NEW YORK SUPREME COURT
SUFFOLK COUNTY
SPECIAL GRAND JURY

SEPTEMBER 20, 2016
TERM 10F

GRAND JURY REPORT
CPL 190.85(1)(C)

Dated: September 20, 2016

FOREPERSON
NEW YORK SUPREME COURT
SUFFOLK COUNTY
SPECIAL GRAND JURY
TERM 10F
SEPTEMBER 20, 2016

NEW YORK SUPREME COURT
SUFFOLK COUNTY
SPECIAL GRAND JURY
SEPTEMBER 20, 2016
TERM 10F
GRAND JURY REPORT, CPL 190.85(1)(C)

TABLE OF CONTENTS

Preliminary Statement		1
Findings of Fact		3
I.	July 18, 2015	3
	A. The Crash	3
	B. Crash Reenactment and Crash Reconstruction	8
II.	The Intersection of County Road 48 and Depot Lane	14
	A. North Fork Traffic	14
	B. Past Troubles at the Intersection of County Road 48 and Depot Lane	25
	C. Law Enforcement at the Intersection Since the Crash	33
	D. Southold Town's Response to Complaints Regarding the Intersection	35
	E. Suffolk County's Response to Complaints about County Road 48 / Depot Lane	40
	F. The New Traffic Light at County Road 48 / Depot Lane	49
	G. A Safer Alternative: The Intersection of County Road 48 and Cox Lane	53
	H. Southold Town's Prior Regulation of County Road 48	59
	I. The Prohibition of U-Turns	62
III.	The Regulation of Vehicles and Drivers	71
	A. The Suffolk County Taxi and Limousine Commission	71
	B. Driver Qualifications	83
	C. Mandatory Inspections of Limousines and Other Requirements	95
IV.	Limousine Safety	104
	A. The Qualified Vehicle Modifier (QVM) Program	104
	B. Limousine Weight	108
	C. Vehicle Safety Features	111
	i. Airbags	111
	ii. Seatbelts	112

D. Side-Impact Safety of Limousines 114
i. Anti-Intrusion Beams 114
ii. Crash Tests 115
iii. Side-Impact Testing Exemptions 117
V. The Limousine Stretch Process 119
A. The Modification of the Limousine Involved in the 2015 Crash 119
B. Safety Features in the Limousine Involved in the 2015 Crash 125
C. Ford's Audits of the Limousine Builder 127
D. Analysis of an Exemplar Limousine 130
E. Forensic Automotive Engineering Analysis 133
i. Expert Qualifications 133
ii. Forensic Examination 133
iii. Side-Impact Anti-Intrusion Beam Examination 134
F. Forensic Examiner Conclusions 135
i. Anti-Intrusion Beam 135
ii. Welding Failures 135
iii. Construction Shortcuts 140
VI. Current Stretch Limousine Base Models 140
VII. The Question of Federal Preclusion and Federal Oversight of Safety Issues 142
Conclusions 147
Recommendations 152
Legislative 152
Executive 154
Administrative 155

PRELIMINARY STATEMENT

The Suffolk County Supreme Court Special Grand Jury, Term 10F, was empaneled on October 8, 2015, and thereafter extended to October 8, 2016, by order of the Honorable Richard Ambro, to investigate the facts and circumstances surrounding a July 18, 2015 limousine crash that killed Lauren Baruch, Stephanie Belli, Amy Grabina, and Brittney Schulman and seriously injured Alicia Arundel, Melissa Crai, Joelle DiMonte, and Olga Lipets in Cutchogue, Suffolk County, New York.

The Grand Jury heard testimony from 47 witnesses, including local residents, individuals involved in the crash, first responders, and representatives of the Suffolk County Taxi and Limousine Commission, the Southold Town Highway Department, the Suffolk County Department of Public Works, the Suffolk County Police Department, the New York State Police Collision Reconstruction Unit, the Suffolk County Planning Commission, the Long Island Limousine Association, the New York State Department of Transportation, the Cutchogue Fire Department, local wineries, Ford Motor Company, a limousine builder, local limousine companies, the Long Island Wine Council, the Southold Town Police Department, the Southold Town Attorney's Office, and a forensic automotive engineering firm. In addition to reviewing the interior construction of an exemplar stretch limousine made by the same manufacturer in the same year as the limousine involved in the 2015 crash, the Grand Jury, pursuant to the December 2, 2015 authorization of the Hon. Richard Ambro, visited the scene of the crash, observed firsthand the two vehicles involved, viewed video footage from a police reenactment of the crash involving three exemplar vehicles, and considered 180 exhibits, many of which consisted of hundreds of pages.

As a result of this investigation, the following report has been adopted pursuant to New York State Criminal Procedure Law 190.85(1)(c) and is respectfully submitted to the Court.

FINDINGS OF FACT

I. JULY 18, 2015

A. The Crash

On the morning of Saturday, July 18, 2015, eight young women met at a house in Smithtown, New York, looking forward to a fun-filled day trip to Long Island's North Fork. The women – all in their twenties – talked excitedly over coffee and bagels, laughing and joking in anticipation of their coming adventures. There had been a bad storm earlier that day, but the weather had cleared by the time their stretch limousine pulled up in front of the house. After the friends had piled into the back of the vehicle, Felicia Baruch, the mother of one of the women, got in the driver's seat and, through the partition, took a picture of the happy group. Felicia kissed her daughter, Lauren, good-bye and told the chauffeur: "You see these eight beautiful babies? The way I'm leaving them with you, I want them back." As the mother could appreciate, the young women were behaving responsibly by using a designated driver to ferry them between wineries and bring them home safely. The responsible decision, however, proved to be a fatal one. By the end of the day, Lauren, Stephanie Belli, Amy Grabina, and Brittney Schulman were dead, killed because they had chosen to ride in the back of that very same limousine.

The group had decided to visit a vodka distillery, Long Island Spirits in Baiting Hollow, and a winery (hereinafter, "the Vineyard") in Cutchogue. At about 11:30 a.m., the group made its first stop at Long Island Spirits. The young women stayed at the distillery for about two hours before proceeding to the Vineyard, where they stayed from about 2 p.m. to about 5 p.m.

The Vineyard had made a name for itself in terms of winery destinations on the East End of Long Island. Whereas some wineries cultivated a more reserved atmosphere, the Vineyard had embraced a nightclub-like image, complete with DJs, dancing, and loud music. As one

Southold Town official commented, the Vineyard had become a stop for "a lot of younger people" whereas "a lot of the other wineries are wineries where people who are serious about wines go and taste wines." The Town of Southold has more than 35 wineries, spanning from Mattituck and Laurel to Greenport. In recent years, some wineries have increasingly refused to allow buses or limousines to bring guests to their premises. The Vineyard, however, has stood out, attracting many party buses, limousines, and, over the years, complaints. Indeed, at one point the Southold Town Police went through New York State Liquor Authority hearings and had the Vineyard's liquor license temporarily suspended. A representative from the Southold Town Attorney's Office indicated that "we did have litigation with [the Vineyard] for operating without a site plan, we had a lot of noise complaints, and also traffic problems with limousines leaving [the Vineyard] and trying to make the U-turn at County Road 48 and Depot Lane." Since it is east of many other wineries, the Vineyard is often the last stop on a limousine wine tour. There is a parking area at the rear of the winery, accessible by a dirt road and surrounded by woods, but the only way in and out of the winery is eastbound County Road 48. A Vineyard security guard greets limousines as they are arriving; when they leave, he thanks them for coming and tells them to get home safe.

On July 18, 2015, as the group's time with the limousine was running out, the eight young women left the Vineyard. A winery security guard thanked the young women for coming, gave them all high fives, and told them to get home safe. The eight friends then got back into their limousine for their trip home. Half the group would never make it. Although the young women's homes were to the west of the Vineyard, the winery's exit only opened onto the eastbound lanes of County Road 48.

The stretch limousine pulled out of the winery heading east on County Road 48 and then entered the left turning lane just prior to the intersection of County Road 48 and Depot Lane, about 1,000 feet from the Vineyard. In July 2015, a blinking yellow traffic light above the intersection faced eastbound and westbound traffic on County Road 48; a blinking red light – the equivalent of a stop sign – faced northbound and southbound traffic on Depot Lane. The posted speed limit on County Road 48 at that point is 55 miles per hour, and the eastbound and westbound lanes are separated by a grassy median. Depot Lane is a two-lane roadway, with one lane traveling north and the other traveling south. The chauffeur proceeded through the blinking yellow traffic light at the intersection, attempting a wide U-turn to bring the stretch limousine into the westbound lanes of County Road 48, west of the intersection.

There was light traffic in both directions on County Road 48 that afternoon. A Jeep Wrangler had also pulled into the eastbound left turning lane of County Road 48, directly behind the limousine. The Jeep Wrangler's driver had seen the limousine pull out of the Vineyard, and, like the limousine driver, she, too, was preparing to make a U-turn on County Road 48 in order to drive west on that road. The Jeep Wrangler's driver watched as the limousine swung wide into the middle of the intersection to attempt the U-turn.

As the limousine turned, a westbound Jeep Liberty stopped across the intersection, preparing to make a left turn to go southbound on Depot Lane from the westbound left-turn lane of County Road 48. The turning limousine blocked the intersection; the Jeep Liberty had to wait until the limousine completed its U-turn before the Jeep could go south on Depot Lane. Another motorist, driving a red 2005 Dodge Dakota pick-up truck, was east of the intersection, traveling in the left westbound lane on County Road 48. The pick-up truck driver at first did not see the limousine attempting the U-turn in the intersection. The pick-up truck driver was traveling at an

estimated 57 to 61 miles per hour when he first engaged his brakes and started leaving tire marks on the roadway. He was still traveling at between 51 and 56 miles per hour when his vehicle struck the limousine. The limousine had completely crossed the left westbound lane, and the front of the limousine was in the right, westbound lane, taking up both lanes of traffic. Thus, at the time of the crash, the limousine was completely perpendicular to Route 48, blocking the right and left westbound lanes of County Route 48.

As the young women were cheerfully talking with one another, the front of the pick-up truck plunged inside the limousine's passenger compartment, killing two women who were sitting on the driver-side bench and pinning their bodies to the vehicle's interior wall. In addition to the two women who were killed on the driver-side bench, the two women who were sitting against the driver-compartment partition also died. The vehicles slid together as a unit for more than 40 feet and came to rest in the westbound lanes of County Road 48.

Other motorists, one of whom had witnessed the crash, stopped to render aid. The Vineyard security guard, who had been on County Road 48 watching the limousine attempt to make the turn, told the person he was with to call 911 while he rushed to the scene. The crash occurred at approximately 5:10 p.m., and the Southold Town Police Department dispatched its officers at approximately 5:11 p.m. to the crash site. The first Southold Town Police Officer arrived at the scene at approximately 5:13 p.m., and other officers arrived minutes later. Upon their arrival, the police officers asked the Vineyard security guard to help direct traffic around the crash scene. Emergency personnel from the nearby Mattituck Fire Department also responded. One Southold Town Police detective called it "absolute chaos. The worst scene I['ve] ever seen."

First responders found several of the conscious survivors screaming for their mothers; one of the young women could not help but stare at her friends' open, sightless eyes. The first police officer who responded to the scene saw one body hanging outside a window, heaving its last, agonized gasps of breath as he approached. Inside the limousine, the officer saw bodies on top of bodies. Fire department personnel had to extricate the limousine passengers using Hurst tools and jaws of life. Initially, first responders thought there were only three fatalities until they discovered another body lying underneath a victim who was facedown. In dealing with the survivors, the fire department called for ambulances from all the way out to Orient Point. A helicopter air lifted two victims to Stony Brook Hospital. Three young women were pronounced dead at the scene; one was taken to Peconic Bay Medical Center and pronounced dead there. Of the survivors, one had a broken arm, facial and head lacerations, and a finger laceration that went all the way to the tendon. Another survivor sustained a broken orbital bone, broken nose, brain injuries, and a lacerated spleen. A third survivor almost went blind when her cornea was cut, and she suffered head injuries and fractures to the right side of her body. The fourth survivor had multiple fractures in her left leg, a broken jaw, and lacerations on her shoulder, chest, hand, and leg. The four survivors were the young women who were sitting rearmost in the limousine. The first responders themselves did not come away unscathed; "any time you have an accident like that, the effect on the rescuers is amazing. And it's not good. . . . The people that went to that accident will carry that the rest of their lives," said one Cutchogue Fire Department official.

After the crash, the driver of the pick-up truck sat on his tailgate with a bloody face, and, despite police instructions, walked around to the limousine and saw the carnage for himself. The limousine chauffeur remained in his vehicle. The two drivers suffered minor injuries as a result of the crash. On the way to Eastern Long Island Hospital in Greenport, the pick-up truck driver

told a Mattituck Fire Department EMT that he had had two beers earlier in the day. The pick-up truck driver consented to a blood test at the hospital, and nearly two hours after the crash, hospital personnel drew his blood. No ethanol or drugs were detected in the limousine driver's blood.

Ultimately, members of the Southold Town Police, the Suffolk County Police Department's Vehicular Crime Unit, the New York State Police, and the Suffolk County District Attorney's Office arrived at the scene. Southold Town Police and New York State Police officers took photographs of the roadway and the vehicles involved in the crash. A member of the New York State Police's Collision Reconstruction Unit also responded to the crash scene at approximately 5:40 p.m. that day and spent about six hours there beginning his reconstruction investigation. The New York State Police reconstructionist was joined by other members of his unit who arrived to provide assistance.

B. Crash Reenactment and Crash Reconstruction

At the scene, the New York State Police reconstructionist employed the Leica Total Station system. The Total Station system involves a camera on top of a tripod that, using laser technology, records measurements at the scene and, after the information is downloaded to a computer, produces a scale diagram of the scene and the evidence found there. Because witnesses to the crash had indicated that there were several other vehicles in the vicinity of the intersection, reconstruction efforts addressed the question of whether other vehicles had obscured

the lines of sight of the drivers who were involved in the crash.[1] To gain a better understanding of the crash, the police decided to conduct a reenactment of the events leading up to the incident.

On August 20, 2015, personnel from the New York State Police, Southold Town Police, Suffolk County District Attorney's Office, and Suffolk County Police participated in the reenactment, shutting down the stretch of roadway where the crash occurred. The police used an exemplar Dodge Dakota pick-up truck and an exemplar 120-inch stretch Lincoln Town Car limousine. In addition, the police placed an exemplar Jeep Liberty at the intersection in the westbound left-turning lane as if it were about to turn south on Depot Lane. Based upon the Total Station measurements taken on the date of the crash, as well as still visible tire marks on the roadway, the police positioned the exemplar vehicles in the places first where their counterparts had been prior to the crash and then in their final locations in the aftermath of the event. Several police officers drove the exemplar vehicles while other officers were taking measurements, videos, and pictures. One individual drove the exemplar pick-up truck in a

[1] A Suffolk County Department of Public Works ("Suffolk DPW") study memorandum, originally prepared on December 10, 2013 and revised on February 5, 2014, indicated the following: "CR 48, Middle Road, is classified as an Urban Principal Arterial, having two lanes in each direction with additional auxiliary lanes for right and left turn movements. Opposing left-turn and right-turns on CR 48 are channelized and delineated with pavement markings. CR 48 maintains a grass/vegetated median, approximately 20'-30' wide and roadway shoulders at approximately 7' wide. Traffic, north and south on Depot Lane, is controlled with stop signs at the intersection with CR 48. In addition, a supplemental flasher is present with red indications facing Depot Lane and amber indications facing CR 48. This segment of CR 48 is straight and level in proximity to the intersection with a slight horizontal curve to the north, beginning approximately 600' east of the intersection. The stopping sight distance required at 55 miles per hour is recommended at 495' or 570' at 60 miles per hour, and is available to motorists travelling west on CR 48 to avoid conflicts with vehicles south on Depot La. (which is the inside of the curve where sight lines would be less than the other approaches). Vehicle volumes on this approach are substantially less than those on the northbound approach. Depot La. is a two lane, two-way roadway with a full barrier center line south of CR 48 and stop lines on each approach to CR 48. Both roadways are generally straight and level with sufficient sight distance on all approaches. In proximity to Depot Lane, the nearest traffic signals along CR 48 are approximately 0.63 miles to the east (Cox Lane) and 2.66 miles to the west (Wickham Avenue)."

westbound direction on County Road 48 at 55 miles per hour, the speed limit at that location. In the course of the reenactment, the driver of the exemplar limousine pulled into the intersection to attempt to execute a U-turn. The exemplar vehicles were equipped with video cameras to capture what the drivers could see at the time of the reenactment. The reenactment demonstrated the distance at which the pick-up truck driver could have first perceived the limousine as it attempted its U-turn.

