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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

July 22, 2022

TRANSCRIPT OF JURY TRIAL  
DAY FOUR - AFTERNOON SESSION  
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

THE COURT: All right. Attorney Bagnell for Mr. Guay.

MR. BAGNELL: Thank you, your Honor.

I want to respond to some of Mr. Joyce's comments. We are not here asking for sympathy, ladies and gentlemen. We're asking for justice alone. It is the height of chutzpah for Sig Sauer to come here and express all these great condolences and sympathy for Mr. Guay when their reckless conduct almost took his life in 2020.

I've practiced law for almost 30 years, ladies and gentlemen. I have never seen any corporation engage in such dissembling about an unsafe product, playing fast and loose with the English language, in my career. The product is safe. It's unsafe. Maybe it's not safe. It's impossible to fire without a trigger pull, but it might be possible under certain circumstances. So I want to go through some of Mr. Joyce's comments and then move over to my presentation.

What I'm going to bring up here, ladies and gentlemen, is a timeline so you can put in full perspective what has happened here since 2014. All right. And I want to leave that up there for a

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while I respond to some of Mr. Joyce's comments in this case.

A couple of things he said, ladies and gentlemen.

First, he talked about a function test and that Mr. Guay's P320 passed a basic function test. That's no surprise, ladies and gentlemen. That's a basic static procedure. The gun is not vibrated. It is simply routine functions. Does the magazine drop out? Does the slide move back? So that has nothing to do with what happens here. Our claim is that when Mr. Guay was jostling the holstered gun, which is a form of vibration, it fired. So the fact that it passed one of the basic function tests is completely irrelevant here.

Second, the trigger pull. Mr. Joyce noted that it was 7 pounds. Mr. Watkins said it was not a hair trigger. So to suggest that Mr. Guay who has lots and lots of experience with firearms drew his pistol, found the trigger guard, and the trigger, put his finger on the trigger, and pulled it hard enough to shoot himself, that is basically saying that he did it on purpose. There's no evidence in the case that Mr. Guay has ever tried to hurt himself in the past or take his own life.

Mr. Joyce is using a phrase we've heard here a lot, that it's "physically impossible" for the P320 to fail. Again the chutzpah is unbelievable, ladies and gentlemen. *I'm* not the one saying that the P320 can fail. Sig *Sauer* is the one saying it can fail - - in their own press releases. I didn't write them. Sig Sauer did. I would like to bring up one of those, I'll put this down for a second, so we can go over exactly what it states again. Instead of having Sig Sauer try to create sort of a spirit of what the actual document says, we can read the language.

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THE COURT: I don't want to throw you off, Attorney Bagnell. I just am asking that you just ask Donna to take it down for you between exhibits.

MR. BAGNELL: Thank you.

THE COURT: Keep going.

MR. BAGNELL: This is the August 4, 2017, press release. This is Sig Sauer stating that vibration can make the P320 fire. It does not say acute vibration. It says acute conditions. Then there's a parenthesis. For example, shock is first. Vibration is second. I never said mere vibration. The word is vibration, ladies and gentlemen. It simply says vibration. It does not say acute vibration. It does say heavy or repeated drops.

So Sig Sauer is the person -- in their own words they're telling you that vibration can make this gun fail, in 2017. You can take that down, Donna, and I would like to bring the timeline back up.

Okay. No replication. The Judge will instruct you on what the law is, ladies and gentlemen, in terms of what you have to find to find that Sig was negligent. Sig had a duty of care to Mr. Guay and every other person out there in the United States not to put a defective pistol into commerce. They have all but conceded in their own documentation that this gun had serious safety problems and it shot Mr. Guay.

They bring up the "Voluntary Upgrade Program." Here's another case of Sig Sauer trying to have it both ways. They say -- and you saw the exhibit. They asked the rhetorical question: Is my P320 safe

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in its current configuration? "Yes." Mr. Guay said he relied on that in not returning it, and so did hundreds of thousands of other people.

We know from the deposition excerpt of Mr. Strader that was read into the record that very, very few people returned their P320s. Saving Sig Sauer millions and millions of dollars. It's clear that Sig had knowledge as early as 2017, and in fact in 2016, that the P320 had the capacity to fire without the trigger being pulled. And instead of being responsible, a responsible corporation, ladies and gentlemen, they did a cover-up. You're allowed to use your common sense here. You're allowed to draw reasonable inferences from the facts. Mr. Toner said clearly that in 2016 they were competing for a \$580 million contract with the Army.

