

SUPERIOR COURT OF DECATUR COUNTY
STATE OF GEORGIA

JAMES BRYAN WALDEN and
LINDSAY WALDEN, Individually and
on Behalf of the Estate of Their Deceased Son,
REMINGTON COLE WALDEN,

Plaintiffs,

vs.

CHRYSLER GROUP, L.L.C. and
BRYAN L. HARRELL,

Defendants.

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CIVIL ACTION

FILE NO. 12-CV-472

**PLAINTIFFS' REPLY TO CHRYSLER GROUP, LLC'S BRIEF IN OPPOSITION TO
PLAINTIFFS' RULE 702 MOTION CHALLENGING CHRYSLER EXPERT
PAUL M. TAYLOR'S "EXPERT" TESTIMONY ABOUT STATISTICS**

The response from Chrysler Group LLC ("CG") asked this Court to do three things to save Paul Taylor from the Rule 702 guillotine: (1) *liberally construe* Taylor's lack of qualifications in favor of expert status, (2) call his work an "engineering analysis" rather than the statistical analysis it purports to be, and (3) create a brand new exception to the standard of admissibility of other similar incident evidence. CG is not entitled to any of those things. Taylor's testimony should be excluded.

First, CG knows Taylor is not qualified to testify as an expert in statistics. If he was so qualified, CG would have not asked this Court to "liberally construe [Taylor's] qualifications in favor of expert status." Since determining whether a witness is qualified to offer expert testimony "is inherently case-specific,"¹ a comparison (*see* chart below) between Dr. Hubele and

¹ *Thomas v. Hubtex Maschinenbau GmbH & Co KG*, No. CIV.A. 7:06-CV-81 HL, 2008 WL 4371977, at *2 (M.D. Ga. Sept. 23, 2008).

Taylor's qualifications is instructive—it is *undisputed* Dr. Hubele is qualified to testify as an expert in statistics.²

Qualification	Hubele ³	Taylor ⁴
Holds undergraduate and post-graduate degrees in mathematics and statistics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Authored books and articles in peer reviewed journals on the subject of statistics and statistical analysis.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member of professional statistics organizations/societies.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Taught statistics at the college level.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Holds oneself out as an expert in statistics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Dr. Hubele's qualifications show what is expected under O.C.G.A. § 24-7-702 for someone to be qualified as an "expert." Taylor's lack of qualifications is just too great to be cured by liberal construction. CG's protestation that Taylor may testify as CG proposes he do is equivalent to CG arguing that had Taylor taken a single undergraduate course in anatomy he would be "qualified" to testify about the cause of Remi Walden's death.

Second, CG attempts to dodge the truth that Taylor is not qualified to testify about the subject for which he was proffered by CG—statistics—by purporting to re-name that subject "engineering analysis." That's made up: Taylor himself testified that what he did was a "statistical analysis." Taylor Dep., 9:22-10:08 (admitting the analysis he performed for CG during the NHTSA investigation was "limited strictly to statistical analyses" of FARS and state data); 10:14-17 (admitting he performed statistical analyses "specifically for the purposes of the case Walden versus Chrysler"); 97:02-13 (describing the "statistical analysis" he performed for

² CG's Rule 702 Motion to Exclude the Testimony of Norma F. Hubele, Ph.D. at 9.

³ See, e.g., Dr. Hubele's CV (Hubele Dep., Exhibit 2 thereto).

⁴ See generally Taylor Dep. at 160-163, 169; Taylor's CV (Exhibits 2 and 3 to Plaintiffs' Rule 702 Motion).

this case); 106:01-08 (describing his *critique* of Norma F. Hubele, Ph.D.'s *statistical analysis*).⁵ CG's attempt to re-label Taylor's subject is disingenuous.

Third, there are no exceptions to the substantial similarity requirements under Georgia law. This part of the law has been fully litigated, and the Georgia appellate courts have established the standard for what is, and what is not, admissible. Georgia law does not allow a party to tender to a Court or jury other incidents that are *dissimilar* to the incident giving rise to the lawsuit. CG has not and cannot cite a Georgia case creating such an exception. Georgia law does not permit CG to bypass the substantial similarity rule for any reason. Period.

CG's reliance on *Heath v. Suzuki Motor Corp.*, 126 F.3d 1391 (11th Cir. 1997) is misplaced. In *Heath*, the trial court admitted evidence of "other rollover incidents involving dissimilar vehicles." 126 F.3d at 1395. The Eleventh Circuit expressly rejected Heath's contention that the "trial court erred in not applying Georgia law to determine the admissibility of the evidence at issue." *Id.* at 1396 ("we find no merit to his position"). Instead, the court applied an entirely different rule based on federal law and the Federal Rules of Evidence—"[t]his evidentiary doctrine applies when one party seeks to admit prior accidents or occurrences involving the other party . . . *Id.* (emphasis added). That is not the law in Georgia.

