedures, creating a foreseeable and unreasonable risk to Stephen D. Cox and those similarly situated.

225. Based upon the aforementioned allegations, it was foreseeable to the Defendants that hiring and/or retaining these agents, servants, employees, and/or representatives created a risk

of harm to Stephen D. Cox and those similarly situated.

226. As a direct and proximate result of the willful, wanton, reckless, grossly negligent, negligent, and/or other tortious conduct of Defendants, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

227. Decedent Stephen D. Cox's injuries were a natural, probable and foreseeable consequence of the willful, wanton, reckless, grossly negligent, negligent acts and/or omissions of the Defendants.

COUNT IX

NEGLIGENT SUPERVISION

228. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

229. Defendants are and were at all times relevant to this Complaint responsible for the management, supervision and general operation of "Rusty Wallace Racing Experience" and Kentucky Speedway, as well as the management and supervision of all agents, servants, employees, and/or representatives of Defendants.

230. Defendants knew or should have known that their agents, servants, employees, and/or representatives, including Defendants Casey Satchwell and Johnathan Croy, hired and retained to maintain and manage the operation of "Rusty Wallace Racing Experience" and Kentucky Speedway were unfit for the job, unqualified and ignorant of basic safety procedures, creating a foreseeable and unreasonable risk to Stephen D. Cox and those similarly situated.

231. Defendants had a duty to supervise and manage the operation of "Rusty Wallace Racing Experience" and Kentucky Speedway, where Decedent Stephen D. Cox sustained severe injuries, suffered great pain of body and mind, and ultimately suffered death, including but not

limited to supervising and ensuring knowledge and compliance of all statutory, regulatory and safety requirements by all agents, servants, employees, and/or representatives of Defendants; a duty to supervise and ensure employment of proper persons and/or instrumentalities involved in the operation and/or maintenance of the subject race car; and Defendants had an overall duty to supervise day-to-day operations at “Rusty Wallace Racing Experience” and Kentucky Speedway.

232. Defendants were willful, wanton, reckless, grossly negligent, and/or negligent, warranting damages, including punitive damages, in one or more of the following manners, with each sufficient to support the relief sought:

- a. In permitting or failing to prevent willful, wanton, reckless, grossly negligent, negligent, and/or other tortious conduct by persons whether or not its agents, servants, employees, and/or representatives, upon the premises;
- b. In permitting or failing to prevent willful, wanton, reckless, grossly negligent, negligent, and/or other tortious conduct by persons whether or not its agents, servants, employees, and/or representatives, in the use of any and all instrumentalities utilized in the operation of “Rusty Wallace Racing Experience” or Kentucky Speedway;
- c. In failing to ensure the proper maintenance of any and all instrumentalities utilized in the operation of “Rusty Wallace Racing Experience” or Kentucky Speedway;
- d. In failing to adequately manage the day-to-day operations of “Rusty Wallace Racing Experience” or Kentucky Speedway;
- e. In failing to implement adequate safety procedures or training to prevent the ongoing pattern of substandard safety surrounding Defendants, consistent with

the aforementioned reviews and descriptions throughout the internet;

- f. In failing to supervise and ensure knowledge and compliance of all statutory, regulatory and safety requirements by all agents, servants, employees, and/or representatives of Defendants;
- g. In failing to supervise and ensure employment of proper persons and/or instrumentalities involved in the operations of “Rusty Wallace Racing Experience” or Kentucky Speedway; and
- h. In any other manner that may be shown in a trial in this matter.

233. Based upon the foregoing allegations and Defendants’ conduct described above, Defendants’ failure to properly supervise their agents, servants, employees, and/or representatives created an unreasonable risk of harm to Decedent Stephen D. Cox, and others similarly situated.

234. As a direct and proximate result of the willful, wanton, reckless, grossly negligent, negligent, and/or other tortious conduct of Defendants, Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death.

235. Decedent Stephen D. Cox’s injuries were a natural, probable and foreseeable consequence of the willful, wanton, reckless, grossly negligent, and/or negligent acts and omissions of the Defendants.

COUNT X

CLAIMS FOR LIFETIME INJURY AND SUFFERING

236. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

237. As a direct and proximate result of Defendants’ conduct described above, Decedent suffered bodily injury resulting in loss of earnings, reasonably necessary medical and hospital

services, pain and suffering, death and funeral expenses, including medical expenses invoiced in the amount of \$414,186.87.

238. As a direct and proximate result of Defendants' conduct described above, Decedent and the Estate suffered mental and physical anguish, and a loss of the enjoyment of life in the future, lost future wages, and ultimately the loss of life.

239. Through the conduct alleged above, Defendants knowingly risked the lives of unsuspecting consumers in order to continue making a profit, and their conduct thus was extreme and outrageous, and warrants an award of damages, including punitive damages.

COUNT XI

SPOLIATION OF EVIDENCE

240. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

241. Marketing materials for Defendant "Rusty Wallace Racing Experience" state:

Videos - First, we have dramatically upgraded our video system. Our cars now carry the Chase cam on board recorders. This will record both the out going view of "what the driver" sees, and a camera pointed at the driver so we can see how you are reacting. So...come up with your best Cole Trickle or Ricky Bobby face for the cameras. If you have not purchased this in advance you may do so at the track the day of the event.