All right. So Roscommon happens in February 2016. Now, the notion that this was investigated, ladies and gentlemen, is ridiculous. Mr. Joyce said the best evidence is the physical evidence. The video, which I will play a clip of and then show you a still frame of, shows that nothing was inside the officer's holster. Nothing. I'll show you a still frame of that.

Instead of announcing a safety problem or a warning in 2016, Sig covered it up. They said nothing about it. Mr. Larochelle "lost" the DVD, and I would suggest that anyone who believes that would believe the moon is made of cheese, ladies and gentlemen. They didn't lose that. They got rid of it because a \$580 million contract was at stake. So I would like to bring up the Roscommon video.

Donna, please.

Are you ready?

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MR. BAGNELL: Yes, I'm ready.

THE CLERK: You're ready. Okay.

Let's look at this again, ladies and gentlemen. This is an amazing video. This is the officer's own bodycam, and I'm going to fast forward it to sort of the relevant section here. Okay.

(Video starts playing)

He's walking, ladies and gentlemen, just like Mr. Guay, walking every single day with the holstered P320 impacting inertially the gun. Sig's explanation of what happened here is so preposterous, ladies and gentlemen. You can see the silver buckle retracted if you look at that closely. It's right at the dividing line. You can see the silver line or silver buckle.

Seat belts and seat belt buckles are not rattlesnakes, ladies and gentlemen. They are not sentient creatures. They do not dive down into a holster. It simply does not happen. And the video that Sig played -- I assume it was made by Sig Sauer. Whoever it was made by, the three second video that shows someone with some keys I think or not even a buckle, maybe a buckle, but literally trying to shove it in the holster. That's their alleged replication of this, someone actually using their hand to shove it in? We know that didn't happen here.

But there's more. There's a still frame I want to show you that shows Officer Richardson

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right after this happens. He's stunned. "How the hell does that happen?" "How does a gun go off getting out of a car?" I'm going to show you a still frame, and you can see positively -- and I want to thank Mr. Joyce for saying that physical evidence is the best evidence. This is physical evidence of what actually happened there that day.

And, by the way, with regard to what the department concluded allegedly, as if you're sort of bound by that, you're not, everyone's assumption -- or most people's assumption in the United States is that this can't happen. Guns can't fire without the trigger being pulled. Now you know the history of this gun, that it can happen, but this department is probably stunned, like, this just can't have happened, so they looked for some explanation. And they're also, by the way, a customer of Sig Sauer.

But I'm going to show you this still frame, and you can see there's absolutely nothing inside Officer Richardson's holster.

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Okay. It's clear as day, ladies and gentlemen, you can see the butt of the gun in the holster. There is no seat belt trailing out of the car. If that had wedged itself into the holster, somehow dove down, wedged itself into the holster, taken a left turn, and then gotten in the trigger guard, gotten on the trigger, there would be a black seat belt obviously visible there. There's nothing there. So the explanation here is wrong, and your eyes can see it. You're entitled as I said, as the Judge will tell you, to use your common sense. There's no seat belt buckle there. There's no seat belt trailing out with him. In fact, later when he's talking to the conservation of

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says, your seat belt wouldn't have hit that. He said, no, it didn't, and that the trigger was completely covered. So here is a replication of the P320 firing on its own. It's clear as day.

Oh, before I -- the last point that Mr. Joyce made. Again, the abuse of the English language here has stunned me. The position that the seat belt buckle "made its way" into the holster. Seat belt buckles don't do that. They don't "make their way" unless a human being takes it by their hand, left or right, and pulls it over. That's how they move. They don't make their way on their own.

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THE COURT: Is this a demonstrative?

MR. BAGNELL: Yes, it's a demonstrative.

THE COURT: Okay.

MR. BAGNELL: So this is the timeline I wanted to 14talk about, ladies and gentlemen.

