

1 seriousness of these injuries.

2 Where we do have a dispute, though, is
3 the cause of these injuries, the cause of the
4 accident, and the dispute is that Deere did not make
5 a defective product. Deere did not make a product
6 with a, quote, unquote, visibility defect. This
7 product was well engineered, well designed, and well
8 built.

9 What happened here is really not very
10 complicated. There are millions and millions of
11 these tractors out in the fields and in the lawns
12 all over the United States and the world. Somehow,
13 through lots of effort, Deere has succeeded in
14 reducing the number of this type of injury to a
15 very, very small number, one or two a year -- not by
16 the tractor itself backing up by itself, not by the
17 tractor inexplicably backing up, but always with an
18 operator. And millions of operators are able to use
19 these machines every weekend, during the week,
20 without managing to hurt somebody.

21 Even Dr. Gill admits when he did that
22 survey or he called somebody up to give him some
23 information about an accident, that he could only
24 confirm seven incidents involving this tractor -- or
25 this type of tractor with the RIO unit -- in the

1 courts from 1999, when these were introduced, to the
2 present.

3 Deere, indeed children, indeed folks
4 all over the United States can ill afford to have a
5 tractor that performs worse than this tractor
6 because we tinker with the design or we do something
7 with the design without thinking out fully whether
8 that design will add value to the product. If you
9 make -- if you add something to this product and it
10 doesn't reduce the accidents from one or two a year
11 to zero or one but indeed makes it three or four,
12 what have we accomplished? If we add a device to
13 this tractor that adds some other type of exposure
14 to the operator, to somebody else in the area, what
15 have we accomplished?

16 So that is a dilemma that Deere has
17 been wrestling with for over 40 years. It is that
18 simple. But the plaintiffs don't want you to
19 believe that. And without offering any specific
20 design, let alone a proven one, they want you to
21 declare that this product is defective and
22 unreasonably dangerous.

23 Plaintiff has talked about the concept
24 of risk utility, so let's talk about that for a
25 couple of minutes here. Has Plaintiff offered a

1 specific place where the RIO button should go and
2 tested that premise in any way?

3 I will be telling you about the
4 efforts that went into the RIO system. You have
5 already heard about it, but I will remind you of
6 some of that, including the 50,000 hours of testing
7 that was done before this product was put in the
8 field.

9 Has the plaintiff offered a specific
10 warning and explained to you how it will result in
11 there being no or fewer back-overs and no
12 (inaudible) from some other type of accident? No.

13 Have the plaintiffs offered a specific
14 design alternative and explained to you how it will
15 result in there being no backover accidents or no
16 increase in some other type of accident? The answer
17 is no.

18 The plaintiffs have talked about the
19 concept of a design hierarchy, and in fact, that
20 is -- that is the hierarchy that Deere uses, and we
21 will be going through some of the product safety
22 manual, as we have during the course of this trial.
23 Design out the hazard, guard against those that you
24 can't design out, and warn against the rest.

25 Deere's response to backover blade

1 contact includes all three. From Deere's point of
2 view, it isn't one, then the other, then the other.
3 It is using all three in combination to try to
4 reduce any type of accident, including backover
5 blade-contact accidents, to the lowest possible
6 number.

7 So design -- design efforts include
8 the RIO, because the RIO doesn't just guard against
9 a possible accident. It promotes operator behavior
10 that will avoid a backover all together. It is easy
11 to blame the blades in a backover accident, but when
12 a backover accident happens, all 532 pounds of this
13 machine gets involved. It guards with the mower
14 deck, the position of the mower deck, and the design
15 of the mower deck. And it warns in the form of
16 on-product warnings and owners manuals, videos, and
17 (inaudible).

18 Now, during the course of this trial,
19 I am not asking you to believe me. In fact, I think
20 you have already been admonished not to believe what
21 the lawyers tell you, but what I am going to ask you
22 is to take a deep breath and look at the evidence in
23 a calm, collected way.

24 There are some interesting premises in
25 this case. Someone backs over somebody and is not

1 taking any responsibility for that. He said from
2 the stand, Mr. Norton, that "I am not negligent. I
3 was not responsible."

4 Someone is telling us in this case --
5 a couple of folks actually, Dr. Ketchman and
6 Dr. Gill -- that you and me, when we look, we don't
7 realize that we can't see where we are looking.
8 Think about that. We are going to be talking a
9 little bit more about that as we go on.

10 Someone is telling us that a
11 reasonable person would think it is a surprise when
12 you leave four children, ages two to seven, under
13 the supervision of a nine-year-old -- that it is a
14 surprise that those children might leave the house
15 at the end of the Cinderella movie. And the
16 straining that has gone on in this case to make it
17 sound as if this nine-year-old boy, as responsible
18 as he was, was an appropriate substitute for an
19 adult is almost mind boggling. Not expected? We
20 all have children. I have three. We have nieces,
21 we have nephews. We know that they are out and
22 about all of the time.

23 We have a responsibility that whenever
24 we operate a vehicle, particularly a vehicle such as
25 this, whether it is a car, a tractor, a lawn

1 tractor, a backhoe, that we should be looking at all
2 times where we are going and where we are going to
3 go. It is a basic, simple expectation of society.

4 Now, I already mentioned that
5 Mr. Norton denies any responsibility. He left the
6 care of four children, ages two to eight, in the
7 hands of a nine-year-old boy and somehow he absolves
8 himself. He tells us that he always mows at the
9 fastest speed. And we will be going through some of
10 those numbers and what they mean.

11 He had no need to mow that evening.
12 There was no event. There was no gathering. The
13 grass, as you can tell from the pictures -- and you
14 will have the pictures to look at -- after being
15 mowed -- when you mow a lawn tractor and you are
16 mowing grass, after the grass was blown from two or
17 three times around the yard, you will see how little
18 grass had actually been cut.

19 There was no need to back up this
20 mower. He could have made the turn without backing.
21 He admitted that from the stand. And there was no
22 need for him to back up in the manner in which he
23 backed up. Yet somehow he maintains that he is not
24 responsible for this accident.

25 Now, we have gone through this machine