

*Selected excerpts from Plaintiff, Chan's deposition taken virtually on November 30, 2020.*

**DAMAGES**

Q. You mentioned that you had full coverage with Progressive Insurance on the Model X; is that correct?

A. Yes.

Q. And did Progressive deny your claim or did they pay your claim in full?

A They paid my claim in full, yes.

Q. And so that I understand what that means, what does that mean -- I just want to make sure that we're speaking the same language, so to speak, if you will. When you say they paid your claim in full, does that mean that they fully repaired your vehicle or that they gave you money to buy a replacement vehicle?

A Well, they told me the car is like -- it's not -- it's like a total loss, you know, so they give me just the residual value of the car.

Q. How much did they pay you for the residual value of the car?

A I think around \$100,000.

Q. When you bought the car, did you finance the car by obtaining a loan?

A No. I paid in cash.

Q. All right. So were you paid by Progressive for any other losses, expenses, damages? Let me just give you one example. Maybe you had to rent a car for a period of time. Did they pay for the car rental? Or maybe you missed a day of work. Did they pay for that? Those are just examples of what I'm asking you about.

A I don't recall, I mean, probably not. Probably not.

Q. Well, let me ask you this: Did you in fact have to rent a car for any period of time after the December 13, 2017, incident?

A No.

Q. Did you miss any work after that incident because of the damage to your car?

A No

Q. Did you have any other property damage or any loss to property, other than the car itself, as a result of that incident?

A No.

Q. You didn't sustain any personal injury; correct?

A Well, actually, I have little personal -- I hurt my hand a little bit, but, again, you know, I recovered, you know, within a few weeks, but, you know, it's a little uncomfortable, you know, for this few weeks, but I never report to my insurance company that I have -- you know, I hurt my hands because I don't -- you know, maybe I forgot, you know, at the time. I was so shaken but later on, you know, I discovered that, you know, my knuckles little bit bruised here. My hand -- I did not move my hand very good for -- for the first three, four weeks.

Q Did you go to the hospital on the day of the incident after the --

A No

Q Did you go to the hospital the next day?

A No.

Q Have you sought any medical care at all for what you just described to your hand?

A No.

Q Have you taken any medication, either prescribed or over the counter, for what you just described in your hand?

A No.

Q You said something about being worried a minute ago; correct?

A I think so, yes. Did I say worried? Maybe -

Q Or concerned or --

A Yeah, you mean -- right after the accident, I feel a little shaken, frightened

Q. Well, are you -- are you claiming that you sustained a psychological or an emotional injury as a result of this incident?

A. Yes. Psychologically, I'm like -- like, I still remember, you know, after the -- at the first six months -- first six months after the incident happened, I -- when I drive, I always worried, be careful when I, you know, when I press the gas pedal. I mean, the -- because I always, you know, suspicious that, you know, the car is going to run off by itself, uncontrollable, you know. Like I always very cautious that my foot is always ready to brake. Before this, I never -- you know, I never will imagine something like this, so psychologically, I'm just hesitant to drive sometimes, you know, like, you know -- you know, this is, like, something -- if you drive something that is suddenly out of control, then, you know, you have a -- your life is in danger and only after was more than a year, then I can overcome this kind of psychological -- I don't know what it called, you know. Like then I'm back to normal, but in the first six to 12 months, the way I drive is like I'm always worried, cautious, you know.

Q. After -- since the accident have you consulted with or treated with either a psychiatrist?

A. No.

Q. Or a counselor of any sort -

A. No.

Q -- concerning your worries or you described?

A. No.

Q. You didn't seek out any kind of medication to help you with your concerns; correct?

A. No.

Q. Did you stop working because of this issue?

A. No

Q. And you, of course -- you kept driving; correct?

A. Yeah, only if it's necessary, you know, for the six to 12 months, you know.

Q. Have you had to pay any money out of your own pocket to cover any expenses, damage or loss after the incident that occurred in December that we're talking about, December 2017, with your Model X?