242. Defendants' employees, agents and/or representatives have viewed and/or failed to preserve the video recorded in the race car provided by Defendants to Stephen D. Cox to drive.

243. Another driver, driving directly behind Stephen D. Cox at the time of the crash, was not provided the video from his car, despite having paid for it, which was not preserved and/or was destroyed by Defendants.

244. The evidence reasonably supports the conclusion that the subject videos were not

preserved, lost or destroyed by Defendants' employees, agents and/or representatives with an interest in preventing the disclosure of the video contents.

245. When it may be reasonably believed that material evidence within the exclusive possession and control of a party, or its agents or employees, was lost without explanation or is otherwise unaccountably missing, the trier of fact may find that the evidence was intentionally and in bad faith destroyed or concealed by the party possessing it and that the evidence, if available, would be adverse to that party or favorable to his opponent. When the trier of fact is a jury, the jury shall be so instructed.

COUNT XII

VIOLATION OF FEDERAL CONSUMER PRODUCT SAFETY ACT **(15 U.S.C. §§ 2051–2089)**

246. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

247. This claim is brought under the Federal Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089.

248. The Consumer Product Safety Commission ("CPSC") was established in 1972 with the passage of the Consumer Product Safety Act.

249. Congress directed the Commission to "protect the public against unreasonable risks of injuries and deaths associated with consumer products."

250. CPSC works to reduce the risk of injuries and deaths from consumer products by: developing voluntary standards with industry; issuing and enforcing mandatory standards; banning consumer products if no standard would adequately protect the public.

251. CPSC has jurisdiction over several types of amusements including trampoline parks, rock climbing walls, ropes courses, go-karts and portable amusement rides. A portable

amusement ride is differentiated by its ability to be transported from location to location, and can frequently be found at local fairs and traveling carnivals.

252. Under the Federal Consumer Product Safety Act, the term “consumer product” means any article, or component part thereof, produced or distributed for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include— (C) motor vehicles or motor vehicle equipment. (15 U.S.C. § 2052(a)(5)(ii)(C)).

253. Under the Federal Consumer Product Safety Act, the term “consumer product” also includes:

any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site.

15 U.S.C. § 2052(a)(5).

254. Defendants transport race cars from location to location (race track to race track) across the country, like mobile amusement rides traveling from one fair/carnival to another.

255. The “Rusty Wallace Racing Experience” is in fact not a race or a competitive event.

256. Defendants’ customers, like an amateur driver such as Stephen D. Cox, travel around a restricted route or course, for the purpose of giving the passenger amusement.

257. Defendants knowingly violated a consumer product safety rule, as well as other rules/orders issued by the CPSC.

258. As a direct and proximate result of Defendants’ conduct described above, including Defendants’ knowing violation of a consumer product safety rule, Decedent and the Estate suffered mental and physical anguish, and a loss of the enjoyment of life in the future, loss of earnings/future

wages, and ultimately the loss of his life, together with additional damages.

259. As a result of the aforementioned wrongful conduct of Defendants, Defendants have violated the Federal Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089.

COUNT XIII

VIOLATION OF KRS 247.232 *et seq.* AND 302 KAR 16

260. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

261. This claim is brought to address violations of the Kentucky Revised Statutes 247.232 *et seq.* and the related Chapter 16 of Title 302 of the Kentucky Administrative Regulations, which governs the requirements for the maintenance and repair of permanent and temporary amusement rides or attractions.

262. Pursuant to KRS 247.232 *et seq.* and 302 KAR 16, the Kentucky Department of Agriculture – Division of Regulation and Inspection is responsible for the inspection of all amusement rides and attractions to ensure the safety of the equipment, including mobile site amusements and carnivals, and go-kart establishments.

263. The subject “driving experience” was not a race or a competition, but was essentially an amusement ride or mobile amusement ride traveling from one fair/carnival to another, and its operation violated the foregoing statutes cited.

COUNT XIV

NEGLIGENCE *PER SE*

264. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

265. Defendants’ aforementioned actions and omissions amount to negligence *per se*

and a *prima facie* violation of 15 U.S.C. §§ 2051–2089, KRS 247.232 *et seq.* and 302 KAR 16.

266. Decedent and the Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind, and ultimately suffered death as a direct and proximate result of Defendants' aforementioned actions and omissions, which amount to breach their statutory duties.

COUNT XV

PUNITIVE DAMAGES

267. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

268. As a direct and proximate result of Defendants' aforementioned indifference to the consequences of their actions; their conscious and reckless disregard for the rights and safety of Stephen D. Cox; their willful and wanton/negligent actions; Defendants' aforementioned absence of care for the safety and rights of Stephen D. Cox; and Defendants' overtly dangerous, reckless and grossly negligent actions, Decedent Stephen D. Cox sustained severe injuries, suffered great pain of body and mind, and ultimately suffered death, and his Estate was damaged as alleged herein.