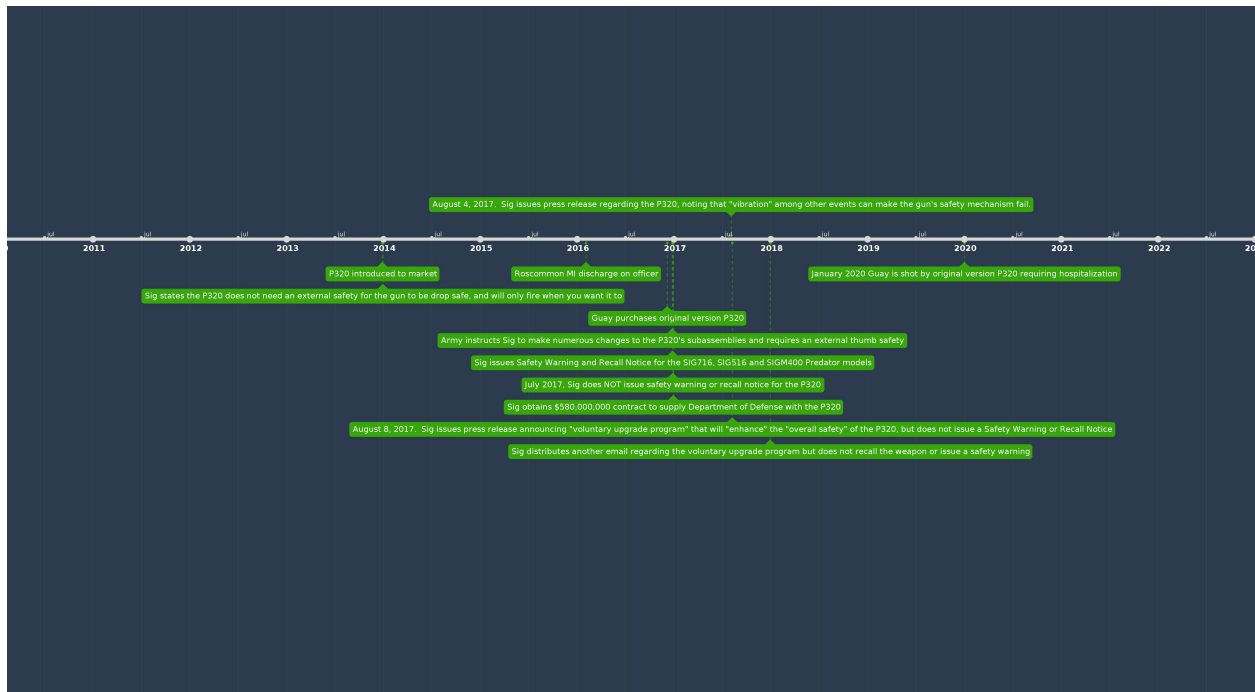
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We really start in 2014. That's when Mr. Toner said the P320 was first introduced to the market. He said some interesting things about the P320. First, it was Sig Sauer's first ever striker-fired pistol. Sig had never done it before. Second, it was not built from the ground up. They kind of cannibalized a frame from an older [hammer-fired] model, the P250, and they married it with a striker-fired slide. So this was not a product that was organically developed from the ground up. He took some frames there, let's throw a slide on it, and put it together. That's what he testified. And in 2014 it was introduced to the market. Sig states that the P320 does not need an external safety for the gun to be drop safe and will only fire when you want it to.

Mr. Joyce is correct. We are not claiming that the gun was dropped. Sig has this obsession

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with trying to limit these discharge incidents to drops. There's evidence galore, including Mr. Guay's case, that far less than a drop, including Roscommon, can make the gun fire because it's that poorly made.

Okay. 2016 you see the entry for the Roscommon, Michigan, discharge on the officer. That is not disclosed to the public. Mr. Guay is not informed of it. He buys his P320 about eight months later -- or ten months later, in December of 2016. Now here's where everything starts happening in 2017. Okay. Sig announces -- first of all, Sig wins the \$580 million contract to supply the Army with the P320. That's January of 2017. In May of 2017 the Army said you have to radically change this gun and not just add an external thumb safety but the insides of the gun were dramatically changed, subassemblies, the lighter trigger, lighter sear.

Sig complies unsurprisingly to get the \$580 million contract but doesn't make the same changes for the commercial version. Does not alert the public to a safety problem. All they do in August of 2017 is announce a "Voluntary Upgrade Program." Now, this is different from what they did with the Predator rifles. With the Predator rifles, as Mr. Toner testified, they issued a safety warning and recall notice for three versions of that rifle. They don't do that with the P320.