A. I don't know. I have to check my records. You mean -- again, I'm not that sure. I've got to check my records.

Q. As far as you can tell, as you're sitting here right now under oath, do you have any recollection of having to pull \$1 out of your pocket to pay for any expense, damage or loss?

A. I think -- right after the accident, I have to call the tow truck, you know, who towed the car, you know, from the highway, you know, to, you know, the repair shop and I think I have to pay the towing guy like 3, 400 bucks.

Q. Can you think of anything else that you've had to pay for as a result of the incident that occurred in December of 2017 with your Model X?

A. Not right now. Now, I only can think of -- only can think of, you know, the towing charges right now.

#### WEBSITE

Q. Is it your testimony that in any of the information that you read on Tesla's website that based on that you believe that the 2016 Model X would be fully self-driving?

A: Yes.

Q. -- while operating in autopilot mode?

A. Yes. While in autopilot mode, you know, the car is self-driving, and that's what, on the website, they tell you, you know, it's autopilot, you know. They have a lot of sophisticated technology built into the vehicle so that, you know, it's basically-- its automatic; its autopilot; its self-drive.

Q. Is it your testimony that based on what you were reading, that you were just alluding to, that if you had autopilot engaged, you would have no responsibilities as a driver of the vehicle? The vehicle would just drive itself?

A: I believe -- I believe under the Tesla website, from what I remember, that we still have to pay attention to the traffic, you know. You still have to use your hand on the steering wheel, you know. You have to, you know -- just in case something happened, you still have to take control of the car.

Q. Would you agree with me, sir, that based on what you read on Tesla's website in this time frame, even while you had

autopilot engaged, you were still fully responsible for driving the vehicle and taking charge of the vehicle when necessary?

A. Yes. I believe the website have -- I believe -- I remember maybe, you know, there it is a -- a caution on the website that, you know, the owner need to take control of the car if something happens, you know. Some emergency happened that, you know, the driver have to be aware, you know; they have to take control. That's all I remember.

Q. You were not confused by that information that you read on Tesla's website, were you, sir?

A. I'm really confused because it's a little contradiction, because at one -- at one time, you know, they saying that it's a really sophisticated technology; it self-driving, but on the other hand, you know, they tell you that, you know, that, you know, it's a -- I remember, it's a beta mode or something, you know, that sometimes you may need to take control, so, again, you know, I was a little confused, actually, at that time, but, you know, I say -- on one hand they say it's a perfect system. On the other hand, that, you know, you need to be a little cautious, but, you know, I take it anyway, but -- because, you know, I just want to try it, you know.

Q. You say you were a little confused at that time. Did you tell Meghan or anyone else from Tesla that you were confused about the messages that you were receiving about autopilot?

A. No, I did not

Q. Did you ever send an email to Tesla in California and say, "Hey, Tesla, I'm a little confused, the person, Meghan, at the dealership told me one thing but I read something different on your website. Please explain"? Did you do that, sir?

A. Again, you know, I just assuming I read something, okay, about a beta mode -- I'm not sure at that time, that it is on the website, but, again, you know, I read somewhere, you know, it's a beta mode. Maybe I get this information afterwards, after I took the delivery. Like the timing, I don't know, so let me rephrase that, okay, that I read on the website that the Tesla, yes, have published their new technology, self-driving, fully autonomous. That's what my

impression is. But later on I learned it's only a beta mode. Again, it may happen after I took delivery, maybe -- now I remember. Maybe I only know about this beta mode in the manual, so -- again, the timing may be -- maybe is off because it was so many years ago, four, five years ago, so I don't remember the beta mode or the -- that it cautions you to take control.

### TEST DRIVE

Q. Is it your testimony that some individual that you dealt with, that you communicated with at Tesla told you that the 2016 Model X was fully self-driving?