As part of his investigation, the New York State Police reconstructionist used the reenactment's results and considered such factors as roadway marks, debris, the vehicles themselves, and roadway and atmospheric conditions. Police can sometimes obtain crash information, such as speeds and seatbelt usage, from a vehicle's event data recorder, known also as its "black box." Dodge Dakotas from the crashed vehicle's year of manufacture, however, do not possess such technology. While there had been a dashboard-mounted video camera inside the limousine, it was disconnected at the time of the crash. The New York State Police were able to obtain some information from the limousine's air bag control module and power control module. As part of the reconstruction investigation, the New York State trooper also factored in the weights of the vehicles involved. Because the limousine involved in the collision was so damaged, for reconstruction purposes the New York State Police inspected a similar limousine from a similar year as an exemplar. The reconstructionist also went to the Southold Town Police Department's impound yard to weigh the pick-up truck involved in the crash. On July 23, 2015, the reconstructionist examined the remains of the crashed limousine at the Suffolk County Police Impound yard in Westhampton.

The reconstructionist checked the pick-up truck's and the limousine's brakes and tires and found no deficiencies. The limousine was not equipped with a front passenger seat, but

featured a driver's seat and perimeter seating in the back. The limousine manufacturer's tag on the doorframe indicated that the vehicle was designed for ten occupants, one in the front and nine in the rear. The pick-up truck weighed 4,850 lbs. Due to the severe damage sustained by the limousine in the collision, the reconstructionist weighed an exemplar limousine of the type that was in the crash and found a total weight of 5,900 lbs. Based on the estimated weight of the occupants of each vehicle, the reconstructionist used a combined weight of 5,030 lbs. for the pick-up truck and 6,930 lbs. for the limousine. The total limousine length was approximately 335 inches, or 27.9 feet, and its height was approximately 59 inches.

With regard to the relative profiles of the vehicles, the reconstructionist found that the high-riding pick-up truck had driven over the low-riding limousine's frame; a significant portion of the front of the truck's front end had gone through the limousine's side and entered the passenger compartment. Despite the catastrophic nature of the crash, the pick-up truck's airbags did not deploy and, apart from the fracturing of its front windshield, the pick-up truck's glass remained intact. The limousine suffered much more damage; as the reconstructionist's report notes, "all the glass in the vehicle, except the rear window, front driver side and rear passenger side windows, fractured during the collision." The limousine had nine seatbelts in the back, passenger portion, but, due to the damage the vehicle had endured, the reconstructionist was unable to determine whether they had been in use at the time of the crash. The reconstructionist did determine, however, that the chauffeur's seatbelt was not engaged at the moment of impact.

After nearly ten months of collaborative research and investigation, the New York State Police reconstructionist completed a peer-reviewed reconstruction report for the incident. The peer review process was as follows: once the Collision Reconstruction Unit officer completed the report, he submitted it to another collision reconstructionist who reviewed it for accuracy.

Following that review, the report went for a regional review with another supervisor, who then approved it.

Mathematical analysis of the distance between the point of collision and the final resting place of the vehicles demonstrated a post-impact speed of the vehicles, moving as a unit, of between 21 and 23 miles per hour. From this calculation, which took into account the friction of the roadway among other things, the reconstructionist found that the pick-up truck had been going approximately 51 miles per hour to 56 miles per hour at the time of impact. On the day of the crash, the pick-up truck left 40.9 feet of tire marks leading up to the impact site. Because the actual pick-up truck had already started to slow down, the reconstructionist determined that the pick-up truck had been traveling between 57 miles per hour to 61 miles per hour when he engaged the brakes.

As per the Institute of Police Technology and Management standard, the average perception-reaction time is about 1.6 seconds, meaning that if somebody notices something about to happen it takes about 1.6 seconds for that person to react. Given an average perception-reaction time of 1.6 seconds, a vehicle traveling 55 miles per hour would travel approximately 129 feet before its driver could even engage the brakes. So, using time-distance formulae and consulting the tire marks on the roadway, the reconstruction efforts determined that between 170 and 176 feet before the impact site, the pick-up truck driver had first perceived the limousine. Traveling at approximately 55 m.p.h.,[2] with a delay of 1.6 seconds for perception-reaction time before applying his brakes, the reconstructionist determined that it would have taken the pick-up

[2] Note that with the Dodge Dakota's estimated pre-braking speed of 57 to 61 miles per hour there would be slightly less time and a slightly greater distance required for the pick-up truck to come to a full stop and avoid the crash. Nevertheless, even if the Dodge Dakota had been traveling at the posted speed limit of 55 miles per hour, the reconstructionist concluded that the crash would have been unavoidable.

truck driver 263.44 feet to fully stop before hitting the limousine. Given the exemplar Jeep Liberty's intervening position, the reconstructionist determined that the earliest that the pick-up truck driver could have seen the limousine, even while traveling at 55 miles per hour, was when he was approximately 200 feet from the limousine.[3] This meant that the pick-up truck driver, originally traveling at between 57 and 61 miles per hour, was unable to avoid the collision. In his report, the reconstructionist determined that the approximately 28-foot-long limousine could not have properly executed a U-turn at the intersection in conformance with the New York State Vehicle & Traffic Law.[4] As such, the reconstructionist concluded, "The primary causative factors in this collision are failing to yield right-of-way and improper turn lane usage on the part of the operator of [the limousine]."

On December 15, 2015, as part of their investigation, the Grand Jurors visited the scene of the crash under the supervision of New York State court officers, pursuant to the December 2,

[3] In 2012, Suffolk DPW conducted its own sight distance analysis: "Intersection sight distance was reviewed on April 12, 2012 during a filed visit, which revealed that sight distance is adequate with no issues from any approach in any direction. It is noted that the higher volume side street approach to CR 48 is located on the outside of a very large horizontal curve with adequate sight lines in each direction. The most sensitive sight distance side street approach would generally be the southbound approach (inside of very large horizontal curve) looking toward the east. Scaled distance off aerial photography shows that approximately 750 ft. is available from a departure point 14.5 ft. from the nearest travel lane looking east. The vehicle departure point was determined in accordance with established guidelines published by AASHTO and ITE. All other approaches would have greater sight distances available. The available sight distance (750 ft.) exceeds the recommended 645 ft. stopping sight distance for vehicles traveling along CR 48 at a speed of 65 mph. Subsequent to a field inspection on January 14, 2014 it is confirmed that available intersection sigh distance (over 1000 feet) exceeds recommended stopping sight distance on all approaches and in all directions."

[4] The reconstructionist also testified that, when entering an intersection, a driver must yield the right of way to any vehicles that are already in that travel lane. In order for a limousine to properly make its turn in a turning lane, it must stay within the turn portion of the intersection; in this case, the limousine swung widely into the intersection so as to better be able to execute a U-turn. In terms of this intersection, to make a proper U-turn from the eastbound to westbound lanes of County Road 48, a limousine in the left eastbound turn lane must finish its turn into the left westbound lane, a task not feasible for a vehicle the length of the 120-inch stretch limousine.

2015 order of the Hon. Richard Ambro. Also, on December 15, 2015, the Grand Jurors, again under the supervision of New York State court officers, visited the impound yard at which were located the motor vehicles that had been involved in the crash, pursuant to the December 2, 2015 order of the Hon. Richard Ambro.

II. THE INTERSECTION OF COUNTY ROAD 48 AND DEPOT LANE

A. North Fork Traffic

Although many areas of Eastern Suffolk County (the "East End") remain rural and relatively undeveloped, vehicular traffic on the North Fork has spiked in recent years. In the 1970s and 1980s, the local potato industry declined; wineries came to the North Fork, buying up land, planting grapes, processing the grapes for wine, and establishing tasting rooms. In the fall, harvest festivals, apple picking, farm stands, and pumpkin picking began bringing many day trippers to the area. As one Southold Town Police official indicated, "I think our fall weekends are just about as busy as our 4th of July weekends and the rest of the weekends." Likewise, a rise in interest in Connecticut casinos has increased traffic out to the tip of the North Fork, where the Orient Point Ferry shuttles people to and from New London.[5]

Apart from day trippers, seasonal summer residents also have long swelled the streets of Southold. In 2009, the East End Transportation Study Final Report, conducted in conjunction with the U.S. Department of Transportation ("USDOT"), noted: "According to the analysis conducted by [Sustainable East End Development Strategies], the East End's population is 2 ½ to 3 times higher during the peak summer season." In Southold, the estimated year-round

[5] In the busy months, the Ferry runs almost every hour on the hour.

population of the Town was 20,945 in 2003; the estimated population of year-round residents plus peak summer seasonal residents climbed to 49,466 that year.

Changing demographics have added to the area's population issues. One member of the Suffolk County Planning Commission[6] described the situation as follows:

> We have a lot of people that are year-round residents. It used to be more of a summer community but now lots of people live there year-round. You have a lot of people traveling out of Orient Point who utilize the ferry rather than travel further up in New England or to go to the casinos. It's my understanding the one in Port Jefferson is not configured so well for commercial traffic. You have issues because you have a lot of local workers that are needed for some of the businesses that are out here that need to be supported year-round, because you have year-round residents, and you have a big affordable housing problem which contributes, because where the affordable housing is located is not always where the work is, so that increases your traffic congestion.

A Long Island Wine Council member had similar concerns about local employees having to commute into the area: "I mean the problem we have on the [N]orth [F]ork is a problem people have almost everywhere on Long Island, which is we can't find employees, many times. Especially as far as younger people are concerned. Younger people really can't afford to live on the east end of Long Island. Taxes are too high."

Agricultural festivals on the East End have greatly increased in popularity, bringing with them droves of visitors. A representative from the Southold Town government, who has lived in the Town for 24 years, had the following to say about such events on the East End:

---

[6] The Suffolk County Planning Commission, which has 15 members and meets monthly, advocates a comprehensive North Fork traffic study to determine where the traffic is coming from, quantify the traffic, and determine how to alleviate it. According to the organization's own guidelines, the Planning Commission examines, among other things, "Traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities." Furthermore, it is a goal of the Suffolk County Planning Commission to "[e]xpand sustainable transportation options – for commercial, commuter, and recreational travel – by promoting greater public transit alternatives and creating a diverse, multi-modal transportation system that links jobs, housing, shopping, and recreation and reduces dependence on single-occupant motor vehicles."

> It was almost unheard of when I moved out there initially, now it's become a day out for families to come out east and spend the day pumpkin picking, apple picking – more pumpkin picking than apple because it's less work, easier, it's more festive, they have their mazes, farm fields, and they serve wine tasting as well, sometimes, and vegetables and pies, and they make it a year-round, almost, activity for agricultural.

Southold has been dealing with traffic congestion issues for more than a decade, but the problem has gotten worse in recent years. In 2007, Southold Town commissioned a traffic study that made the following observations:

> [A]s a whole, traffic throughout the Town of Southold has increased an average of 38% from 1993 to 2006, or an annual increase of 2.9% per year. However, traffic volumes in Zone 1 [Mattituck-Cutchogue] of the Town [have] increased an average of 25.0% annually since 2004. The large increase of traffic in Zone 1 reflects the recent increase in popularity of the North Fork's vineyards and wineries. In recent years, the vineyards and wineries of Long Island's North Fork have been praised nationally, which in turn, attracts more visitors. People are also traveling to the Town of Southold in order to take advantage of the rural way of life, including visiting farm stands, downtown areas, the beach, and inns.

Local residents indicate that the presence of vineyards and agricultural festivals have greatly increased traffic congestion in the Town of Southold since 2006. Limousines and buses have particularly increased in numbers. One limousine industry representative, who also is president of a company with a 22-vehicle fleet with 32 employees, calls Long Island "a seasonal economy," which requires him to acquire more drivers in the busy months between May and November. The Vineyard security guard reported that he sees "probably 20 or more limousines" stop at the establishment on a typical day, in addition to "anywhere from five to ten" tour buses carrying between 10 to 40 passengers. April to November is the most active time of year for the wineries, with August through November as particularly busy. Traffic – passenger vehicles, as well as buses and limousines – becomes much heavier in the Town of Southold at those times.

As limousines and buses have proliferated in the Town of Southold, navigation of the Town's roadways has become more difficult – and dangerous. "A lot of [stretch limousines and

buses] have a tough time navigating our roadways because the roadways in Southold are a lot older than the rest of the county," designed more than 30 and 40 years ago, said a Southold Town Police official. The Southold Town Police official noted that it is "dangerous because there is a lot of situations where limousines and buses are trying to make turns and trying to get across traffic from different locations and . . . basically causing other traffic to stop while they make their moves." As a result, the Southold Town Police has stepped up law enforcement efforts to monitor sites that it knows will be busy with limousines and buses, mainly around the wineries on weekends.

Apart from the many festivals and other seasonal attractions, one of the most popular activities on the East End – throughout the year – is wine tasting. Thousands of individuals come to the area to go wine tasting at some of the area's more than 40 wineries and tasting rooms. The bulk of these wineries are located on the North Fork. Beginning with the first commercial vineyard – Hargrave – in 1973, wineries have multiplied on the East End. There are now approximately 3,500 acres of grapes planted on the East End, and the Long Island Wine Council, which was founded in 1989, counts 48 full members, including about 30 of the area's wineries.[7] In a good year, a vineyard can grow three tons of grapes per acre of vines. With more than 3,000 acres under cultivation on Long Island, the area's wineries could produce 9,000 tons in a year, and every ton can produce at least 50 or 60 cases. In a "best-case scenario," said one Long Island Wine Council officer, the region can produce close to 500,000 cases in a year. Between the Long Island wineries and several prominent upstate ones, especially in the Finger

[7] With regard to whether all Long Island wineries are represented on the Long Island Wine Council, a Council officer had the following to say: "The majority of them are, not all. There is nothing – it's not mandatory that you have to be a member of the Long Island Wine Council. There are various organizations that are not. . . . Paumanok is not a member, Lenz is not a member, [the Vineyard] is not a member, Borghese is not a member at this time."

Lakes region, the state's wineries have made New York State one of the largest producers of wine in the United States.

The Long Island Wine Council estimates that local wineries now attract about 1.3 million visitors each year. In addition to the wineries, Long Island Spirits and Greenport Harbor Brewing Company have opened and welcome visitors with other alcohol-based attractions. Vineyards differ in their approach to wine tasting; some promote an outdoor-party atmosphere while others offer tours of their wineries where visitors can observe the wine-making process. Several wineries promote picnics on their grounds; others prohibit outside food from coming in. One winery may host opera nights, and others may sponsor food-and-wine pairings with guest chefs. Originally, many of the early wineries on the North Fork did not charge money for their tastings; their business model was to offer free samples and, if a consumer enjoyed what she was drinking, she might buy several bottles of wine before leaving. People started taking advantage of the free tastings, however, going to the wineries to drink free wine and leaving without buying anything, so wineries increasingly began to charge money for the tastings. The wineries now no longer just serve small tastings of their latest vintages. A representative from the Southold Town Highway Department had the following to say about the winery industry on the North Fork: "[T]he trend has become not just a winery but they became a venue for activities, weddings, parties, fundraisers. So they went from just growing grapes to becoming social events."

With so many alcoholic-beverage-based activities – wine-tasting, vodka-tasting, beer-tasting – taking place on the East End, there have been associated alcohol-related problems. Responsible drinkers at these locations, however, can arrange for transportation between the locations in advance. With the success of East End wineries has come the ubiquity of large, chauffeured vehicles – stretch limousines, stretch SUVs, and party buses – shuttling revelers or

more serious connoisseurs from one wine-tasting location to another. A chauffeur is a "designated driver," stated one limousine company owner. "I think it's the safest way to go." Another limousine company officer indicated: "We bring passengers out to the wineries so they could enjoy their day without the worry of having to drive and drink and be safe." He added that some limousine companies require chauffeurs to give their passengers a briefing prior to heading out to the wineries, informing them that "any drunk or ridiculous behavior won't be tolerated at the wineries. We'll be asked to leave."