Again, ladies and gentlemen, you can use your common sense why they did not do that. They had just gotten a \$580 million contract. Are they really going to five months later, six months later announce to the public that we have to do a safety warning for the P320? The Army has that gun. It would have been a public relations calamity. So, instead, they announced a "Voluntary Upgrade

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Program.” Again, playing games with words. It's an upgrade, it's safe as is, but it's also designed to improve the overall safety of the gun.

Ladies and gentlemen, a company can't have it both ways. They can't say the gun was totally safe, blame Mr. Guay for not taking advantage, but also confess that there's a safety problem with the gun and not tell the public about that. That's negligent. You can't do that. This is not a toaster, ladies and gentlemen. It's a gun. So, again, they're playing fast and loose with the English language, and they're playing fast and loose with Mr. Guay's life and other consumers' lives.

Four days later, again another press release talking about enhancing the overall safety of the weapon. Okay. And that's it. Nothing else is said except, as Mr. Toner said, there was a second – actually, as Mr. Strader said, there was a second voluntary upgrade notice in June of 2018. That's it. From Roscommon, February 2016, four years later to when Mr. Guay was shot, there's silence from Sig Sauer. No safety warning, no recall notice, even though they had done it for other products.

Okay. Experts. Ladies and gentlemen, Mr. Joyce obviously was not happy with our experts. Yes, it is the case we have competing experts here. That's what happens in products cases. It should be no surprise. Experts for the corporation say one thing. Experts for the plaintiff say something else. To suggest, however, that Mr. Hicks or Mr. Villani were in any way in bad faith offering their opinions, that they themselves created the animation -- the animation, ladies and gentlemen -- Sig had their own animation. An animation is n animation. That's all it is. It's not a video. I made the point early in the trial that it's impossible to get a camera inside a gun to make an actual video of exactly how

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everything looks. That's not possible. So what do you do? You make animations as kind of a guide to help people. Sig is trying to hold up that animation as if we're claiming it was a video. We're not. We made that very clear. But if we did not have an animation, if Sig did not have an animation, Mr. Joyce and I would have been here, you know, for five days, four days, trying to get you all to understand what these little parts were on the inside of a gun. That's why animations are made.

Mr. Hicks is an engineer. Mr. Watkins can say he's wrong. Fine. We don't agree. We think Mr. Watkins is wrong. Watkins talked about twelve other P320 cases that he's involved in. That's not one or two, that's twelve, and not just from the same manufacturer *but the exact same model gun*. Again, you're allowed to use your common sense. The notion that people all over the country are conspiring to sue Sig Sauer for no reason at all or that they're all shooting themselves is not credible. There's an obvious safety problem with this gun, and the only people who can do anything about it are you.

Mr. Hicks and Mr. Villani testified I think over the course of one day, they managed to do it in one day, that there was obvious excess metal material on the striker foot face and the sear face that should not be there, that it should be machined off, that it should be smooth. They went into great detail about that. Mr. Hicks talked about the overlap where the striker foot was significantly over the sear face. That it should have been seated lower. And Mr. Villani, probably one of the nation's foremost experts on the P320 itself, he's not an engineer, we didn't claim that, stated that to a reasonable degree of certainty he thinks the gun went off in the holster and one of the reasons was the holster was blown to

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pieces.

Mr. Watkins takes a P320 that's not even the same model, it's an "upgraded" model with a very thin trigger. He stands behind it four to five feet, I don't know, he's pulling a lanyard to make it fire. Well, that's not what the allegation is. The allegation is that Mr. Guay was moving, jostling the holstered pistol back and forth. He made no attempt to test that, not with a robot, not with anything else. And as Mr. Villani said, these little inertial impacts of the P320, they're cumulative. You know, walking 3,000 steps a day, that's 3,000 inertial impacts. That's moving that connection to the failure point.

And when it's going to happen, you don't know. It's a gradual process. It could be a month. It could be a year. But to put, you know, the ten guns out of one million -- and, by the way, the vibration tests, they're not credible, ladies and gentlemen. You take ten P320s out of a million supplied by Sig Sauer, Mr. Guay's representatives have no chance to see them, sent to a contractor paid for by Sig. These tests are done. They're put in a vise grip or a vise. Mr. Guay was not carrying his gun in a vise. He was carrying it in his holster. That holster had the ability to move. It was not static. And they both testified again to a reasonable degree of certainty that the gun went off in the holster. That they have a different opinion is no surprise, ladies and gentlemen. You have to decide which one is more credible.