269. Plaintiffs are entitled to an award of punitive damages in such an amount as a jury may find to be appropriate at the trial in this matter.

COUNT XVI

DECLARATORY JUDGMENT THAT FEDERAL CONSUMER PRODUCT SAFETY ACT APPLIES TO "RUSTY WALLACE RACING EXPERIENCE" "DRIVING EXPERIENCES"

270. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

271. Congress directed the Consumer Product Safety Commission to "protect the public against unreasonable risks of injuries and deaths associated with consumer products."

272. Consumer Product Safety Commission has jurisdiction over several types of amusements including trampoline parks, rock climbing walls, ropes courses, go-karts and portable amusement rides. A portable amusement ride is differentiated by its ability to be transported from location to location, and can frequently be found at local fairs and traveling carnivals.

273. The “driving experience” operated by the Defendants as the “Rusty Wallace Racing Experience” should be subject to the jurisdiction of CPSC because Defendants transport its race cars from location to location (race track to race track) across the country, like mobile amusement rides traveling from one fair/carnival to another.

274. The “driving experiences” operated by Defendants are not a competitive races and do not involve “actual” racing, but are essentially traveling amusement rides that involve amateur participants.

275. Defendants’ conduct is in violation of the law and regulations enforced by the CPSC, resulting in the damages alleged herein.

COUNT XVII

DECLARATORY JUDGMENT THAT THE KENTUCKY DEPARTMENT OF AGRICULTURE – DIVISION OF REGULATION AND INSPECTION IS RESPONSIBLE FOR THE INSPECTION OF “RUSTY WALLACE RACING EXPERIENCE” “DRIVING EXPERIENCES”

276. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

277. The Kentucky Revised Statutes 247.232 *et seq.* and the related Chapter 16 of Title 302 of the Kentucky Administrative Regulations, governs the requirements for the maintenance and repair of permanent and temporary amusement rides or attractions.

278. Pursuant to KRS 247.232 *et seq.* and 302 KAR 16, the Kentucky Department of Agriculture – Division of Regulation and Inspection is responsible for the inspection of all

amusement rides and attractions to ensure the safety of the equipment, including mobile site amusements and carnivals, and go-kart establishments.

279. The “driving experience” operated by the Defendants as the “Rusty Wallace Racing Experience” should be subject to the jurisdiction of the Kentucky Department of Agriculture – Division of Regulation and Inspection because Defendants transport its race cars from location to location (race track to race track) across the country, like mobile amusement rides traveling from one fair/carnival to another.

280. Defendants operation of “driving experiences” is not a competitive race, does not involve “actual” racing, and was not a public racing event, but was essentially a mobile amusement ride traveling from one fair/carnival to another, which involved amateur participants.

281. Defendants’ conduct is in violation of the aforementioned laws and regulations, resulting in the damages alleged herein.

COUNT XVIII

DECLARATORY JUDGMENT

282. Plaintiffs incorporate and adopt by reference each foregoing paragraph set forth in this Complaint as if fully rewritten here.

283. Among other reasons alleged throughout this Complaint, the so-called “waivers”/“releases” are inapplicable and ineffective based upon public policy and as a matter of law. (*See* Fact Sec. C, *supra*.)

284. There is an evident public interest in the physical safety and protection of the public, as in the applicability of the aforementioned safety statutes and regulations.

285. Public policy disfavors such purported “waivers”/“releases”, and this was not a competitive race or sporting event for the public.

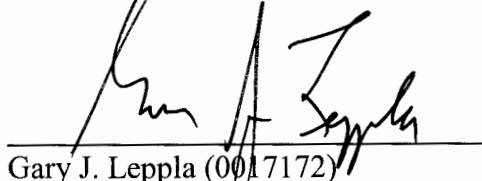
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants, jointly and severally, as follows:

- A. For an award of compensatory damages against Defendants for loss of earnings, medical and hospital expenses, funeral expenses, pain and suffering, and other damages according to proof at trial in excess of the jurisdictional limit;
- B. For an award of punitive or exemplary damages against Defendants in an amount sufficient to punish and deter future similar conduct;
- C. For declaratory relief that the purported “waivers”/“releases” are ineffective, for a declaration as to the applicability of safety statutes cited herein, and for other appropriate declaratory relief;
- D. For reasonable attorneys’ fees and costs;
- E. For pre-judgment interest;
- F. For leave to amend as additional facts are gathered; and
- G. For such further relief as this Court deems necessary, just and proper.

Date: June 10, 2015

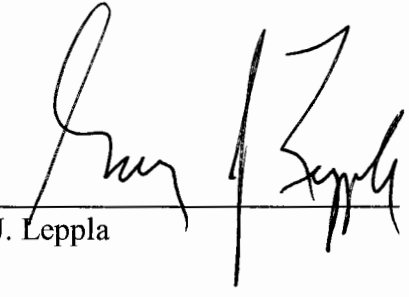
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JURY DEMAND

Plaintiffs hereby demand a trial by jury.



Gary J. Leppla