Several wineries prohibit stretch limousines and their passengers; others display signs welcoming them.[8] The Long Island Wine Council officer[9] explained that some wineries embrace the wine tour industry:

> Some limo companies will work with a winery that is looking for volume, . . . large numbers of people. And so they will reduce their normal tasting fee to a very low figure to encourage these companies to bring out the maximum number of people. Many times the limo company is collecting in advance a certain dollar amount, $75, $80, per person, whatever it may be, and the limo company will guarantee them they'll bring them to three different wineries for tasting of three different wineries and will provide them with a box lunch. So those wineries, those limo companies, it's a real encouragement to them if the winery says we'll

[8] A Long Island Wine Council officer noted the following about allowing limousines and party buses to stop at a winery: "[F]or smaller wineries, it doesn't work. It's too disruptive. You can't have limousines coming in, you can't have a limousine with 20 people show up if you are a small winery that can only fit 35 or 40 people. Because they basically take over the whole place, and they bring their atmosphere, whatever that may be, to the winery. And for the most part, smaller producers who are more into the wine, perhaps, and more looking at this from a point of view as this is an extension of who they are as a person, don't like that, don't like to have that whole thing happen where people come in and take over the winery. There are some that don't do it because they are very [small]. Croteaux Vineyards doesn't allow any limos because they are very small and have very small parking areas. And most of the other wineries either don't allow it or don't encourage it except with very great discretion."

[9] With regard to his own winery, the Long Island Wine Council officer explained his policy: "I don't allow limousines unless I get a call from a company and it's eight or fewer people and I know what it's about and they make me their first stop. So, and I worked with a few companies, but on an average weekend, I might have two limos show up. Because that's not what they want. And we don't encourage limos because we don't reduce our fees because they are showing up with a limousine."

> only charge you four dollars a person for a wine tasting. They'll get a maximum number of limousines. And that could be someone's business model, and there are different business models on Long Island.

A Southold Town Police official recognizes that limousines and buses serve a valuable purpose in the community: "they are taking visitors to the wineries that don't have to drive after they have been consuming alcoholic beverages." One limousine executive himself admitted:

> I do not advertise the fact that I'm in the business of moving drunks, excuse me, moving people that have been drinking. . . . You know, inherently, in the business of moving people you are going to deal with intoxicated individuals, and regardless of occasion, and it's, you know, what we are prepared for.

As another limousine company officer described it, the limousine business has "grown tremendously" on the East End, and limousine fleets have grown accordingly.[10] "Most [limousine] companies on Long Island are one to five cars, sometimes eight. I would say under 10 cars. But they are very small companies. The larger companies, 20-plus vehicles, are I would say less than ten. Not that many," said a limousine company executive who has owned a 35-vehicle limousine company for 18 years. This officer is also a director of the Long Island Limousine Association[11] and has served for years on the organization's board. The Long Island Limousine Association now includes between 80 to 85 limousine companies,[12] with more than 1,000 vehicles and more than 1,000 employees between them.

---

[10] The limousines do not just provide service between wineries. In 2014, one limousine company with a 22-vehicle fleet serviced more than 1,200 weddings on Long Island. The same company had sales of more than $2 million, $88,000 of which came from prom business alone.

[11] The Long Island Limousine Association was incorporated in 1978 with a charter group of 24 owners. The Association works with local charities and has been involved in outreach with Mothers Against Drunk Driving, Toys for Tots, and the Make a Wish Foundation. Its board meets once a month at the Race Palace in Nassau County. Every other month, the Association convenes a meeting to discuss such subjects as limousine safety, insurance issues, new regulations, and new county laws.

[12] The limousine company that owns the car involved in the July 18, 2015 crash is a member of the Association and the company that built the car, the Limousine Builder, is an associate

After tremendous growth in the early 2000s, the number of winery visitors sagged in 2008, due to the economy. Since then, however, winery attendance is back up and, with it, the limousine industry. Over the past seven years, "wineries became a very important part of our business," noted one limousine company owner. He added:

> It's a very large tool for tourism in Suffolk County. Our business went up probably 20 percent in the winery seasons, which we are very busy from, I would say from the April to November, it gets very busy with wineries, especially on the weekends. . . . It's a very good, lucrative tool.

Another limousine company official repeatedly referred to the "booming" business between East End wineries.

There is a distinct lack of public transportation available in Suffolk County, so groups of visitors have taken advantage of chauffeured vehicle services to sample the area's wines.[13] A limousine company can hire out a seven-passenger stretch limousine for $117 per hour for a minimum of five hours or a nine-passenger limousine at $131 per hour for a minimum of five hours. The more passenger room there is in a vehicle, the greater the price the limousine company can command. A member of the Suffolk County Police Department Motor Carrier Safety Section commented on the trend in limousine activity in Suffolk County:

---

member. To be a member a company must own a Town Car or limousine. Associate members also include insurance companies.

[13] In its 2009 East End Transportation Study Final Report, the U.S. Department of Transportation, Research and Innovative Technology Administration, John A. Volpe National Transportation Systems Center, noted the following: "The East End of Long Island, defined here as the Towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold and located at the extreme eastern end of Long Island, has longstanding traffic congestion and internal circulation problems. The East End's location and geography limit its roadway network. As a popular location for tourists and second home owners, the East End experiences significant seasonal traffic congestion. At the same time, the emphasis on tourism in the local economy and the desire to maintain a rural quality heightens the importance of scenic views and preservation of open space and makes roadway capacity increases difficult to implement. A number of public and private transportation providers serve the area, but uncoordinated schedules and service limitations make internal circulation difficult for those who do not or choose not to drive."

> The big one now is the wine tours. . . . They, some limos provide the whole tour. They'll call up the different wineries and book the reservation. Limousines and buses need reservations at some of these wineries out there because they have to fit in the parking lot, so they have a certain time they can be there. Some limo companies have you, the paying patron, have you book them.

Ferry traffic has also increased the numbers of visitors and vehicles to the North Fork. As far back as 2007, a Southold Town traffic study noted: "One substantial traffic generator within the Town is the Cross Sound Ferry." An analysis of ferry traffic between Orient Point – on the eastern tip of the North Fork – and Connecticut is revealing. Cross Sound Ferry Services records show a significant growth in annual passenger traffic from 2003 through 2016. In 2003, 511,460 people left from Orient Point on the ferry; in 2015, 765,295 people left from Orient Point, about a 50-percent increase over twelve years. By contrast, in 2003, 229,153 vehicles left from Orient Point; in 2015, 241,187 vehicles left from Orient Point, denoting a much smaller increase than that of the passenger boom. Likewise, from New London to Orient Point, in 2003 there were 276,191 passengers and 235,269 vehicles; 2015, however, saw 544,337 passengers coming from New London, as well as 248,239 vehicles. The number of Suffolk-bound passengers increased significantly whereas the vehicle numbers did not. One interpretation of this data would be that there is a trend that larger vehicles with more passengers are making the trip between Suffolk County and Connecticut. To get to Orient Point, given its location, these vehicles would have to drive straight down the North Fork's roadways.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Vehicles From New London	235,269	247,492	236,183	229,273	233,860	206,571	219,581	223,896	220,322	219,001	219,370	234,623	248,239
Passengers From New London	276,191	285,843	268,194	260,482	262,653	234,012	483,345	498,941	498,465	496,261	490,660	510,478	544,337
Drivers & Passengers From New London	511,460	533,335	504,377	489,755	496,513	440,583	702,926	722,837	718,787	715,262	710,030	745,101	792,576
Vehicles From Orient Point	229,153	241,017	232,062	223,690	230,296	203,123	218,539	221,516	215,226	214,549	212,658	227,188	241,487
Passengers From Orient Point	267,437	282,366	266,623	252,294	250,737	226,440	478,855	483,790	489,105	483,828	476,788	505,466	523,808
Drivers & Passengers From Orient Point	496,590	523,383	498,685	475,984	481,033	429,563	697,394	705,306	704,331	698,377	689,446	732,654	765,295

The Long Island Wine Council officer noted that there were benefits and drawbacks to the burgeoning limousine business between the wineries:

> Most wineries will have a sign out front that says 'no limos, no buses except by reservation.' And they are very strong on that. Because you don't want a large number of people to come onto your property unless you were expecting them. So that, you know, you have a sufficient staff to handle the numbers, et cetera. So those wineries that do accept limos and buses, and not all do, will only accept them if they have a reservation. So it's a by reservation-type thing. And I think you know, in a way, obviously, limos and buses are a preferred way for people to come out to the wineries because it eliminates a lot of cars on the road. It also eliminates people drinking and driving. So it's a good thing to do. . . . The potential downside and the downside some wineries experience, is that because people feel they are, they don't have to drive, they feel they don't have to behave appropriately. So they can drink more than what they should because they are riding in a limousine or riding in a bus.

The Long Island Wine Council and some of the North Fork's wineries have been working with local law enforcement on the matter of winery-related traffic. A Suffolk County Police Department Motor Carrier Safety Section officer had the following to say about this cooperation:

> Those, as you all know, out east and in Cutchogue, the roads are not made for these big vehicles, and they are asking for our assistance. We are working closely with the wine council. The wineries are looking forward, they are not against us going out there. They are trying to help regulate the situation. There are many limousines out there. One limousine company does 11,000 tours a year. So it's a big deal.

The increased flow of people and vehicles to the area has been a mixed blessing. The popularity of these opportunities has yielded great economic benefits to the area. Local businesses, wineries included, thrive due to the visitors attracted by the East End's events. Local residents, however, have long complained that the community's infrastructure was not designed for the massive influx of visitors that the East End has been witnessing. In addition to the aggravation of traffic jams, critics have cited the dangers of large, chauffeured vehicles attempting to navigate relatively narrow rural roads. Traffic control devices and signs that dictate the progress of these and other vehicles have come under attack as inadequate for the realities of today's traffic. Some residents complain that the local road network was not designed for this level of visitors.

A Southold Town Highway Department official said that the wineries make the traffic on the Town's roads very congested: "Obviously you can tell, the ones that are going to the vineyards, (a), the traffic is around those intersections where the vineyards are and, (b), by the limousines and the small buses become very popular for them to go to those places." He noted that limousines are "common" on the Town's roads during the summer and fall. He also said that limousines and small buses clog the roadways because of their relatively large size and their volume:

> [O]ur roads were designed and our town was established in 1640, the oldest in New York, just for the record, so the vehicles have outgrown the roads. The roads have not changed, the vehicles have. So some of our turns and turning radiuses were not designed for certain vehicles.

B. Past Troubles at the Intersection of County Road 48 and Depot Lane

At the time of the July 18, 2015 crash, County Road 48 featured two eastbound lanes going through the intersection with Depot Lane. In addition, the intersection had a left turning lane for traffic preparing to turn north on Depot Lane, as well as a right turning lane for traffic preparing to go south on Depot Lane. There was no designated traffic light protecting the left turning lane – the only signal facing west there was a constantly blinking yellow light, warning caution. Westbound, County Road 48 had a similar lane configuration: two through lanes, a left turning lane for traffic preparing to turn south on Depot Lane, and a right turning lane for traffic headed north on Depot Lane. Again, there was no designated traffic light protecting the turning lanes from that direction, just a blinking yellow light facing traffic to the east of the intersection.[14] Although there are a number of traffic lights on County Road 48, this was the last one with blinking yellow lights on that road. Increased traffic over the years had resulted in the County's replacement of blinking lights with green-yellow-red lights and, in some cases, lights that involved a green arrow for protected left turns.[15] As its name implies, County Road 48 is owned and maintained by Suffolk County, whereas Depot Lane is owned and maintained by the

[14] The New York State Police reconstruction report included a more detailed description of the intersection: "At the time of the collision, County Route 48 in the vicinity of Depot Lane was a four (4) lane asphalt roadway. The roadway was divided by a grass median with two (2) lanes traveling in an eastbound direction and two (2) lanes traveling in a westbound direction. The lanes in both directions were divided by broken white pavement markings that indicate passing was permitted. Both the eastbound and westbound sides of the roadway had one (1) left and (1) right turn lane that permitting access to the intersection of Depot Lane. The westbound lane widths were approximately 11.9 feet for the right turn lane, 12.0 feet for the right lane, 12.3 for the left lane, and 12.2 feet for the left turn lane. The intersection of County Route 48 and Depot Lane is controlled with a traffic signal light that flashes yellow on the eastbound and westbound lanes of County Road 48, and a traffic signal light that flashes red on the northbound and southbound lanes of Depot Lane. Depot Lane, northbound and southbound, is additionally posted with a stop sign at the intersection of County Route 48."

[15] According to a senior Suffolk DPW official, statistically this intersection had fewer accidents than other intersections on County Road 48: "There was a reason this was the last remaining flashing signal on County Road 48."

Town of Southold. At the time of the crash, blinking red traffic lights[16] – as well as stop signs – faced northbound and westbound traffic on Depot Lane. Suffolk County had been responsible for the installation of the blinking yellow traffic light at the intersection.[17]

Prior to the crash, the intersection of County Road 48 and Depot Lane had been notorious among local residents for limousines attempting – and failing – to execute proper U-turns. As noted above, at the time of the crash, there was no three-color traffic light or protected left turn signal (green arrow).[18] On the other hand, nothing at the intersection prohibited U-turns. In order to execute a proper U-turn from one left-turning lane, a vehicle would have to "come out in the left lane of the opposing direction" – the lane "closest to the median" – according to a

[16] A Suffolk DPW official likened a blinking red light to a stop sign: "They are identical. They are identical in terms of the requirement of the driver to come to a full stop and yield right-of-way before entering an intersection."

[17] Suffolk DPW takes into account drivers' lines of sight when installing traffic control devices, signs, and traffic lights. A Suffolk DPW official described the process: "[W]hen you get into highway design and geometrics, there is what is called the AASHTO green book. It's an acronym for American Association of State Highway [and] Transportation Officials. . . . And they have a what is generically referred to as the green book, and it is a highway geometric manual, it's several inches thick, and it looks into different conditions and the appropriate designs. A location like that we would look at what the stop line sight distance, if you will, for the eastbound to northbound left turn or eastbound to westbound U-turn, versus the approaching westbound vehicle. And to my knowledge, that greatly exceeds the requirements of the AASHTO manual. I would venture to guess we are probably in the neighborhood of a thousand-plus or quarter of a mile of sight distance at that intersection."

[18] A Suffolk DPW official discussed the reason for having flashing red and yellow lights at an intersection on County Road 48 instead of a stop sign: "Back when County Road 48 was designed and built, between the late '60s and early to mid '70s, and maybe even creeping into the late '70s, you had a divided highway that was built through the north fork to pull traffic off of Middle County Road or Main Street or whatever the local name reference happens to be. It's New York 25 is the route. And the idea was that the north fork would eventually be built out, as has happened in western Suffolk. Because of the very nature of what was out there at the time, you had many farms, you had undeveloped land, you had long lengths of highway between intersections. So to help define or help drivers identify these approaching intersections it was determined at that time that a flashing signal would be appropriate, so someone driving along 48 unfamiliar with the location maybe gets a little white-line fever, maybe they drove from the city, and it would maybe help them just identify an un-obvious intersection they were approaching."

Southold Town Police official. As Section 1160(e) of the Vehicle and Traffic Law states, "U-turns shall be made from and to that portion of the highway nearest the marked center line."

An employee at the nearby Vineyard had long recognized the problem that faced limousines attempting such a turn. The Vineyard security guard had seen limousines make U-turns at the intersection of County Road 48 and Depot Lane before, whereas other limousines turned left onto Depot Lane and then turned around in an industrial area before returning to County Road 48 and heading west. The security guard had, at times, advised chauffeurs to turn around in the industrial area; he did not suggest that they attempt a U-turn at the intersection of County Road 48 and Depot Lane because, as he put it, "I don't see it as being safe." The only way chauffeurs could hope to negotiate even an improper U-turn at the intersection was to go deep into the intersection and make a wide turn, although this still would not position the limousine in the closest westbound lane from the eastbound left-turning lane. Moreover, as a Southold Town Police official indicated, "[T]hey have to eat up two or three lanes in the other direction to make that turn."