Now, the witnesses. We had two very credible officers testify here, Officer Bannister and Sergeant Hodgen. Officer Bannister, the first person to see Kyle Guay, testifies, corroborates what Kyle's claim is here, that the gun was fully seated in the holster. He was trying to remove that from his belt when it just went off. That's the most reliable testimony. He's an officer with a distinguished service

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record, military, no motivation to, you know, skew the truth in any way. And then you have -- okay. You have an EMT come in 5 later who has no experience with firearms who's very, very concerned to help Mr. Guay who has been shot through his leg. It's no surprise in that commotion that she could mishear him, not understand what he said. In her deposition she did say Kyle said "it went off."

The doctors, ladies and gentlemen, I suggest their testimony -- not their testimony, their records are not credible. You have one saying -- these are emergency room doctors, ladies and gentlemen. They are busy with other things life and death. They're making notes quickly. You had one doctor saying Kyle said he was holstering his gun, which he never said, and you have another one saying he was pulling it out of the holster. So the most reliable evidence is Officer Bannister, the first person on the scene, and his opinion was that the holster damage indicated that it was fully seated in the holster.

Okay. Ladies and gentlemen, I want to talk a little bit about the pain and suffering Kyle has had to endure. And, again, we are not asking for sympathy, but getting shot, it's not happened to me fortunately, is obviously not just an extremely painful but an extremely mentally traumatic violating incident to a human being. Mr. Joyce made some comments about, well, yeah, you know, it's terrible that that happens and we feel bad for him, but he's fine now. He's not fine now, ladies and gentlemen. He reached I think 80 percent improvement, and then there was no more insurance. He testified that he still thinks about it. He still is sleepless. He still has pain. But nearer to the incident he said he was having night terrors because, again, he was never put on notice by Sig Sauer, a company he trusted to tell him the truth about a dangerous product. Because they didn't honor that obligation, he almost loses his

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life. If that bullet hit his femoral artery, we would not be here today. He would have died in minutes. But as it was, you heard him testify that the pain as it was being addressed and washed out with salt water, was like an acetylene torch. Those were his words. So this is not someone who just, you know, scraped their elbow. This is a traumatic major wound to the human body with concurrent mental and emotional symptoms. He testified that -- Mr. Guay -- by the way, obviously a very kind young man. He was 33 when this happened. This is not someone who wants to talk a lot about pain and suffering, but he did a little bit. Typically, I would say young men and men in general, don't want to talk about pain and suffering too much, but he told you enough to let you know that this was horribly traumatic to him and it never should have happened.

If there had been a safety warning, he testified he would have put the gun away or he would have done something with it. He never would have carried it. And because, again, Sig did not honor it's obligation to its consuming public to be straightforward and honest, hey, we have a problem with this gun, we probably rushed it into production competing for a contract -- they got the contract. That's great. Money makes people do funny things, ladies and gentlemen. *\$580 million* dollars will make some people do insane, evil things, including throwing someone like him under the bus and risking his life so they get the \$580 million, and let's hope for the best. Let's hope nothing happens.

In 2017, again, Sig is telling you in its own words they knew there was a problem, and instead of speaking about it forthrightly, they hedge their bets. They dissembled. They said -- by the way, who really wants to go to the post office with a gun, ladies and gentlemen, and ship it, you know, through interstate commerce through the mails? I wouldn't. Most people don't want to do that.

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But if they had aid this could kill you, everyone would send it back or they would take a sledgehammer to it. Again, Sig did not honor its responsibility, its duty of care to Mr. Guay and the consuming public.

I want to briefly go back to the officers. Another flaw with Mr. Watkins' experiments in the laboratory which again did not replicate what Mr. Guay was alleging -- again, it is very clear that he was moving. We had multiple people, we had an officer, multiple people imitate a rocking motion, a jostling motion, but he puts it in kind of a vice, takes a string and stands behind it and pulls it. n the trigger pull subject, that's 7 pounds. And if I already said this, I'm sorry, but you have to mean it, okay? Your finger has to move 7 pounds of force. Mr. Watkins, I said, this is a hair trigger? No, it's not a hair trigger. Hair trigger meaning you touch the thing and it fires. Seven pounds. So to suggest that Mr. Guay did this accidentally is not credible. He either did it intentionally or it went off in the holster as he said. That's what the evidence shows.