The black-letter rule in Georgia is that statistical evidence regarding other wrecks is not admissible unless the other wrecks are "substantially similar" to the wreck at issue. *Cooper Tire & Rubber Co. v. Crosby*, 273 Ga. 454, 455 (2001); *Colp v. Ford Motor Co.*, 279 Ga. App. 280, 281 (2006). It applies equally to plaintiffs and defendants. *Id.*; see also Order, *Hatfield v. Ford* (substantial similarity rule "applies to the proponent of the evidence in question, whether it be the Plaintiffs or Defendant Ford.") (Exhibit 5 to Plaintiffs' 702 motion).

⁵ Excerpts from Taylor's deposition are attached as Exhibit A.

The substantial similarity rule does not vary based on the reasons for which the proponent seeks to admit something. The Court of Appeals has expressly *held* that “[i]n product liability actions, evidence of other similar incidents involving the product is admissible, and relevant to the issues of notice of a defect and punitive damages, provided there is a showing of substantial similarity. *Without a showing of substantial similarity, the evidence is irrelevant as a matter of law.*” *Volkswagen of Am., Inc. v. Gentry*, 254 Ga. App. 888, 895 (2002) (emphasis added); *see also Crosby*, 273 Ga. at 460 (“substantially similar evidence is admissible because it is relevant to the issues of notice and punitive damages and evidence that is “wholly different” should be excluded.”) (emphasis added).

Fourth, even if there was an exception to the substantial similarity rule—which there isn’t—the evidence CG seeks to admit through Taylor is not relevant to “balancing risk against utility.” CG never considered Taylor’s statistical analyses when making the decision to locate the gas tank behind the rear axle in the 1999 Grand Cherokee—that is not and will not be disputed. Taylor did not perform the statistical analyses that CG now seeks to tender *until after* NHTSA’s Office of Defects Investigation started investigating the Jeep Grand Cherokee, Cherokee, and Liberty. CG did not even know about those statistical analyses when it made the design decisions (*for the obvious reason the statistical analysis did not exist*). Taylor’s statistical analyses are calculated to confuse and mislead the jury.

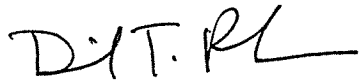
In summary, the law requires that this Court exclude any testimony from Taylor which involves statistics, statistical analysis, and any related conclusions. Taylor is not an expert in statistics and this Court should not construe his lack of qualifications in favor of expert status. There are no exceptions to the substantial similarity rule in Georgia. Taylor’s proposed

testimony has no probative value and would only confuse and mislead the jury—that is its sole purpose.

This 18th day of February, 2015.

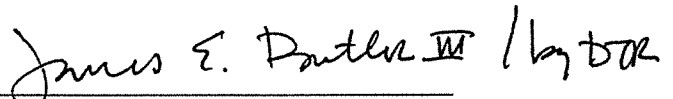
Respectfully submitted,

BUTLER WOOTEN CHEELEY & PEAK LLP

BY: 
JAMES E. BUTLER, JR.
Georgia Bar No. 099625
DAVID T. ROHWEDDER
Georgia Bar No. 104056

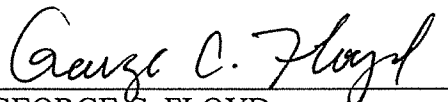
2719 Buford Highway
Atlanta, Georgia 30324
(404) 321-1700

BUTLER TOBIN LLC

BY:  / by bar
JAMES E. BUTLER III
Georgia Bar No. 116955

1932 N. Druid Hills Rd. NE
Suite 250
Atlanta, Georgia 30319
(404) 587-8423

FLOYD & KENDRICK, LLC

BY: 
GEORGE C. FLOYD
Georgia Bar No. 266350

P.O. Box 1026 (39818)
415 S. West Street
Bainbridge, Georgia 39819
(229) 246-5694

ATTORNEYS FOR PLAINTIFFS

BY: L. Catharine Cox / by DR
L. CATHARINE COX
Georgia Bar No. 192617

P.O. Box 98
Young Harris, GA 30582

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record with a copy of the foregoing by Electronic mail and depositing it in the United States Mail with adequate postage affixed thereon and addressed as follows:

M. Diane Owens, Esq.
Terry O. Brantley, Esq.
Alicia A. Timm, Esq.
Anandhi S. Rajan, Esq.
Swift, Currie, McGhee & Hiers, LLP
1355 Peachtree Street NE, Suite 300
Atlanta, Georgia 30309

Karsten Bicknese, Esq.
Robert Betts, Esq.
Seacrest, Karesh, Tate & Bicknese, LLP
56 Perimeter Center East, Suite 450
Atlanta, Georgia 30346

Erika Z. Jones, Esq.
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006-1101

Sheila Jeffrey, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
101 North Main, 7th Floor
Ann Arbor, MI 48104-1400

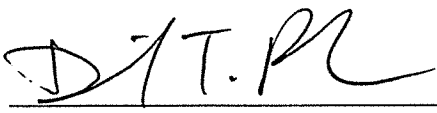
Brian S. Westenberg, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
840 W. Long Lake Road, Suite 200
Troy, MI 48098

Bruce W. Kirbo, Jr., Esq.
Bruce W. Kirbo, Jr. Attorney at Law, LLC
Post Office Box 425
Bainbridge, Georgia 39818

Brian W. Bell, Esq.
Anthony J. Monaco, Esq.
Andrew J. Albright, Esq.
Swanson, Martin & Bell, LLP
330 N. Wabash, Suite 3300
Chicago, IL 60611

This 18th day of February, 2015.