Upon realizing that they could not make a U-turn in their stretch limousines, chauffeurs often had to make a multiple-point turn, backing out toward the southeast into oncoming westbound traffic before straightening out and driving westbound on County Road 48. A Southold Town official said that he personally has seen "tons" of limousines attempt the turn. "I can't even count" the number of times I witnessed these vehicles at this intersection, attempting to make U-turns, he added. Likewise, a local police officer sees limousines attempting to make a U-turn at the intersection "all the time," although he has never witnessed a successful, proper one being completed. Area residents had long complained to the Southold Town Supervisor, the Southold Town Board, and the New York State Liquor Authority about how vehicles were

making unsafe turns at the intersection, being unable to complete the turns, and blocking traffic, as a result. One local resident recalled seeing eastbound limousines attempting to make a U-turn there "quite a few times," although "[i]t's physically impossible because of the length of the limousines." This resident recalled that these limousines would "hit the curb" on the northern edge of County Road 48 and have to "back up to . . . head west." In the meantime, as the stretch limousines were making their multiple-point turns, traffic on County Road 48 had to stop to avoid a crash. Members of the Cutchogue Fire Department, prior to the crash, had discussed the dangers of the intersection and informally broached the subject with Southold Town officials and the police.

The intersection itself and its proximity have had a history of motor vehicle crashes. Back in April 17, 1985, there was a T-bone incident at the intersection of County Road 48 and Depot Lane in which a westbound vehicle struck a vehicle facing north in the middle of the intersection, hitting the second vehicle on its passenger side. Between 1999 and 2006, there were 42 motor vehicle crashes in the vicinity of the intersection of County Road 48 and Depot Lane. In 2005, there were ten motor vehicle crashes in the area, four of which resulted in personal injury. The following year, in 2006, there were six motor vehicle crashes with one personal injury. In 2007, there were five crashes at the site, four involving personal injury. In 2008, there were four crashes, two of which resulted in injuries; in 2009, there were four crashes with no injuries reported. In 2010, there were six crashes with no injuries being reported, and, in 2011, there were three crashes with two involving personal injury. In 2012, there were seven crashes, two of which involved injuries. Six motor vehicle crashes with no reported injuries occurred in 2013. In 2014, there had been four motor vehicle crashes with no reported injuries.

And, prior to the limousine crash on July 18, 2015, there had already been a total of four motor vehicle crashes near that intersection in 2015.

The Southold Town Police, which has authorization to patrol County Road 48 in Cutchogue, repeatedly has had to conduct law enforcement actions in relation to vehicles leaving the location of the Vineyard. For the past five years, local police officers have dealt with complaints about limousine and bus activity near the intersection of County Road 48 and Depot Lane. On June 4, 2011, police received a complaint regarding a limousine attempting a U-turn on County Road 48 near the crash location. On October 15, 2011, police responded to complaints of limousines and buses blocking the roadway. On November 5, 2011, a driver left the Vineyard going the wrong way on County Road 48. On November 19, 2011, there was a complaint that a tour bus making a U-turn at the intersection of County Road 48 and Depot Lane forced another motorist off the road.

Problems persisted the following year. A limousine driver was cited for failing to yield the right of way on May 5, 2012. On the same date, another driver received a ticket for failure to yield the right of way. On May 19, 2012, a motorist complained that a limousine making a U-turn at the intersection of County Road 48 and Depot Lane had cut her off. Two vehicles that just left the Vineyard on June 2, 2012, were observed heading east at a high rate of speed, with one tailgating the other; both drivers were arrested for driving while intoxicated. On September 29, 2012, two summonses for failure to yield right of way, a violation of New York Vehicle and Traffic Law Section 1143, were issued for oversized vehicles attempting to make U-turns at County Road 48 and Depot Lane. And on October 7, 2012, the Southold Town Police received a complaint regarding limousines making U-turns at that intersection and cutting off traffic.

The complaints have not stopped in the past three years. Since 2013, local police have continued to respond to incidents at and around the Vineyard. On February 2, 2013, an arrest was made with regard to a fight inside of a limousine in the winery parking lot. On April 6, 2013, a summons was issued to a limousine driver making an unsafe U-turn at the intersection of County Road 48 and Depot Lane and blocking traffic. A week later, on April 13, 2013, local police issued a summons to another limousine driver at the same intersection for failure to yield right of way. On that same day, a person complained that another limousine had made a U-turn in front of him and nearly hit him. On June 8, 2013, the Southold Town Police issued a ticket to a driver for failing to yield right of way at County Road 48 and Depot Lane. A week later, on June 15, 2013, police issued a traffic summons for an unsafe U-turn at the intersection. On that same date, the Southold Town Police issued a second ticket for a failure to yield right of way.

Southold Town Police officers have issued numerous summonses for traffic on the portion of County Road 48 near the Vineyard. Local police issued the following summonses in 2014: in April, two; in May, three; in June, nineteen; in July, thirty; in August, nineteen; in September, twelve; in October, twelve; in November, twelve; and in December, ten, a total of 124 for the year. The following year, for that same stretch of roadway, the Southold Town Police issued the following summonses: in January, eighteen; in February, eight; in March, six; in April, five; in May, nine; in June, eight; in July, eleven; in August, twenty-two; in September, fourteen; in October, three; in November, eleven; and in December, two, a total of 117 in 2015. Traffic violations have not been the only complaints with which the police have dealt. Between July 23, 2011 and October 18, 2014, Southold Town Police responded to 32 noise complaints, five complaints for the vineyard's exceeding of its maximum capacity, ten complaints for vineyard patrons causing a disturbance or urinating in public, and two complaints of public

sexual intercourse or lewd acts. There were also complaints of limousines parked in front of houses or in no-parking zones and an excess of 34 vehicles parked at the vineyard.

Internally, members of the Southold Town Police Department have consistently expressed concern about the activities at and around the Vineyard. In a May 3, 2012 internal Southold Town Police Department memorandum, supervisors addressed complaints of "[i]rresponsible operation of limos and buses attending the event including blocking traffic portions of the highway, backing across the highway, [and] discharging passengers on the shoulders of the roadway." This memorandum also cited complaints including "[p]atrons having sex in the vineyards and fields in view of the neighbors," public intoxication, and public urination. In other internal memoranda, dated May 12, 2012 and October 6, 2012, the Southold Town Police Department instructed that "[o]fficers will also monitor the traffic conditions/parking of limos and buses by the event to make sure the flow of traffic is not impeded by same." In a June 7, 2013 memorandum to Southold Town Police sergeants, a supervisor noted:

> As the summer approaches and the weather improves, [the Vineyard] is again becoming busier and the crowds have increased. The Vineyard's activities have tapered off slightly because of their ongoing State Liquor Authority hearing involving their liquor license. However, there are still enforcement issues that must be addressed that are both officer initiated and complaint-driven: Traffic enforcement on Rt. 48 near [the Vineyard] to address the limos and buses that are obstructing traffic.

On June 14, 2013, the Southold Town Police Department issued a memorandum, regarding "[The Vineyard] Activity," to its sergeants indicating as follows:

> As of this date the enforcement efforts at [the Vineyard] will still revolve around the label of a 'special event'. When officers observe comfortably more than the 225 maximum capacity of the site being violated, and a large number of limousines and buses needed to deliver these patrons for the day, and tents erected with music, the totality of all these factors will constitute a need for a special events permit from the Town. Officers will check to see if the manager has a

> special event, and if not, a Town summons will be issued for same. However, there are still enforcement issues that must be addressed that involve officer initiated and complaint-driven: Traffic enforcement on Rt. 48 near [the Vineyard] to address the limos and buses that are obstructing traffic. The actions of the patrons both inside and in the neighboring community. Noise complaints and whether they violate the Town's Noise ordinance.

The Southold Town Police Department has continuously apprised the Southold Town Board of law enforcement issues involving the intersection of County Road 48 and Depot Lane and the nearby winery. In an April 30, 2012 e-mail from a police official to a Southold Town official regarding the weekend of April 28-29, 2012:

> Saturday was definitely the worse of the two days with a pretty substantial crow, outside tents erected, a DJ, lots of buses and limos, one noise complaint from [a local resident]. We are meeting today with the command staff at Hqs and will be formulating a plan to put into effect on several fronts: traffic enforcement, [experiment] with our noise meters issuing summonses for noise violations, attempting to send someone in in an undercover situation to take a look at sales to both minors and intoxicated patrons and finally trying to get the [State Liquor Authority] involved again in the enforcement here.

About five months later, in an October 1, 2012 e-mail from a Town of Southold police official to the Board: "We are starting to get them again these past two weekends, we spent a couple of hours there yesterday writing summonses to the limo drivers for blocking Rt. 48 while turning and other traffic violations." The same police official sent another e-mail that day to a Town Official: "[W]e were there at 5:15 p.m. on Saturday and spent some time in the area writing tickets (6) to limo drivers that were causing traffic issues, the place was a mess." On October 15, 2012, a police official sent an e-mail to Town Board members indicating that on Saturday, October 13, 2012, "we spent a significant amount of time there with 2-3 cars patrolling the outskirts and conducting traffic stops, mostly for limos blocking traffic trying to negotiate turns." On Monday, October 22, 2012, a police official sent an e-mail to Town Board members stating that, on Saturday, October 20, 2012, "[w]e had three marked cars conducting traffic enforcement

on Rt. 48 in front of the Vineyard and made appx. 10 traffic stops, mostly of limos and buses, and wrote 4 summonses."

C. Law Enforcement at the Intersection Since the Crash

Between the date of the July 18, 2015 crash and October 2015, there were still multiple complaints to the police regarding the intersection, oversized vehicles, and attempted U-turns. On September 12, 2015, the Southold Town Police received a complaint that limousines were blocking traffic while making U-turns. On September 26, 2015, the Southold Town Police received a complaint of a bus making a U-turn, blocking traffic. On October 3, 2015, a person complained that a limousine stopped traffic trying to make a U-turn before heading west on County Road 48. Even in the aftermath of the July 18, 2015 crash, there were additional motor vehicle crashes at the intersection of County Road 48 and Depot Lane on August 9, 2015 and October 2, 2015.

Since the crash, local law enforcement stepped up its activity in the vicinity of the intersection. On September 19, 2015, the Southold Town Police, in conjunction with Suffolk County Police Department's Motor Carrier Safety Section, conducted a series of vehicle inspections at the intersection of County Road 48 and Depot Lane. The police inspected nine limousines and eight buses. Of the limousines, eight out of nine had violations; of the buses, six of eight had violations. In total, the police noted 30 violations in the 17 problem vehicles. In the course of these inspections, one limousine was cited for an unsecured fire extinguisher and an inadequate emergency exit marking. A bus was cited for violations of operating a commercial motor vehicle without proof of inspection and inoperable required lamp. Another limousine was cited for insufficient warning devices and inspection, repair, and maintenance of parts and

accessories, as it had blue, treated water leaking to the ground from a vent hole. Police inspection that day discovered six violations on another bus involving insufficient warning devices, no U.S. Department of Transportation ("USDOT") Number, malfunction of the brake system, leaking hubs and wheels, defective emergency exits, and failure to start right away. Another limousine was cited for failure to display the carrier name. Police cited another limousine for failure to display the carrier name or USDOT Number and failure to register to obtain a USDOT Number. Police found five violations in another bus that day including the following: the driver was operating a commercial motor vehicle in violation of his license restrictions; there were no emergency exit markings; there was an unsecured fire extinguisher; there were inoperable headlights; and there was no USDOT Number displayed on the vehicle's side. Another limousine received four citations: failure to display a USDOT number; no fire extinguisher; no warning devices; and operating a passenger-carrying vehicle without possessing a valid medical certificate. A 14-passenger limousine was found to have no carrier name and no USDOT Number on the side of the vehicle. A motor coach had an inoperative windshield washer fluid system. Another 10-passenger limousine had no carrier name or USDOT number on the vehicle, no fire extinguisher, and no warning devices. An 11-person limousine and a bus had no carrier names and no USDOT Numbers on their sides. And a 10-person limousine had failed to display a USDOT Number, failed to register to obtain a USDOT Number, and had a defective parking brake system.

This past year, local police officers have devoted more resources to monitoring the situation on County Road 48. Near the beginning of 2016 the Southold Town Police increased its patrolmen assigned to County Road 48 from one to two, out of a total force of approximately 35. According to one Southold Town official, these patrolmen's "job is just to maintain safety

on County Road 48, and speed." The Suffolk County Police Department's Motor Carrier Safety Section has continued to monitor the intersection in question on multiple occasions over the past year.[19]

D. Southold Town's Response to Complaints Regarding the Intersection

As County Road 48 is a Suffolk County road, the Town of Southold does not have the authority to make changes with regard to the traffic light at the County Road 48 and Depot Lane intersection; such engineering decisions are the province of the Suffolk County Department of Public Works ("Suffolk DPW").[20] As one Town official indicated: "Depot Lane is a Town road with about 98% of it, there is about ten-foot right of way on 48 for the county and about a ten foot, 15 foot right of way on 25 and Depot Lane . . . about ten feet on Depot, either side, that's the county right of way." A representative from the Southold Town Attorney's Office noted that

[19] One Motor Carrier Safety Section officer indicated the extent to which his unit is policing the intersection: "[W]e have gone out there several times since and we plan on going out in the future to regulate the limousines and the wine country. Those, as you all know, out east and in Cutchogue, the roads are not made for these big vehicles, and they are asking for our assistance. We are working closely with the wine council. The wineries are looking forward, they are not against us going out there. They are trying to help regulate the situation. There are many limousines out there. One limousine company does 11,000 tours a year. So it's a big deal. And they are allowing us, we have to be requested or asked to work out there. And Southold has been very accommodating to us. We are probably going to be out there at least twice a month in the summer."

[20] The Southold Town Highway Department, however, has 2000, 2013, and 2015 agreements with Suffolk County to ensure, through a subcontractor, that the LEDs in the light are changed if they go out. Between 2003 and 2013, the Town of Southold has dealt with various problems with the flashing light at the intersection of County Road 48 and Depot Lane, including sagging traffic signal heads, a red light going out, a yellow light going out, lens replacement, and visor replacement. At one point, the Town of Southold received a notice of claim involving an assertion that as an individual was driving westbound on County Road 48 and was passing through the intersection with Depot Lane "the traffic light controlling that intersection fell onto claimant's vehicle, striking the right side of the vehicle, with the cables attached to the downed traffic light getting tangled in the vehicle[']s front tow hook and undercarriage." The Town of Southold subcontracts the traffic light inspection and maintenance work.

"Depot Lane is a town road. That's our responsibility." For a County Road, by contrast, Suffolk DPW is responsible for the design and installation of the traffic light at an intersection.

Even prior to the date of the tragic crash on July 18, 2015, Southold Town officials – responding to residents' complaints – had repeatedly attempted to prompt Suffolk County to address the dangers of County Road 48's intersections. As far back as 1985, when a school bus was hit at a County Road 48 intersection, local residents have petitioned the Southold Town Highway Department for more and improved traffic lights on that road. A member of the Southold Town Transportation Commission, which exists to address the public's concerns for traffic issues in the Town of Southold, indicated that his organization had made several requests for a safer traffic light at the intersection of County Road 48 and Depot Lane, asking for the replacement of the last of the blinking yellows on County Road 48. The Cutchogue Fire Department also made requests for a better light at the intersection. The Southold Town Board made it a policy to forward any complaints about County Road 48 to Suffolk DPW, as it is a County road.

On July 22, 1997, the Southold Town Board passed a resolution asking for Suffolk DPW to complete a traffic study at County Road 48 and Depot Lane. On August 6, 1997, the County of Suffolk acknowledged the Southold Town Board's request for a traffic signal at the intersection of County Road 48 and Depot Lane. In its response, the County indicated that it would complete a traffic engineering study but warned that it would be delayed because the county receives many such requests.