Cauterization.

Going back briefly, the other problem with Mr. Watkins' theory -- and, by the way, this holster is a cheap Sig Sauer P250 plastic holster. It's very brittle. This is as cheap as they come. It's brittle plastic. To do this three or four times and say, aha, that's it -- maybe if he did it 50 times, maybe that would have some credibility. Obviously, he was determined to suggest that this particular damage meant the gun was out of the holster. I can't recall how it was. Kyle somehow got into the holster finding the trigger. No, it's not credible. If he did it 50 times, maybe, maybe then, but he's taking one discharge in unrealistic conditions and saying that proves that he pulled the trigger. Officer Bannister talked about cauterization. An Air Force veteran, an officer for many, many years. Fifteen years. He said that the entrance wound

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appeared to be cauterized due to a close contact discharge with the human -- close contact to the human body, and that if the gun had been farther removed, there would not have been evidence of cauterization.

The vibration tests. Again, we're talking about 10 out of a million. That's a ridiculously small sample. Sig controlled them. I don't know what that video was meant to show, but their own contractor -- and keep in mind, again, Mr. Guay's representatives know nothing about this. This vibration testing is *four years* after 2017. Mr. Joyce talked about of course there was lots of vibration testing. I've never seen it. It was not introduced into evidence in this case. The only testing document we have from 2014 to the present is one from October 2021 testing ten P320s, none of which was Mr. Guay's particular compact P320. That's absurd, ladies and gentlemen, in that period of time. That's seven years. Yeah, seven years, I believe. We've got one document showing 10 rough handling and vibration tests. The video -- obviously, the jostling impacted the weapons negatively. The document says the sear was out of place. The test was designed to stress that sensitive connection. Mr. Joyce was saying, oh, no, no, no, they didn't know what they were talking about. They meant to say the slide was out of battery.

You know, ladies and gentlemen, at this point I don't know if it matters. The slide was out of battery. The sear was out of battery. What that test showed is that even Sig's own contractor being paid by Sig recorded that vibration and rough handling moved parts in the gun that shouldn't move. So, if anything, I think that supports our theory that the gun is poorly made and that vibration, as Sig has said repeatedly, can make the internal safeties of the gun fail.

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Lastly, ladies and gentlemen, is the claim for breach of warranties here. I want to bring up Plaintiff's

Exhibit 28, I believe. Okay. I might have the wrong document right now.

Okay. Donna.

THE CLERK: Publish?

MR. BAGNELL: Yeah.

Ladies and gentlemen, this is an express warranty by Sig, Safety Without Compromise, which we can all see based on the evidence is not true. The evidence shows that should read Safety With Compromise. In any case, from the trigger to the striker, and even the magazine, the P320 won't fire unless you want it to. It did in this case. It did in other cases. Sig knows it. That's why approximately four years after this came out, three years, they issued a press release saying, oh, some acute conditions, one of which is vibration, might make it fire when you don't want it to. That's an attempt to disclaim the warranty after the fact, after a product has been sold, after Mr. Guay paid \$600 for a product that he was told wouldn't fire unless he wanted it to. A year later, or approximately I guess six, seven months later, Sig in a press release, which there's no evidence that they ever sent it to Mr. Guay, disclaimed this and said, no, there's multiple conditions under which this statement is not true. It might fire, it might hit you, it might hurt you, and it might kill you. No safety warning.

Nothing. Never.

All right. Ladies and gentlemen, in closing,

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You've all been here a long time at this point. You have the evidence. A judge told me once that the jury gets it so there's no need for the parties to keep talking and talking. So I will stop, but I will ask you based on the evidence in this case to return a verdict for Mr. Guay on all counts. I will ask that you determine what is a fair amount of compensatory damages to award him. I will also ask you to return a dollar amount for enhanced compensatory damages due to the evidence showing Sig's reckless and wanton conduct, playing games and risking life and safety, and never telling anyone that there's a serious safety problem with the P320 as Sig did with other of its products.

Thank you.

THE COURT: All right. Closing statements, closing arguments are done now.

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*After a full weekend and full day of deliberations on the fifth day, five questions to the Court, a request for an in-court demonstration, the jury informed the court that it was hung. In a decision issued six weeks later, the Court stated that it found Mr. Guay "credible in every respect" that the P320 shot him while fully seated in its holster.*

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