BUTLER WOOTEN CHEELEY & PEAK LLP

BY: 

JAMES E. BUTLER, JR.
Georgia Bar No. 099625
DAVID T. ROHWEDDER
Georgia Bar No. 104056

EXHIBIT A

IN THE SUPERIOR COURT OF DECATUR COUNTY

STATE OF GEORGIA

JAMES BRYAN WALDEN and
LINDSAY WALDEN,
Individually and on Civil Action File
behalf of the Estate of No. 12CV472
their deceased Son,
REMINGTON COLE WALDEN,

Plaintiffs,

vs.

CHRYSLER GROUP, L.L.C.,
and BRYAN L. HARRELL,

Defendants.

THE DEPOSITION OF PAUL M. TAYLOR, Ph.D., P.E.

October 2, 2014

9:00 a.m.

The Peachtree, Suite 300

1355 Peachtree Street NE

Atlanta, Georgia

Maureen S. Kreimer, RPR, CRR, CCR-B-1379, LCR-061

1 recent PE and EA investigations?

2 Q. I'm talking about -- I'll redo the
3 question again because I can read it here.

4 Did you work on the statistical analyses
5 that were provided to NHTSA by Chrysler with respect
6 to Chrysler's Jeep-type vehicles with rear fuel
7 tanks?

8 A. Oh, yes. I'm sorry, I thought you said "G
9 type."

10 Q. Jeep?

11 A. Okay.

12 Q. What did you do with respect to those
13 statistical analyses?

14 A. I essentially calculated rates from FARS
15 and confidence intervals on those rates using FARS
16 data. I did some analysis using state's data. And
17 I did the fuel tank survey that has been included as
18 part of this. In terms of, are you limiting just to
19 statistical analyses, or any sort of work? Because
20 the fuel tank is not a statistical analysis.

21 Q. Let me do my question again.

22 Did you work on the statistical analyses
23 that were provided to NHTSA by Chrysler with respect
24 to Chrysler's Jeep-type vehicles with rear fuel
25 tanks? That was my question.

1 A. That was the first one I answered yes. It
2 was the next question that you were asking.

3 Q. What did you do?

4 A. Okay. And is that being limiting strictly
5 to statistical analyses?

6 Q. Yes.

7 A. So that would be analysis of FARS data and
8 state data.

9 Q. All right. What else did you do?

10 A. Then I did the fuel tank survey, and I did
11 some work looking at issues associated with other
12 databases like NAAS, CDS. I don't recall if I did
13 GES.

14 Q. All right. Have you done any statistical
15 analyses specifically for the purposes of the case
16 of Walden versus Chrysler?

17 A. Yes, I have.

18 Q. Okay. What have you done?

19 A. Can I show you the files, or do you just
20 want a general description?

21 Q. Let's start with general description.

22 A. I calculated rates using the FARS database
23 for a variety of different crash modes and
24 scenarios.

25 Q. All right. Let's go back to the work that

1 that is -- strike that.

2 Describe for us the statistical analysis
3 work that you've done specifically for the Walden
4 versus Chrysler case.

5 A. Okay. The statistical analysis, and in
6 general, it's a relatively straightforward. When
7 you say statistical, I'll include it to mean simple
8 things such as rates, which are a straightforward
9 measure.

10 I have measured rates of FARS collisions
11 under various scenarios, and have calculated the
12 confidence intervals about the rates for those
13 vehicles. And by vehicles, I mean the WJ Grand
14 Cherokee, and peer vehicles to the WJ Grand
15 Cherokee. Excuse me W -- WJ. I just want to make
16 sure I got WJ correct.

17 Q. What does WJ mean?

18 A. WJ is a platform, and it references the
19 1999 to 2004 Grand Cherokee platform.

20 Q. What does XJ mean?

21 A. XJ is the Cherokee platform. It's a
22 separate vehicle.

23 Q. What model years?

24 A. The XJ -- there is also, for a time
25 period, called the XJ Wrangler was from 1984 to

1 think you limited it to statistical analysis.

2 Q. I did. Have you done other kind of work
3 for the Walden case?

4 A. Yes.

5 Q. Other work. What was that?

6 A. I reviewed Dr. Hubele's -- is that how
7 it's pronounced? Dr. Hubele's analysis and provided
8 a critique of the work that she has done.

9 Q. All right. Show us that critique, please.

10 A. There are two parts to this. One of them
11 is I have the opinions, but the opinions are more
12 fully disclosed in some slides that I created.

13 Q. Was that under a divider? Give me that,
14 too.

15 A. Yeah. There is one other slide that's not
16 related to Dr. Hubele in supplemental analysis, but
17 I can include it as long as you understand it's a
18 little bit broader.

19 Q. Yeah. Well, save that.

20 A. Okay.

21 Q. Where is the divider that goes before
22 this?

23 A. It's called "Supplemental Analysis".

24 Q. All right. I'm going to mark as
25 Plaintiffs' Exhibit No. 8 this written critique of