In November 1999, the Southold Town Highway Superintendent received a letter from a member of the public, complaining about the traffic at County Road 48 and Depot Lane and

asking for a new traffic light.[21] The following month, the Southold Town Board passed a resolution, requesting that a Suffolk County traffic survey be conducted and that a more appropriate traffic light be installed at the intersection of County Road 48 and Depot Lane. On December 30, 1999 and again on January 13, 2000, the Southold Town Board formally requested that Suffolk County complete a traffic safety study to analyze the traffic at County Road 48 and Depot Lane "for the purpose of installing a traffic light." The County acknowledged the Town's requests on February 2, 2000:

> [W]e will initiate a traffic study at this location. However since we receive numerous requests for traffic safety evaluations throughout Suffolk County, there will be some delay in progressing and completing this study. As soon as we complete our investigation, we will advise you of our findings and recommendations.

In 2005, there was another Southold Town Board meeting where members of the public and the supervisor discussed the intersection of County Road 48 and Depot Lane. At the June 21, 2005 Town Meeting, the Southold Town Supervisor announced that the County had agreed to facilitate the installation of a light featuring a left-turn arrow at the County Road 48 and Cox Lane intersection, an intersection to the east of County Road 48 and Depot Lane. A resident at the meeting deplored the dangerous intersection of Depot Lane and County Road 48.

In its 2007 traffic study – the Town of Southold Corridor Study, dated February 13, 2007 – the Town sought to determine the cause for the increase in vehicles along its roadways.

[21] A November 3, 1999 letter from a concerned citizen was addressed to the Southold Town Department of Transportation, indicating that "[a] standard traffic light signal is seriously needed at the intersection of Route 48 and Depot Lane in Cutchogue. As a resident on the north side of Route 48, I cannot cross Route 48 with my children on bike or foot without risking our lives. The average vehicle travels at 70+ miles per hour on Route 48. On Wednesday, October 27th I was told my children's school bus was hit while at a full stop on Route 48 (intersection of Alvah's Lane). 29 children were on that bus. People are going too fast on this road – a traffic light would help residents cross 48 and traffic to slow down."

Although some Town officials had expected that the ferry system on the East End was the source of the area's traffic woes, the study indicated that agriculture-related traffic – including vehicle traveling to vineyards and farms – was the most significant cause. In its Executive Summary, the report did indicate that "traffic volume counts are higher and road capacity is more severely challenged in the western portions of the Town, [and] the rural nature of the road system in the eastern portion of the Town is in jeopardy." The report went on to note that the western portion of town is where "the majority of wineries and farm stands are located." The report predicted that "[c]ontinued increases in traffic volume throughout the Town will increase environmental and quality of life impacts such as traffic noise, litter and emissions. Eventually, the volume on the roadway will create significant congestion." In terms of recommendations, the report suggested the widening of road shoulders and the use of roundabouts to improve traffic flow.[22] The report pointed out that Suffolk DPW was already conducting new traffic signal installations and roundabout design "primarily in answer to an increased number of traffic accidents along CR 48." Two years later, on January 27, 2009, a manager from the Southold Town Office of the Engineer proposed to the Town Board that it look into the creation of a roundabout at County Road 48 and Depot Lane.

In 2011, the Southold Town Zoning Board of Appeals grappled with issuing event permits to the Vineyard, putting restrictions on limousines' U-turn activities. In a document entitled, "Addendum to a Winery Event Permit for [Vineyard] Dances on Saturday, November 12, 2011 and Sunday November 13, 2011," the Board of Appeals issued the following requirements:

[22] The study also addressed the possibility of "Jersey Jug Handles," but noted that "typically their cost is greater as right-of-way acquisition is typically required."

> Limousine and bus drivers bringing attendees to the vineyard for this event(s) must be provided with a printed traffic route that prohibits 'U' turns on CR 48 and a copy of this document must be submitted to the Office of the Zoning Board of Appeals prior to the date of the event (s). A security person must be positioned on site to provide surveillance and supervision of traffic.

The following year, in 2012, Southold Town received a copy of the Vineyard's correspondence dated March 30, 2012 indicating that the winery would self-police its vehicle traffic:

> [The Vineyard] would like the attending limousine companies to follow a guide line in order to keep things moving smoothly and [in] accordance [with] the town code. 1. There is absolutely no parking on Middle Rd (Route 48). 2. No U-turns to be made at the intersection of Middle Rd (Route 48) and Depot Ln. 3. . . . After reading please have [an] authorized person sign, state their position at company & date below.

At least four limousine and wine tour companies signed these documents in acknowledgment.

Later in 2012, local residents continued to contact the Southold Town Board about limousines attempting U-turns on County Road 48. One resident took a picture of a limousine making such a maneuver and, in a prophetic e-mail to a Town official on Sunday, August 12, 2012:

> The limo was unable to make this turn so he backs up across the east bound traffic lanes blocking both lanes and stopping traffic in a 55 mph zone (more like 65 mph) . . . We have been complaining about these same problems for 18 months. Putting the town codes to the side, if a limo is broadsided by another car in a situation that you see in the picture I am sending you how many injuries will occur? 10-16 in the limo? 4 in the other car? How many cars at 55 mph+? [T]hose are answers none of us would like to see.

The next month, on September 29, 2012, a resident e-mailed a Town official about weekend traffic issues: "Limos and Buses [were] parked along route 48, most limos and buses were doing u turns and 3 point turns on 48."

A June 3, 2013 Southold Town Planning Board Meeting turned into a forum for resident complaints about limousines on County Road 48. One resident again issued a warning:

> There is a number of times we've gotten nearly hit by limos trying to make U-turns on CR 48. . . . I can't imagine in a limo or a huge bus [making a U-turn]. And it stops all traffic when it happens. Everybody going either way has to stop. There is going to be a terrible accident on this road. It's going to happen. It's just a matter of time, and the Town needs to do something about it before it happens. Because I would hate to see a loss of life over this. It's ridiculous.

Another resident described an accident in which a volunteer firefighter got into a crash because buses and limousines parked near the Vineyard obscured his line of sight; the resident also complained about limousines attempting U-turns at the intersection of County Road 48 and Depot Lane: "The limos can't make U-turns; they shouldn't be parking on 48. They've parked in our driveway. Enough is enough. Something has to be done." One resident attributed his presence at the meeting to the following:

> I almost got killed last year. I was going east on 48. A limousine came around making a so-called U-turn and stopped dead in front of me – I'm doing 50 mph. I had to slam on my brakes and drive over onto the lawn in order to keep myself from getting killed. And he stops dead there. . . . They are constantly making turns there and it is dangerous. I don't want to be a statistic, and I almost was.

Yet another participant at the meeting echoed these concerns:

> These party buses and extended limos are also attempting to make U-turns on CR 48. I say attempting because they are unable to make the U-turns, thereby creating a danger to themselves, their passengers and other motorists when they are forced to make 4-point and 6-point turns in some cases on a dual lane highway.

E. Suffolk County's Response to Complaints about County Road 48 / Depot Lane

Despite the pervasive community complaints about the intersection's dangers, a senior Suffolk DPW official with nearly 30 years of experience insisted that, apart from the July 18, 2015 crash, "in my years at Suffolk County it's been a very unremarkable intersection." During the course of the Grand Jury's investigation, the Suffolk DPW official acknowledged that the

County had received complaints about the intersection prior to the July 18, 2015 crash. The Suffolk DPW official denied that his office had received complaints about limousine traffic, however: "The nature of the complaints was an interest in changing the operation from the flasher to a three-color signal," not U-turns, he said. The Suffolk DPW official also indicated that the only complaints his office had received about stretch limousines and other oversized vehicles in the area had come in 2012 and 2013 and related to requests for parking and standing restrictions on County Road 48: "[T]he town asked us about this and we had given them the thumbs up on implementing the parking restrictions. There was nothing about movements of vehicles. It was all about eliminating the on-street parking because of [the Vineyard's] popularity."

Prior to the 2015 crash, the senior Suffolk DPW official said he was not aware of police activity or the citation history at that intersection. According to the Suffolk DPW official, communication between the Southold Town Police and Suffolk DPW about police activity in the area "was limited to the on-street parking. And again, . . . back in 2012, 2013, we had, we were involved with the Town of Southold regarding this on-street parking issue. We gave them the authorization to go through with that restricting that parking." The senior Suffolk DPW official indicated that he had not heard complaints from Southold since the installation of no-parking signs on County Road 48:

> I had never heard another complaint from Southold in 2014 or 2015. Quite frankly, I presumed that between the business owner and the town, and the town police, we are treating them as almost one entity, that they had come to some sort of workable agreement. . . . [I]t was not until July, 2015, after the accident, I saw [the Vineyard], and I, really, I had not heard anything about [the Vineyard] in many years, two years.

According to the Suffolk DPW official, as well as internal Suffolk DPW memoranda, the only complaints that Suffolk DPW had received about the intersection itself had come in 1999,

2001, and 2002. In two internal memoranda, Suffolk DPW acknowledged that a request to study the intersection had been made by "[c]orrespondence from the Town of Southold, dated 12/30/99 and two letters from individual residents, dated 6/23/01 and 8/22/02." These letters and correspondence did not mention a left-turn signal; they were primarily concerned with the installation of a three-color traffic light at the intersection to permit safe travel on Depot Lane across the intersection. After 2002, the Suffolk DPW official said, his department never received another complaint about the intersection of County Road 48 and Depot Lane until after the accident in July 2015.

It is the practice of Suffolk DPW to initiate a traffic study whoever is doing the requesting, be it a private citizen, a petition with a thousand names, or a public official. In response to the public inquiries, Suffolk DPW conducted traffic counts at the intersection to determine the volume of vehicles passing through from each direction. With regard to traffic safety, Suffolk DPW employs a staff of engineers and technicians whose job duties include traffic studies, traffic signal design and construction, pavement marking work, and signage work.

In 2002, upon review of the traffic counts and the intersection's accident history, a Suffolk DPW engineer, who was overseeing traffic studies at the time, determined that the traffic volume did not meet federal guidelines for a different type of traffic light. The engineer did not dismiss the matter, however, instead putting the inquiry into a "pending" status. At about the same time, another intersection along County Road 48 did meet the federal guidelines with regard to volume or accidents and its traffic light was upgraded to a three-color model. A senior Suffolk DPW official indicated that, after data collection from the County Road 48 and Depot Lane intersection in 2001, "we had seen that a traffic signal was not, clearly not warranted. We decided to keep the flashing operation."

The file lingered in what the senior Suffolk DPW official called "limbo" for seven years. In 2009, however, a new Suffolk DPW engineer had been assigned to overseeing traffic studies, and he began to sort through older files that contained pending matters. Coming upon the field work and analysis that Suffolk DPW had conducted at the County Road 48 and Depot Lane intersection seven years prior, the engineer recommended to his supervisors that the file now be closed, as no further complaints had come into Suffolk DPW about the intersection. His supervisors, however, noting that this intersection featured the last flashing yellow traffic light on County Road 48, sought to obtain updated traffic volume statistics by conducting "machine counts,"[23] roadside devices that involve black hoses that lie across the road. Suffolk DPW gives the counts a three-year reliability window, and the ones that the Department had on file for the intersection were, at that point, outdated.

Over the next several years, Suffolk DPW conducted fresh sets of machine counts, counts of turning vehicles, and other analysis. In April 2012, Suffolk DPW ran a spot speed study on County Road 48 at a location approximately 280 feet of Depot Lane, just east of where the pick-up truck had started to slow down in the July 18, 2015 crash. Although the posted speed limit was 55 miles per hour, the study noted that the 85th percentile for eastbound traffic was 65 miles per hour, meaning 15 percent of eastbound traffic was traveling above 65 miles per hour, and the 85th percentile for westbound traffic was 61 miles per hour, meaning 15 percent of westbound

[23] The senior Suffolk DPW official described how these machine counts work: "[A] machine count is a small field-hardened piece of electronics that have a series of air switches. Those are pneumatic tubes similar to, if you are a certain age, you remember going into the gas station many, many years ago, and you hear the bells go off as you are pulling into the gas station, it's a pneumatic tube pushing air through, and making the bell go off inside the garage. It's the same basic, simple principle. There are air switches that are so precise there, to a micro-second of precision, and what they do is they count the number of axle hits on the tubes and they can determine cars going one direction or the other."

traffic was going over 61 miles per hour. Internal Suffolk DPW memoranda state that the Department forwarded a request for speed enforcement on County Road 48 to the Southold Police Department on or about November 15, 2012.

In May 2012, the Suffolk DPW conducted a turning movement count for northbound traffic on Depot Lane through the intersection between 3 p.m. to 5 p.m., when Depot Lane experienced the most traffic activity. The data indicated that approximately 40% of the approach volume made a left turn, 40% made a right turn, and the remaining 20% went straight. The turning movement count, however, did not include movement from County Road 48 onto Depot Lane or U-turns on County Road 48. In August 2012, on weekdays between the hours of 6 a.m. and 11 p.m., Suffolk DPW counted 7,947 vehicles going eastbound on County Road 48 through the intersection and 7,765 vehicles going westbound on County Road 48 through the intersection, with an hourly high of 631 eastbound vehicles and 720 westbound vehicles between 4 p.m. and 5 p.m. Also in August 2012, on weekends between the hours of 8 a.m. and 7 p.m., Suffolk DPW counted 6,880 vehicles going eastbound on County Road 48 through the intersection and 5,895 vehicles going westbound on County Road 48 through the intersection, with an hourly high of 817 eastbound vehicles between 2 p.m. and 3 p.m. and 657 westbound vehicles between 1 p.m. and 2 p.m. Suffolk DPW found that on County Road 48, at a point 1.4 miles west of Depot Lane, the average weekday traffic was approximately 13,860 vehicles – 7,011 vehicles eastbound and 6,849 vehicles westbound – slightly fewer than the 14,674 vehicles that the Suffolk DPW recorded at this same location in 2009.

In a memorandum, dated April 4, 2012 and revised on July 11, 2012 and January 4, 2013, Suffolk DPW did not recommend the installation of a new traffic control signal, citing, among other things, the low volume of traffic coming from Depot Lane into the intersection, and

"insufficient crash frequencies and severity." This memorandum recommended the consideration of the "collection of new summer (July-August 2013) traffic volume data on all approaches for a minimum 7 days - 24 hours" and suggested that the case be held as pending the outcome of new traffic count data. Suffolk DPW continued collecting data on the intersection the following summer.

In the summer of 2013, Suffolk DPW again analyzed the traffic flow on Depot Lane. In July 2013, Suffolk DPW conducted 24-hour, 7-day traffic volume counts along Depot Lane approximately 100 feet south of the intersection with County Road 48. The data showed that the average weekday traffic was approximately 1,446 vehicles, northbound only, on Depot Lane. That month, Suffolk DPW also conducted 24-hour, 7-day traffic volume counts along Depot Lane approximately 500 feet north of the intersection with County Road 48. This data showed that the average weekday traffic was approximately 467 vehicles, southbound only on Depot Lane.

In 2013 and 2014, the Department's engineering staff finalized its review of the data.[24] In 2009 on Depot Lane, going north and south across County Road 48, DPW had found that average weekday traffic in both directions was 1,553 vehicles; four years later, in 2013, DPW found that number to be 1,913 vehicles, a 23% increase. On Saturdays, 2009 traffic in both directions along Depot Lane was 1,866; in 2013, it was 1,994, a 7% increase. And on Sundays, 2009 traffic in both directions along Depot Lane was 1,108; in 2013, it was 1,582, a 43% increase. Despite the increase in traffic at the intersection, Suffolk DPW's engineers again determined that the current traffic volume did not meet the federal guidelines for a different light.

[24] DPW traffic studies took weather into account: "Weather, because of the data that we collect, this is regarding the machine counts that we talked about, which are 24-hour counts broken down by direction and by hour, we do not take into account weather. And I'll in parenthesis say, except winter. Because we don't do counts during the winter. It's only spring, summer, fall."