A. Yes.

Q. Please give me the name of that person.

A. I think its Meghan.

Q. I see reference in the email under Exhibit 3 to Meghan Mack, M-a-c-k.

A. Yes, I believe --

Q. Is that the Meghan you're referring to?

A. Yes.

Q. All right. And when do you think Ms. Mack told you that the Model X that you bought was or would be fully self-driving?

A. Well, at the time of test-driving, you know, she told me that, you know, this car is like -- it self-drive, you know. All you have to do is like put in autopilot mode and the car can stop and the car can, you know, can keep, you know, a distance in front of the car and the car can steer, you know, left and right for you. So I believe her, that, you know, that the car is fully self-drive. That's what she told me, that.

Q. And it's your testimony that when you were talking to Meghan, either before the test drive or during the test drive, she told you that you could close your eyes and relax while you had autopilot activated?

A. No, at the time -- at the time of test-driving, at the time of test-driving, when, you know, when we turn on the autopilot, you know, when we test the autopilot, she's kind of saying that, "hey, you know what, Joe? You can relax and on the HOV lane and close eyes and then you'll be home,

you know." You know, that's, you know, that's what she said.

Q. So you're saying that she told you that you could close your eyes while autopilot was activated?

A. And relax, actually -- and relax, close your eyes and relax. That's what she said.

Q. Did she tell you about any of the limitations that existed with autopilot?

A. No.

Q. Did she tell you that you were still responsible for driving the vehicle?

A. No.

Q. Even though she didn't tell you those things, was it still your understanding during the test drive that as an operator of the vehicle it was still your responsibility to drive the vehicle safely?

A. Well, I know that I'm still responsible to drive, you know, the car in any conditions, you know. That's driver's responsibility, but, again, you know, from what I'm -- from what Meghan told me at that time, from what I understand from the website at that time, that the car is fully autonomous and fully self-drive. That's actually what the website said, self-drive. That's what Meghan said, self-drive, you know; it should be all in, because I still remember it should be all in because I can drive, you know, HOV lane by myself, use the autopilot mode, and you home, you know, with your eyes closed and relax. So I was under, you know, from all the information I obtained at that time, that the car is self-drive; fully self-drive.

Q. Who else was present with you, if anyone, during that test-drive?

A. Who else besides -- at the test-drive, I think is only -- I think is only I and Meghan.

Q. Did you make a recording of that conversation?

A. No.

Q. Did you make any notes about that conversation afterwards or during the conversation?

A. No.

Q. Did you have any Questions about autopilot either during the test drive or after?

A. Any questions? Let me see, Yeah, I asked her, you know, are you sure that works, and she said, yeah, it will work, you know, so I was little hesitant, but then I turn on the autopilot and it works at the time, and, you know, the car really stops and go and steers and drive, you know, so I said, oh, great, you know, that works, you know.

Q. After you looked at the Tesla website and saw information about autopilot, did you ask Meghan or anyone else at the Tesla stores that you were visiting any questions about how autopilot worked?

A. No. Repeat the question. I don't -- I don't understand the timing.

Q. In between the date that you went to the website, saw information about autopilot, and the date you took delivery of the Model X in September of 2016, did you have any conversations with Meghan or anyone else at Tesla about autopilot and how it worked?

A. Yes. The answer is no, I did not talk to anybody regarding the autopilot, you know -- you know, before I took delivery.

Q. Did you send --

A. Wait, wait. Before I took delivery, I did, because, you know, we talked about autopilot when I have a test drive with Meghan, and that's -- you know, if that's what you mean by talk about, then, yes, you know, I talk about autopilot with Meghan. I did, you know, before I took delivery.

Q. You took delivery of the vehicle in September of 2016 at a store in Brooklyn; correct?

A. Yes.

Q. Did anyone from tesla at that store provide you with any information about the vehicle at all before you left the store with it?