In the process, Suffolk DPW also revised its estimates of accident frequency at the location. Suffolk DPW officials initially thought there were fewer crashes at the intersection. In an April 4, 2012 memorandum, revised July 11, 2012 and January 4, 2013, Suffolk DPW counted nine crashes at the intersection between September 29, 2008 and September 30, 2011 without commenting on any injuries involved and concluded that "there are insufficient crash frequencies and severity that justify, as the principal reason, the installation of a traffic signal." In a memorandum dated December 10, 2013 and revised on February 5, 2014, however, Suffolk DPW acknowledged that its earlier crash count was based on Suffolk County Police Department figures alone, and then supplemented its information with statistics from the Southold Town Police Department. According to the Suffolk DPW's data, between 2009 and 2012, there were 10 reported crashes at the intersection, seven of which involved injuries or a fatality. All seven of these crashes involved the action of a vehicle violating the right-of-way of a vehicle traveling along County Road 48. As the Suffolk DPW's updated study memorandum of February 5, 2014 notes, "70 percent of the crash types reported may be correctable with the installation of a traffic signal." Despite the revision of its accident statistics, Suffolk DPW's engineering staff again did not, in early 2014, recommend a new traffic light.

As late as February 5, 2014, internal engineering memoranda were recommending that, even with the five-year projection of traffic activity, the existing flashing signals should not be replaced and the case should be closed. Instead, the February 5, 2014 memorandum recommended that Suffolk DPW contact the Southold Police Department to step up its speed enforcement along County Road 48. Significantly, the February 5, 2014 memorandum noted that the intersection did meet the federal guidelines for five-year projected vehicle volumes, and

it did hold out the possibility that future studies could result in a determination that a new traffic light was appropriate.

Despite the February 5, 2014 engineering memorandum, in the year that followed, Suffolk DPW officials came to the conclusion to replace the last flashing yellow traffic light on County Road 48. The decision to install a three-color traffic light was based upon the projected volume of traffic through the intersection in the next five years. After deciding to complete the project, the Department added the upgrade of the traffic light to its running project list. As the senior Suffolk DPW official noted, "And being this signal was based on projections of volumes and not current actual volumes, it was put on the, all right, we are not going to drop everything and do it today. We'll put it on the list and we'll take care of it." In 2014, Suffolk DPW engineers began designing the construction of a three-color signal for the intersection, an event that would require the removal of old timber poles and the modernization of the intersection's infrastructure and foundation. Suffolk DPW was also at the time working with the local utilities to make room for the underground infrastructure that was going to be installed in association with the new traffic light.

Suffolk DPW submitted a proposal to the Southold Town Board to obtain local authorization and the Town's assumption of maintenance responsibilities. At a Southold Town Board meeting on February 10, 2015, the Town passed a resolution authorizing and directing the Supervisor to execute an agreement between the County of Suffolk and the Town of Southold for the installation and maintenance of traffic control devices at County Road 48 and Depot Lane, Cutchogue, subject to the approval of the Town Attorney.[25] Apart from the maintenance aspects

[25] On February 10, 2015, the Southold Town Board adopted Resolution No. 2015-146: "Resolved that the Town Board of the Town of Southold hereby authorizes and directs Supervisor Scott A. Russell to execute the Agreement for the Installation of Traffic Control

of the agreement, the County would be responsible for the design and installation of a traffic light on the County Road.[26] As such, the Town would not be involved in the design or installation of such a light. In the decision to install a three-color traffic light, rather than one with a left-turn signal, the Suffolk DPW did not take into account the length or type of vehicles anticipated to be making turns or U-turns at the intersection. A Suffolk DPW official did

---

Devices between the County of Suffolk and the Town of Southold for the installation and maintenance of traffic devices at CR 48, Middle Road @ Depot Lane, Cutchogue, subject to the approval of the Town Attorney."

[26] Agreement for the Installation of Traffic Control Devices, signed by the Town of Southold official on February 17, 2015 and by the County of Suffolk on March 24, 2015, approved by the Suffolk County Attorney's Office and the Suffolk DPW: "Whereas, the Department operates a program to improve traffic signals, markings, signs, flashing beacons, associated appurtenances and the like in order to ensure the safe and continuous movement of traffic, and whereas the Department has determined that certain Devices are necessary at the intersection of CR 48, Middle Road @ Depot Lane, Cutchogue for the improvement of traffic conditions at that location within the TOWN, and the TOWN accepts said determination, and whereas, pursuant to Section 136 of the New York State Highway Law, the Commissioner of the Suffolk County Department of Public Works ("Commissioner") is empowered to erect Devices, as authorized by the County Legislature in order to improve traffic conditions, and whereas, pursuant to Section 1652-b of the Vehicle and Traffic Law, the County is authorized to install traffic signals, provided that they are adequately supported by a request and investigation, and that the governing body with jurisdiction over the highway, road, or street enters into an agreement with the County regarding the erection and maintenance of the signal; and whereas, the parties hereto desire to provide for the installation and maintenance of Devices at the aforesaid location within the TOWN for the improvement of traffic conditions, in accordance with a traffic signal plan on file with the DEPARTMENT . . . The County shall, upon consultation with the Town regarding the engineering and design of the Devices, install, at the expense of the Permit Applicant or through the County's Capital or Operating Budget, Devices at the location set forth above. . . . Definitions: . . . Devices: Traffic signals, markings, signs, flashing beacons, associated appurtenances, and the like. Permit Applicant: The entity installing a Device under a Suffolk County Highway Work Permit using a design approved by the Department. Traffic Signal Service Report: A report of any and all work performed on the devices. . . . Any and all Devices installed pursuant to this Agreement shall be the sole and exclusive property of the Town. . . . All costs incurred in the operation and maintenance of the Devices after installation of the Device(s), including any and all charges for electricity, shall be borne by the Town or, in the case of a Permit Signal, the Permit Applicant, until such time as responsibility for the operation and maintenance of the Devices is assumed by the Town. . . . The Town shall not alter the signal operation or timing of the Devices without the prior written approval of the Department. In the event of any alteration to the signal operation or timing of the Devices, the Town shall furnish the Department with one (1) set of wiring diagrams for each alteration."

acknowledge, however, "[T]here are times where the design [of the] vehicle is [a] critical point in the design of an intersection. Yes, [the size of anticipated vehicles] does come into play often."

In the winter of 2014-2015, Suffolk DPW had cleared up any issues with the utilities; in spring of 2015, approximately mid-May, Suffolk DPW issued a work order to its electrical contractor, authorizing it to build the new traffic signal. As a Suffolk DPW official noted, the design and installation of a new traffic light costs Suffolk County approximately $75,000. The County's work order enabled the contractor, in late May and early June 2015, to order the requisite steel poles, signal controller, signal cabinet, and signal heads for the new traffic light.

F. The New Traffic Light at County Road 48 / Depot Lane

On July 18, 2015 the blinking yellow light was the only signal for eastbound and westbound traffic on County Road 48 at its intersection with Depot Lane. As described above, the Suffolk DPW had, earlier in 2015, already decided to install a new traffic light at the intersection of County Road 48 and Depot Lane. There was thus no connection between the timing of the traffic light's activation and the July 18, 2015 limousine crash at that intersection. As one senior Suffolk DPW official said, "It was happening one way or the other." The new light was installed in September 2015 in preparation for its activation.

On Wednesday, October 14, 2015, Suffolk County activated the new traffic light at the intersection of County Road 48 and Depot Lane. Now, instead of flashing yellow lights facing east and west, eastbound and westbound traffic encountered three-phase, green-yellow-red lights. Suffolk DPW also tied the timing of these traffic lights into that of adjacent lights to ensure a coordinated County Road 48 system.

Southold Town officials testified that they had no input in the type of light that was installed. Indeed, the change surprised some Southold officials, who had expected that the new light would also feature green arrows and protected left turns. The traffic light still does not protect left turns or U-turns with a green arrow; left-turning vehicles must proceed in the face of oncoming traffic having a green light. As a representative from the Southold Town Attorney's Office put it:

> [We] [d]idn't see how it solved the problem. The problem was, the cars, limos making a left or trying to make a U-turn at that intersection and traffic coming from the east heading west, they'll have a green light at the same time the limos have a green light and are trying to make a turn, which is the same situation with the flashing lights.

Even prior to the lights' activation, but observing the type of new lights that the County had installed, in a September 14, 2015 Southold Transportation Commission Meeting at Southold Town Hall, the Commission decided that "[a]s the new signals have been installed without left-turn arrows, the SCDPW will be contacted requesting that the signals be adjusted accordingly."

After the installation of the new traffic light, the Town of Southold has continued to receive complaints about the intersection and its traffic control devices. Specifically, there have been renewed community concerns about U-turns at the intersection. Nearly eight months after the deadly July 18, 2015 crash, local residents still observed limousines attempting to make the U-turn at County Road 48 and Depot Lane. A resident of Cutchogue for 45 years said the following: "[W]ithin two weeks after that crash, I was headed east in my [T]own truck, and I had to slow down for a limo making a three-point U-turn at the same intersection." The Southold Town Police continues to stop limousines that are attempting the same maneuver that resulted in the July 18, 2015 crash. The new traffic light has not changed the situation – "because it still doesn't give the people who want to go west the opportunity to make that turn without oncoming

traffic," one witness familiar with the intersection indicated. In the intersection's current configuration, westbound traffic is not forced to stop while eastbound traffic attempts U-turns along County Road 48.

Local residents have also complained to the Town of Southold that there is no directional arrow for turns as a separate phase on the new light, still making the intersection unsafe.[27] With regard to the new traffic light, a local fire department official indicated, "It was about time. But why didn't they put a left-turn arrow with it?" In September 2015, again even before the new lights' activation, the Southold Fire Chief's Council had petitioned the Southold Town Board to ensure that turn signals be included at the new traffic light.[28] Since the new light was activated, Cutchogue Fire Department officials have asked local and County officeholders to see if they

[27] One resident sent the Town Board the following message: "It gives no opportunity to these vehicles to make a turn while traffic is stopped. It also does not address the failed attempts at u-turns at Private Rd B. They will continue to make these turns by cutting off passing motorists as they have been for years now. I have seen first hand that event the July 18th tragedy has not stopped these unsafe maneuvers by the traffic coming to and leaving [the Vineyard]. County Road 48 is not currently designed to handle the volume of traffic that is being generated in this location. Perhaps a second look is in order? Possibly a NO COMMERCIAL U-TURN sign at both Depot & Private Rd B? What about the possibility of a new cut through across CR48 at the Horseshoe Drive location? This would allow [the Vineyard] traffic to easily enter and exit the premises without the need for turning around at all. . . . It is my fear that if nothing other than a plain traffic light is put up, we will be looking at another major occupancy vehicle being involved in a multiple fatality accident. I implore you to please rethink the traffic plan on County Road 48 near [the Vineyard]. This is a public safety issue that needs to be addressed ASAP."

[28] On September 21, 2015, the Town of Southold received a letter from the Southold Town Fire Chiefs Council, addressed to Suffolk DPW and cc'ed to the Southold Town Supervisor, indicating that "[t]he Southold Town Fire Chiefs Council represents the current and past Chief Officers of the eight Fire Departments within the Township. Following a tragic accident at this location in July when four lives were lost and several more seriously injured it was announced that a traffic control device would be installed but without turn signal indicators. Several years ago the same scenario took place at the intersection of CR48 and Cox's Lane. But when accidents continued to occur the turn signals were installed. Use of CR48 continues to grow with the increase of agrotourism (vineyards, pumpkin picking, corn maze and Christmas trees) as well as ferry traffic to Connecticut. This Council requests that turn signals be installed at CR48 and Depot Lane."

could "facilitate putting in a lefthand turn arrow. The lefthand turn lane is there, but an arrow for lefthand turns" is not, according to one Cutchogue Fire District Commissioner. Likewise, the Southold Transportation Commission has met to discuss the new traffic signal and has requested that Suffolk DPW change the new light to include turn signals. As a result of the community's discontent with the new traffic light, the Town of Southold has "sent several memos to the County asking for turn signals to be placed at that intersection," according to the Southold Town Attorney's Office representative.

In the meantime, limousines and other large vehicles continue to attempt to make U-turns through the intersection. As part of this investigation, the Suffolk County District Attorney's Office set up pole video cameras at the intersection from June 18, 2016 to August 14, 2016. The purpose of these cameras was to record U-turns made by vehicles at the intersection where the July 2015 fatalities occurred. Between the busiest hours of 3 p.m. to 8 p.m. on the Fridays, Saturdays, and Sundays during the period recorded, a total of four tour buses, 38 party buses, and 18 limousines make U-turns on County Road 48, heading from the eastbound lanes to the westbound lanes. On the other side of the intersection, 45 buses and limousines make U-turns, heading from the westbound lanes to the eastbound lanes. In total, during the busiest five hours of the days mentioned above, the camera recorded a total of 950 vehicles making U-turns at the intersection. During the weekend of July 16, 2016 to July 17, 2016, the anniversary weekend of the fatal crash, a total of 84 vehicles, including five limousines and buses, made U-turns at the intersection. The busiest day for U-turns was July 30, 2016, in which a total of 86 vehicles – including four limousines and five party buses – made U-turns at the intersection.

G. A Safer Alternative: The Intersection of County Road 48 and Cox Lane

About one mile to the east of the Depot Lane intersection, County Road 48 intersects another north-south roadway, Cox Lane. Unlike the intersection where the July 18, 2015 crash took place, where County Road 48 meets Cox Lane a traffic light with green-arrow signals provides drivers in the eastbound or westbound lanes of County Road 48 with a protected left turn onto the side-street. At the County Road 48 and Cox Lane intersection, eastbound and westbound drivers have red lights while vehicles in each left-turning lane have green arrows to allow them to turn – or make U-turns – more safely with all other traffic stopped in both directions.

With regard to the intersection of Cox Lane and County Road 48, just as with the intersection of Depot Lane and County Road 48, "the traffic signal was designed and built by Suffolk County and currently owned and maintained by the Town of Southold," a senior Suffolk DPW official said. The traffic light at the intersection of County Road 48 and Cox Lane was, in the early 2000s, "originally built that as a two-phase signal, just red-yellow-green on the mainline, red-yellow-green on the side street," he added. As such, the traffic signal there was similar to the one that is currently at County Road 48 and Depot Lane.

Toward the end of the 2000s, the Town's landfill access layout changed and a senior citizen development was opened near the intersection.[29] Prior to the installation of the protected-left-turn traffic lights at the Cox Lane intersection, local police indicated that there had been many motor vehicle crashes at the intersection, which is near the Town's landfill. The Suffolk

[29] The senior Suffolk DPW official said that Depot Lane did not compare to Cox Lane in terms of traffic volume: "As we talked about with the Cox Lane signal, the land uses and developments throughout Southold on and around these other side streets had changed. Depot, for whatever reason, and I'm not familiar with sort of microscopically all the properties down Depot north and south, but Depot just had not experienced the growth of side street traffic that all the others had."

DPW official acknowledged that the Town of Southold may have requested the green-arrow light at Cox Lane. Prior to the installation of the green-arrow light at Cox Lane, Suffolk DPW had received complaints "[t]hat there were left turn accidents occurring at that intersection now, and would we please revisit it and see if it warranted a left-turn phase," according to the senior Suffolk DPW official.

The landfill and the senior citizen development changed both the traffic volume and the type of turning movements that were being made through the intersection. Accordingly, the senior Suffolk DPW official indicated, in the late 2000s or early 2010s, the County installed a new Cox Lane traffic light. Since the installation of the new traffic light at the Cox Lane intersection, "[t]he accidents just dropped," according to a resident who has lived in the area for nearly 50 years. A Town Highway official noted as follows: "Cox and Depot are similar with the four-way [intersection] but the difference is Cox Lane has a green arrow so you can go north safely and south safely, depending on which direction you are going and coming from." There are no prohibitions on U-turns at County Road 48 and Cox Lane, and residents who did not feel safe making U-turns at the blinking lights of the County Road 48 and Depot Lane intersection could travel 0.6 miles east to Cox Lane in order to take advantage of the protected-left-hand turn there.

Even with the protected left turns at Cox Lane, however, local residents noted that eastbound stretch limousines still are unable to execute proper U-turns there because their length prevents them from being able to turn into the closest westbound lane at the end of their turn. One resident indicated that these limousines would – like the limousines at County Road 48 and Depot Lane – "hit the curb and they would have to back up to head west again." In fact, local fire department personnel have refused to attempt U-turns at the intersection in their fire vehicles

for safety reasons. Shorter vehicles, such as sedans, pick-up trucks, and SUVs encounter fewer problems while attempting U-turns at either the Depot Lane or Cox Lane intersection, due to the vehicles' smaller turning radii. As one Southold Town official explained:

> When you take a limousine and stretch it, it was designed as a turning radius for a certain size limo which was factory built as opposed to customizing it and making it longer. They can't maneuver the turns as well as a bus could. So usually at that intersection or most intersections, they have to make a three-point, they have to back up to make a turn or swing wide to go into the other lane to make the turn. . . . Especially with our, like I said, our roads are more narrow than most.

Citing the Cox Lane intersection, some local residents have argued for a protected left turn at the intersection of County Road 48 and Depot Lane. An officer of the Cutchogue Fire Department commented:

> [W]ith the light being at Cox Lane, I mean, drastically stopped the accidents that we had there, so we started talking amongst ourselves we should recommend that we have another green turning arrow [at Depot Lane] for left turns. It only makes sense. The Lane is there, why they didn't put the light up when they changed the light is beyond me. I don't know why.

Another resident indicated that a protected left turn at the Depot Lane intersection would be particularly appropriate, given the limousine traffic in the area:

> We would like to see a lefthand turn arrow that would prevent somebody from having to turn into opposing traffic because it would, with a limousine, I believe your visibility is so limited when you are trying to make a turn like that, that you don't see what you need to see. A lefthand turn only would stop opposing traffic.

The Suffolk DPW is adamantly opposed to the installation of a green-arrow signal at the intersection of County Road 48 and Depot Lane, however, at least at this time. Ever since 2012, the Department's analysis had not warranted such a signal. On May 23, 2012, from 3 p.m. to 5 p.m., Suffolk DPW conducted a manual vehicle volume count for turning movements at the intersection of County Road 48 and Depot Lane. Of the 1,124 eastbound vehicles that were passing through the intersection, 46 executed a left turn or U-turn toward Depot Lane; 982

vehicles went straight through the intersection. Of the 1,207 westbound vehicles, 1,103 went straight through the intersection. On May 23, 2012, from the peak hour of 3:45 p.m. to 4:45 p.m., Suffolk DPW conducted a manual vehicle volume count for turning movements at the intersection of County Road 48 and Depot Lane. Of the 583 eastbound vehicles that were passing through the intersection, 23 executed a left turn or U-turn toward Depot Lane; 507 vehicles went straight through the intersection. Of the 627 westbound vehicles, 563 went straight through the intersection.

Nor did what Suffolk DPW knew of the intersection's accident history warrant a left-turn signal, an official said. The accident history of an intersection factors into Suffolk DPW's decision to design and install a traffic light featuring left-turn arrows. Moreover, the type of each accident is also considered. Suffolk DPW officials "[c]onsider a protected left turn phase . . . [i]f the number of left turn accidents at least four (4) in one year or six (6) in two years (one approach), or [i]f the number of left turn accidents at least six (6) in one year or ten (10) in two years (both approaches)." In its 2013 report, Suffolk DPW counted, between August 31, 2009 and August 31, 2012, 10 motor vehicle crashes at the intersection, including five right-angle crashes, four of which resulted in physical injury and one in a fatality. Suffolk DPW tracked, between 2009 and 2010, three crashes, one of which was a right-angle crash like that of the July 18, 2015 incident, at the intersection; the right-angle crash Suffolk DPW considered correctible by an appropriate traffic signal. Suffolk DPW also counted, between 2010-2011, two crashes, both of which were right-angle crashes like that of the July 18, 2015 incident, at the intersection; the two right-angle crashes Suffolk DPW considered correctible by an appropriate traffic signal. Between 2011 and 2012, Suffolk DPW was tracking five crashes, two of which were right-angle

crashes like that of the July 18, 2015 incident, at the intersection; again, with regard to the two right-angle crashes, Suffolk DPW considered them correctible by an appropriate traffic signal.

Acknowledging that "[o]bviously in the wake of the accident, there were calls for a left-turning phase, in response to this accident," the senior Suffolk DPW official said that his Department had conducted turning movement counts both before and after the crash; analysis of this data showed that no left-turn phase was warranted. Although the five-year projection of vehicle traffic volume may have warranted a change to a three-color light at County Road 48 and Depot Lane, turning movement counts from 2012 "clearly didn't meet the warrants for a left-turn phase." In the wake of the July 18, 2015 crash, Suffolk DPW officials became aware of complaints about the lack of a left-turn phase and sent out a technician to the intersection on a Saturday in August 2015. Suffolk DPW faced outcry and controversy after the accident and its officials decided to update the turning movement data it had for the intersection. As the new traffic light was still under construction, it would not have been very difficult for Suffolk DPW to issue a change order and modify the new light.[30] Unlike machine counts, which register the vehicles that travel over their black tubes, turning movement counts consist of a human being watching an intersection and manually recording the number of turning vehicles.[31] In

[30] The senior Suffolk DPW official described the process to change a three-color light to a light with a left-turn signal: "Without getting too inside baseball, it would be some modifications to the wiring in the cabinet, some changes to the programming in the controller. It's like a computer, the field-hardened computer that you see in the silver box that's on the side of the road. And there would be some changes to the head displays on the County Road 48. It's not a big list. It would be a little bit of work between our designers and the contractor. . . . [I]t's a field adjustment."

[31] A senior Suffolk DPW official described the process: "They are counting the number of vehicles at an intersection on each leg, making a left turn, going straight, making a right turn. And what we do is back in the office we use this data for different studies or different insights to other information we may have. In the case strictly of left-turn phases, what we do is we look at a left turning movement cross multiplied with the opposing through and right-turn movement. This is all standard operating procedure from using ITE's guidelines. And that cross

conducting turning movement counts, the human being does not expressly record the size or type of vehicles passing through an intersection.

Unlike in its collection of the 2012 data, in 2015 Suffolk DPW distinguished between vehicles making left turns and those making U-turns. For an afternoon count, in a peak hour of 2 p.m. to 3 p.m. on August 29, 2015, there were 991 vehicles going eastbound through the intersection, 23 of which turned left and 16 of which made U-turns. All told, in a two-hour period, from 2 p.m. to 4 p.m. on August 29, 2015, DPW counted 29 eastbound vehicles making U-turns through the intersection. Westbound, during this time period, there were 907 vehicles going westbound through the intersection, 22 of which made left turns or U-turns. The 2015 data confirmed the 2012 findings; there were significantly fewer turning movements than would necessitate a left-turn arrow, the senior Suffolk DPW official said. Under the same guidelines that justified the five-year traffic projection that, in turn, warranted a change to a three-color light, there is no comparable five-year projection allowable to justify a turn arrow, he added.

Despite complaints and requests for a left-turn arrow at the intersection of County Road 48 and Depot Lane, the senior Suffolk DPW official remains unpersuaded in the face of the local community's reaction. Between the installation of the new light and April 7, 2016, Suffolk DPW received approximately 10 requests for a left-turn phase. "[M]ost people who have reached out to us about this have brought up they would like to see a left-turn phase," indicated the senior Suffolk DPW official. "We explained to everyone we had done an analysis before the design

---

multiplication gives you an idea of the magnitude of what is happening with that left-turn movement versus the through. So therefore if you have a good amount of left turners and an exceedingly high opposing traffic, then there will be a high cross product, which will give you an idea that there is probably a pretty significant delay for those left turns. A second part of that takes into account crash history involving that left-turning movement versus the opposing vehicles, as in this accident."

and we have done a secondary analysis in the wake of the, this accident, and both had, it was determined using both analyses, that a left-turn phase was not warranted."

In the senior Suffolk DPW official's 30 years of experience, he says that he has never overridden a traffic study's recommendations, even in the face of civilian outrage. He described his data-driven approach as follows:

> If I did not conduct traffic engineering studies, using data and, you know, engineering judgment and experience, then each traffic engineering study would basically become a political football. And quite frankly we are playing into the cynicism of most people who think, oh, something has to happen for something to happen. And I'll be honest with you, if I had, if I deviated as significantly as I would have to in order to recommend the implementation of a left-turn phase at this intersection, I would be playing into the cynicism that many people feel, quite frankly.

The senior Suffolk DPW official was not familiar with an instance in which an intersection did not meet the Department's standards for a protected left-turn signal but where Suffolk County went ahead and installed a protected left-turn signal anyway. The official dismissed the idea that the size of vehicles going through an intersection might affect the need for a protected left turn signal: "that piece of information would not be necessary."

H. Southold Town's Prior Regulation of County Road 48

Although County Road 48 is a Suffolk County Road, the Town of Southold has, with the cooperation of Suffolk County, installed some limited traffic-control signage on that roadway in the past.[32] According to the Southold Town Code, Chapter 260:

> The Superintendent of Highways of the Town of Southold shall install and maintain traffic control devices when and as required under the provisions of this chapter, to make effective the provisions of this chapter, and may install and

[32] As the Southold Town Highway official indicated, "we have to put 'no parking' signs on [State Road] Route 25 with obviously permission of the state, and we put 'no parking' signs on the county road, with permission of the county."

> maintain such additional traffic control devices as he may deem necessary to regulate, warn or guide traffic, under and subject to the provisions of the Vehicle and Traffic Law of the State of New York.

The Southold Town Code also has provisions for the Town's regulation of one-way streets, the installation of stop and yield signs, stop intersections with flashing signals[33], the installation of no-parking signs, the prohibition of parking or standing,[34] the installation of no-trailer-parking signs, and the enforcement of no-stopping signs.

In 2013, Town officials found that buses, cars, and limousines visiting the Vineyard and parking on County Road 48 were negatively impacting other motorists' ability to drive safely on that road. The Southold Town Transportation Commission sought and obtained permission from Suffolk County to prohibit parking in front of the Vineyard on County Road 48. Pursuant to the Town's procedures, in order to install such no-parking or no-standing signs on roads within the Town's borders, the Town's Transportation Commission, made up of Town officials and members of the public, would make initial recommendations to the Town Board. The Town Board then would pass a resolution setting a public hearing date, which is published in the newspaper. At the hearing, the Town Board would entertain comments from the interested public, after which the Board could enact a local law adopting the measure to install no-parking signs in certain areas. Town legislation for the installation of such signs passes by a simple majority of the Town Board. After the passage of the local law, the Town would file the law with the New York State Secretary of State.

---

[33] This includes the intersection of Depot Lane and County Route 48; Section 260-5 specifically pertains to the "Intersection" of "Depot Lane and County Route 48," the "Red Signal Facing . . . [n]orth and south on Depot Lane," and the "Yellow Signal Facing . . . [e]ast and west on County Route 48."

[34] As of August 27, 2014, the Southold Town Code authorized the placement of no parking and no standing signs on County Road 48 "[i]n Cutchogue, along both sides of County Route 48 from the western corner of Depot Lane westerly for approximately 1,420 feet."

On August 27, 2013, the Southold Town Board passed Resolution 2013-648 that determined no-parking or no-standing signs on County Road 48 would not violate New York State's Environmental Quality Review Act. Accordingly, after a public hearing, the six-member Town Board adopted a local law amending Chapter 260 of the Town Code Vehicle and Traffic to provide that there be no-parking and no-standing signs on certain sections of County Road 48.[35] The Southold Town Highway Department then installed the signs on the north and south sides of County Road 48 near the Vineyard.

While Southold's Town Code enables the Town Highway Department to regulate parking, standing, and stopping on its roads through signage, it does not allow it to install signs to prohibit U-turns or other moving-traffic-related maneuvers on County Roads, according to one Town Highway official. A Southold Town Attorney's Office representative indicated that the Town had the authority to put up no-parking signs on County Road 48 but not no-U-turn signs because "[t]he no[-]U-turn or stop sign is considered a traffic control device, just like a light. Under the county charter, issued for Suffolk County, they specifically give the authority for all traffic control devices on county roads to be through the Department of Public Works." The Suffolk County Charter, Article VIII, specifically entrusts the Suffolk DPW with the "design

[35] Resolution 2013-649 states: "Whereas, there has been presented to the Town Board of the Town of Southold, Suffolk County, New York, on the 30th day of July 2013, a Local Law entitled 'A Local Law in relation to Amendments to Chapter 260, Vehicles and Traffic, in connection with Parking and Standing on County Route 48 in Cutchogue' and whereas the Town Board of the Town of Southold held a public hearing on the aforesaid Local Law at which time all interested persons were given an opportunity to be heard, now therefor be it resolved that the Town Board of the Town of Southold hereby enacts the proposed Local Law entitled 'A Local Law in relation to Amendments to Chapter 260, Vehicles and Traffic, in connection with Parking and Standing on County Route 48 in Cutchogue' reads as follows . . . Purpose. Parking associated with County Route 48 in the hamlet of Cutchogue has resulted in conditions that impact the public health, safety and welfare in the surrounding community. The conditions consist of undue congestion, restrictions on access and maneuverability as well as dangerous traffic impacts."

(including the preparation of the plans and specifications), construction, reconstruction, improvement, maintenance, repair and cleaning of all: (a) highways; (b) roads; (c) streets; . . . (bb) traffic signs, signals or traffic control devices . . . under the jurisdiction of the County." If, by contrast, a sign were to be put up on a Town road, such as Depot Lane, it would have to go through the same procedure as the 2013 no-parking signs, according to the Town Attorney's representative.[36]

I. The Prohibition of U-Turns

As noted above, residents are still complaining about dangerous U-turns at the intersection of County Road 48 and Depot Lane. Apart from the possibility of a green-arrow signal at the intersection, there is also the option of installing no-U-turn signs there or of banning stretch limousines from making U-turns altogether, at the Town, County, or State level. At the time of the crash, there was no signage posted at the intersection of County Route 48 at Depot Lane preventing U-turns. There is no no-U-turn sign facing any direction of the intersection, and local residents often made U-turns in the intersection to get to their housing developments along the north side of County Road 48. To this day, there is no such signage limiting or prohibiting U-turns at the location.

Several witnesses suggested that a no-U-turn sign at the intersection might be the most feasible and cost-effective response. A new traffic light might cost the County $75,000 to design and install; by contrast, a no-U-turn sign costs approximately $500. A member of the Motor

[36] There are limits to what the Town can do to regulate even its own roads. As the Southold Town Attorney's representative indicated: "under the New York State Law, the towns cannot set speed limits on their town road. You have to make a request for the county and the state has to sign, you make a request to the county, the county reviews it, they send it to the state, the state does a review in order to change the speed limit."

Carrier Safety Section pointed out that, although a combination of factors may have led to the July 18, 2015 crash, to make the intersection safe "they could use a no U-turn sign there."

Despite the Southold Town Code's provisions for the Town's installation of such signage as stop and yield signs, no-parking signs, and no-trailer-parking signs, there is no explicit provision in Southold's Town Code for the installation of no-U-turn signs.[37] The senior Suffolk DPW official has indicated that, in coordination with the County, the Town of Southold does have a role to play in the event of the installation of no-U-turn signs on County Road 48. In fact, the Suffolk DPW official said that local authorization is required for many types of traffic signs on County Roads: "Any regulatory signing on a county highway other than stop signs and yield signs need to be authorized by the local board, in this case the Town Board of Southold." The senior Suffolk DPW official went on to say that, with regard to Southold Town's installation of no-U-turn signs on a County Road, the procedure would be similar to the process by which the Town had earlier installed the no-parking signs on County Road 48. As such, there would need to be public notice, a public hearing, and a vote prior to installation. The senior Suffolk DPW official mentioned his familiarity with a "handful" of no-U-turn signs on County Roads, and he added that some were installed by the County and some by individual towns, but always by means of a County recommendation and local approval.