A. They only showed me how to charge the car, and that's it.

Q. Did you ask them any questions about how to use the car or any feature of the car?

A. They told me to look at the manuals in the computer.

### OWNER'S MANUAL

Q. And how soon after taking delivery of the vehicle in September of 2016 did you access the owner's manual?

A. Right away. I mean, after I get home, I sit in the car and I look at the manuals.

Q. What do you remember reading?

A. I remember reading all the features, like how to adjust the seat, the phone control. I mean, everything is new. I mean, this car is so modern, so I have to learn, you know, from scratch, you know, even the signal light and everything, you know.

Q. What do you remember reading about autopilot?

A. Autopilot, just tell you like how to engage it, you know, like pulling the lever on the left-hand side once or twice; I don't remember. Maybe twice, or maybe one time. And that's it and also they have to set a vehicle distance, like how many distance you want to keep from the car in front of you, you know, stuff like that.

Q. When you access the owner's manual through the touchscreen, what I'd like you to do is I'd like you to read this entire page or any portion of the traffic-aware cruise control -- I can scroll, you know, wherever you'd like, but what I'd like to draw your attention to right now is the -- the information that's identified by the red triangles with the exclamation points in them that start out "Warning," so I'd like you to read those to yourself, please.

Q. Have you read those three warning statements?

A. Yes.

Q. All right. Let's just start with the first one. Do you remember reading this information when you accessed the owner's manual through the touchscreen shortly after taking delivery of your Model X?

A. Yes.

Q. Did you have any questions or confusion about what was being communicated to you through that first warning statement when you read it back in September of 2016?

A. Can you repeat your question?

Q. Did you have any question or confusion about what was being communicated to you by Tesla through that warning statement when you read it in September of 2016?

MS. NIEHAUS: Objection.

THE WITNESS: Yes, I was little confused because, you know, under website and also under maintenance and introduction on the car, the car is fully autonomous, but when I read this, I say, "You know what? I still have to - you know -- you know, I still have to be aware of the traffic situation, you know."

Q. Well, you certainly must have called Meghan back immediately and said, "Hey, Meghan. What's going on?"

MS. NIEHAUS: Objection. Argumentative.

Q. -- "you told me one thing and I just read something else."

WITNESS: No, I didn't do that, I didn't do that. I did not call .

Q. You didn't drive the car back and say, "I want my money back because you told me one thing but the owner's manual told me something different"? You didn't do that either, did you, sir?

A. No.

Q. Mr. Chan, the owner's manual that you had access to through the car and that you actually read shortly after taking delivery of the car in September of 2016 conveyed to you that it was your responsibility to stay alert, drive safely and be in control of the vehicle at all times; correct?

A. Yes

Q. And to never depend on traffic-aware cruise control to adequately slow down the Model X; correct?

A. Yes.

Q. Another thing that you read back then while in your car September 2016, is that you shouldn't use traffic-aware cruise control on city streets or on roads where traffic conditions were constantly changing; correct?

A. If that's what appears in the manual, then, yes.

Q. -- you were told back in 2016 when you read the manual through the vehicle that traffic aware cruise control cannot detect all objects and may not brake/decelerate for stationary vehicles, especially in situations when you are traveling or driving over 50 miles an hour; correct?

A. Yes.

Q. Well, you were told everything that is identified here on the screen, or shown on the screen in these three warning statements that are identified by the red triangles with the exclamation points through them; correct?

A. Yeah. Yes, appears to me that, yes, there's the warning sign on the manual, yes.

Q. And after reading this information that we can see here, after you read it through the touchscreen of the car in September of 2016, you never contacted Tesla and asked any questions about what you read; correct?

A. No.

Q. Are you aware of -- are you aware of any other Tesla Model X owner or operator who claims to have had an experience like you claim you had in December of 2018 -- I'm sorry. -- December 2017? Sorry

A. Do I know any Tesla owners that have the same situation? No.

Q. So the incident that you have described in your Complaint, you don't know anyone else who claims to have experienced a similar incident in another Tesla Model X; correct?

A. I Google it, actually, and that's a handful of cases but it's similar but it's not -- it's not exactly the same, so -- but I do not know any owners that have happened to them.