New York State's classification of a particular town – for example a "first-class suburban town" like Southampton versus a "rural" town like Southold – also determines the level of the County's involvement in the physical installation of signage on County Roads, said the senior Suffolk DPW official; it "would always be the case," however, that the County would wait until

[37] Although Section 260-2 of the Town Code does give the Town Superintendent of Highways the authority to "install and maintain such additional traffic control devices as he may deem necessary to regulate, warn or guide traffic, under and subject to the provisions of the Vehicle and Traffic Law of the State of New York."

the local town government passes a resolution approving the sign. When a town is below the suburban-town threshold, such as Southold, the County has greater involvement with regard to the installation of no-U-turn signs on County Roads. As a result, it would be the County that would install any no-U-turn signs at the intersection of County Road 48 and Depot Lane.

The County's recommendation, however, would come as a result of the Suffolk DPW's traffic engineering research. The senior Suffolk DPW official indicated the following:

> When we get a request for any traffic control, additional traffic control, what we do is we initiate a traffic study, and that traffic study is tailored to whatever that complaint happens to be. It can range from a simple, something on the low end, a parking sign, all the way to a traffic signal. And the level of detail and data necessary varies greatly depending on – each one is looked at individually.

Describing crash data as "the lifeblood of every traffic study," the official stated that his Department would analyze the last three years of crash data in considering the priority of a project and whether or not to recommend the installation of a no-U-turn sign. Suffolk DPW would also examine turning movement counts at an intersection and the geometrics of the intersection's layout. If the Town and County did agree to install no-U-turns signs, there would be no need to wait for approval from New York State.

The senior Suffolk DPW official cautioned that there could be unintended consequences of a decision to install a no-U-turn sign at the intersection of the crash. Frustrated by such a sign, motorists desiring to make a U-turn might go a little further down the road and make a U-turn at another, more dangerous location without any traffic signal at all: "[W]e may be taking a location that is not a problem, except for a tragedy, and actually creating a problem to the east." At this point in time, the senior Suffolk DPW official stated that a no-U-turn sign was not appropriate at the crash location: "We have a location here that, based on our accident data,

other than this one albeit tragic accident, there is nothing to suggest that a U-turn prohibition is required or appropriate."

In reaching this conclusion, the Suffolk DPW official discussed his Department's use of a program called Auto-Turn to simulate how vehicles of different sizes can execute turns in particular portions of Suffolk County's roadways. The vehicle size in the simulation can be customized, and – after the crash – Suffolk DPW employees ran a scenario using a vehicle the size of a 28-foot stretch limousine to see how it would maneuver through the intersection of County Road 48 and Depot Lane. The Auto-Turn software demonstrated that it was physically possible for a 120-inch stretch limousine to make a U-turn on County Road 48 at that intersection, going from the eastbound to the westbound lanes. The simulation, however, showed that even if it was able to make the turn in one arc, it would have to go into the mouth of the side street and end up in the far westbound lane, rather than the near westbound lane. The senior Suffolk DPW official stated that, at this intersection and others, "[i]t's unrealistic for any vehicle outside of a motorcycle to make a U-turn from a left turning lane only into the opposing left through lane. It's completely unrealistic." As has been noted above, however, both a Southold Town Police official and the New York State Police reconstructionist drew a line between a physically possible U-turn and one that is legal. A vehicle in the left eastbound lane of County Road 48 must end a U-turn in the left westbound lane of County Road 48, pursuant to Section 1160(e) of the Vehicle and Traffic Law.

Limousines touring the wineries are not the only vehicles to execute U-turns on County Road 48. Given the distance between traffic lights on that road, many local residents make U-turns to get to their housing developments along the north side of County Road 48. One local resident indicated as follows: "[T]here is a development just north and east of me, so they have

to come up to the light and make a 'uey' to go home." If local residents could not make U-turns at County Road 48 and Depot Lane, a Southold Town Highways Department representative fears that additional examples of unsafe driving might result:

> They would have to do something, probably not rational, make a right-hand turn at the light, find the first driveway, pull in that driveway, back out, go to the light, make a left and go through. So they would be forced to do, you know, people are creatures of habit, so they make U-turns forever, so, you know, it would change their traffic patterns of getting home and make it more difficult.

He continued: "[I]f they were not allowed to make [a] U-turn on [County Road] 48 a lot of people would not be able to get to their residency. They would have to find a different route, because there is a lot of subdivisions in between the long lights." He concluded:

> It would make it very difficult to people to get back to their residency, driving eastbound, the intersections are far apart, so you pass your subdivision on the north side, so when you come up to the next intersection, you make a U-turn to get back to your subdivision, drive another thousand feet to get to your subdivision to get home.

Although passenger vehicles such as sedans and SUVs may not have a problem making these turns, box trucks, trucks pulling trailers, limousines, and buses have a difficult time, according to a Southold Town Police official. A Southold Town official said that, if large vehicles were prohibited from making U-turns at that intersection, local residents would not be much affected, apart from a limit to the actions of any moving vehicles, moving vans, or delivery trucks trying to get to their houses.

Some residents pointed to the length of the limousine involved in the 2015 crash and attributed its inability to make a proper U-turn to its size. The limousine the young women were in had initially been a black 2007 Lincoln Town Car that was cut in half and then stretched 120 inches to accommodate a total of 10 occupants, including the driver. The total length of the stretch limousine was approximately 28 feet. A Cutchogue Fire Department official suggested

that local government make a distinction between U-turns made by stretch limousines and those made by smaller vehicles:

> We would like to see no U-turns by stretch vehicles or limousines. I don't think it would be proper to stop a normal automobile from making a U-turn because the residents do it all the time. But the big vehicles that actually can't make the turn, they back up to make a three-point turn in a major intersection, I would, we would like to see a rule that says they may not make U-turns. Let them go down to a parking lot and turn around in the parking lot and then come back. It could be a quarter mile to a mile. Or go around the block. This particular block is less than a mile on the side. They would be doing three times three-quarters of a mile to come back and reverse their direction. No U-turns for them.

There are currently no signs on the roadways of Suffolk County that specifically prohibit stretch limousines from making U-turns.

Several local residents, police officers, and municipal officials have decried the practice of stretch limousines attempting U-turns in the sometimes narrow confines of Southold's roadways. At least one resident was for an outright ban on stretch limousines making U-turns: "Stretch limos, they shouldn't make U-turns, no. Make a left, make a right, find a church parking lot or side street, back up and turn around and then make your left or right, wherever you have to go. It will take a little longer, but it's only common sense." An investigator for the New York State Department of Transportation ("NYSDOT") agreed that limousines, in his experience, should not make U-turns:

> I think, in general, a limousine should never make a U-turn. If I owned a limousine company and I would – that would be in my rule book as things you can't do. The vehicles, especially where you, you know, everyone tries to make a U-turn and you couldn't make it. And the problem with the commercial motor vehicle, whether it's a truck or limousine, is the thing does not move [as] fast as a car. You can't maneuver it, especially when you have human bodies behind you, you can't jump into reverse and go back quick and re-do it. You also have the factor of line of sight. You may not be able to see as well as you can in your car. In a limousine you can't look over your right shoulder to the back and get the whole vision. So it's a poor maneuver. I know one fatal crash having to do with a truck with a U-turn that I investigated, that was a catastrophe, because of the

> choice the driver made. I would be routing drivers, if I owned a company, certain ways so U-turns would be avoided. I just would not permit it.

A limousine company safety officer put it bluntly: "They should never make a U-turn. It should be totally against the law to make a U-turn with a stretch limo."

The limousine industry has attempted to regulate its drivers' execution of U-turns. The limousine involved in the July 18, 2015 crash was owned by a company (hereinafter, "The Limousine Company") whose own Chauffeur's Training Manual expressly prohibited chauffeurs from making U-turns: "NEVER . . . Make a 'U' turn in a limousine. Go completely around the block." The manual also required the company's chauffeurs to know and be in compliance with all state and local traffic laws. Prior to the July 18, 2015 crash, another limousine company's safety officer emphasized to his chauffeurs that "you do not make a U-turn with a stretch limousine." The safety officer gave the following rationale:

> Because a stretch limousine, it's too long to make a U-turn. Most of the time when you are making a U-turn with a stretch, you need to either go wide or you have to end up making a K-turn with it and a K-turn is ridiculous because of your sight in the vehicle, you can't see your right side. So it just doesn't make sense. It makes more sense to take two or three minutes to go around the block than it is to try to make a U-turn.

Prior to the July 2015 crash, the Long Island Limousine Association had not issued any recommendations to its members regarding U-turns. After the crash, the Association sent out approximately 400 safety bulletins to all limousine companies, members and non-members, encouraging them to "instruct their drivers not to make any U-turns at that intersection," instead proceeding to a nearby parking lot or controlled intersection with a traffic light to turn around. With regard to one company's no-U-turn policy, chauffeurs received a letter outlining the ban along with their paychecks. Since the crash, "[a]ll chauffeurs have been instructed not to make U-turns there," said the owner of the limousine company that owned the vehicle involved in the

2015 crash. Another limousine company executive distributed a memorandum prohibiting U-turns to all of his drivers that all of the drivers had to sign in acknowledgment. The executive stated as follows: "There is no time, at any intersection, at any non-intersection, that a chauffeur should ever attempt a U-turn." Furthermore, even if a limousine is executing a normal turn, the same limousine company executive instructs his drivers to "always take the outside turning lane" to account for the vehicles' large turning radius. He added that "it is always best to go to a parking lot or a residence where you can pull in and attempt a multi-part turn as opposed to doing it on a major roadway." Another limousine company owner spoke of the difficulties that his chauffeurs face in making a U-turn in a stretch limousine:

> [W]e try to refrain from making U-turns at all. It's very hard to make a complete U-turn with a 120-inch vehicle. . . . To make one turn without turning back up and completing the turn, it's very hard to do, so. If you are staying in your complete left lane, say, and make that turn, it's very hard. You have to swing either way out to right, encroaching on the right lane and making the turn or making that turn and backing up and turning to make a complete turn.

With regard to the possibility of a statewide prohibition on stretch limousines' execution of U-turns, witnesses discussed how the New York State Vehicle and Traffic Law already limits the operations of certain types of vehicles apart from limousines. A NYSDOT official stated that New York State Vehicle and Traffic Law does not currently prohibit limousines from attempting U-turns on New York's roads: "I believe there is a provision in the Vehicle & Traffic Law about making prudent decisions, but there is nothing about U-turns, to my knowledge."[38] A Motor

[38] One local resident emphasized the driver's role in making safe decisions: "I believe every driver, if you are driving a piece of apparatus, fire truck, limousine, farm truck, you know the limitations of the vehicle. You know how tight each one of these individual cars turn. These guys should know it takes quite a turning radius to get these things turned around, the big stretch limos, and they should really use their head before they start turning. They got precious cargo in the back."

Carrier Safety Section officer pointed out examples of state limitations on the activities of other types of vehicles:

> They have to stop. It's not just school buses, it's also hazardous material, bulk carriers, they are supposed to stop. Everybody gets behind the bus, they open the door and listen, and they have to look. That's a requirement. Buses have to do that." They are regulated with right turn on red. They are not allowed to.

The officer noted that school buses are not allowed to turn right at a red light. The NYSDOT investigator also mentioned the restrictions on school buses as an example.

Likewise, although Suffolk County does not currently prohibit stretch limousines' U-turns, the County already provides a legal framework for enforcing a prohibition on stretch limousines' U-turns, be it imposed at the municipal, county, or state level. Suffolk County Local Law No. 17-2014, adopted by the County Legislature on June 17, 2014, states: "No owner shall permit a for-hire vehicle to be operated in violation of the New York State Vehicle and Traffic Law, Suffolk County Local Law, and any other applicable ordinances, rules or regulations." The same law puts identical restriction on drivers of for-hire vehicles. In its For-Hire Vehicle Registration Section of the County Code, Suffolk County has reiterated that "No owner shall permit a for-hire vehicle to be operated in violation of the New York State Vehicle and Traffic Law, Suffolk County local law, and any other applicable ordinances, rules or regulations." Significantly, unlike at the time of the 2015 crash, Suffolk County now has a functional Taxi and Limousine Commission that is starting to play a major role in the regulation of local limousine activity.

III. THE REGULATION OF VEHICLES AND DRIVERS

A. The Suffolk County Taxi and Limousine Commission

In 2012, Governor Andrew Cuomo signed legislation authorizing Suffolk County to adopt ordinances regulating the registration of taxicabs, limousines, and livery vehicles. On June 17, 2014, the Suffolk County Legislature duly authorized the creation of the Suffolk County Taxi and Limousine Commission ("Suffolk TLC"), which falls under the Suffolk County Department of Labor, Licensing, and Consumer Affairs ("Suffolk DLLCA"). The Suffolk DLLCA, the parent department of the Suffolk TLC, is entrusted with protecting consumers and providing an even-playing field for businesses. Accordingly, the Suffolk DLCCA issues licenses in home improvement, plumbing, electrical, home furnishing, livery companies, precious metals, and secondhand dealers. As part of its responsibilities, the Suffolk DLCCA also requires the registration of contractors, carpenters, retail establishments, and livery businesses, among others.

As per the 2014 County law,[39] the eight-member Commission is supposed to include the Suffolk DLLCA Commissioner or his designee, a member appointed by the Suffolk County Supervisor's Association, a Suffolk County Executive appointee with a background in taxicabs, a Suffolk County Executive appointee with a background in limousines, a Suffolk County Executive appointee with a background in consumer advocacy, a Suffolk County Legislature's Presiding Officer appointee with a background in urban transportation matters, a Suffolk County Legislature's Majority Leader appointee with a background in urban transportation matters, and a Suffolk County Legislature's Minority Leader appointee with a background in urban transportation matters. Except for their initial terms, all members, other than the Commissioner

[39] The legislation authorizing the Suffolk TLC does not define "limousine," unlike the regulations governing other counties' taxi and limousine commissions, and does not impose regulations specific to limousines or modified vehicles.

or his designee, serve four-year terms. The County Executive designates one member of the Suffolk TLC to serve as chair, and members of the Suffolk TLC are not entitled to compensation for their service on the Commission.

The creation of the Suffolk TLC came in fits and starts. The topic of a Taxi and Limousine Commission had come under discussion within the County government in 1985 and 2005, but nothing came of it. Although the 2014 legislation created the Commission, the Suffolk TLC did not fully begin operations until August 2015, the month after the fatal limousine crash in Cutchogue. As of this Grand Jury investigation, the Suffolk TLC had six of its authorized complement of eight board members. Five of the board members are members of the taxi and limousine industry; the sixth is a representative from the Suffolk DLLCA. The board is scheduled to meet every three months but its members are in close contact between the meetings.

The Suffolk TLC serves in an advisory capacity to the County Executive, the County Legislature, and the Suffolk DLLCA Commissioner regarding the regulation and supervision for the for-hire transportation industry. According to the Suffolk County Code:

> The Commission shall have the power to make recommendations regarding, among other things: (1) regulations and policies for the issuance of for-hire vehicle registrations and for-hire vehicle driver's licenses; (2) standards of for-hire vehicle driver conduct; (3) safety and design, comfort convenience, noise and air pollution control and efficiency in the operation of vehicles and auxiliary equipment; (4) maintenance of financial responsibility, insurance and minimum coverage for for-hire vehicles; and (5) passenger rights.

One of the Suffolk County TLC's paramount concerns is safety, according to several Suffolk TLC members. An original member of the Suffolk TLC indicated that the Commission was put in place "in order to start to regulate for-hire vehicles that have formerly not had any regulations." He continued: "Prior to the Suffolk County TLC being created you had and still have a significant . . . safe harbor for any operator to run any type of vehicle and call it a

limousine, with or without a proper chauffeur, with or without proper insurance, with or without any type of vetting process of the vehicle." The 2014 local law makes clear that "[i]t shall be unlawful for any person to operate a for-hire vehicle in the County of Suffolk unless such person first obtains a for-hire vehicle driver's license issued by the Department." Likewise, with regard to the vehicles themselves, "[i]t shall be unlawful for any person to operate or permit to be operated a for-hire vehicle in the County of Suffolk without a for-hire vehicle registration for such vehicle issued by the Department."

In many ways, Suffolk patterned the Suffolk TLC off of the Nassau County Taxi and Limousine Commission ("Nassau TLC"). The history of Nassau's TLC is instructive. Nassau, too, sought and received authorization from the Governor's Office to form a TLC. In May 2003, the Nassau County Legislature passed a home rule message requesting that New York State authorize Nassau County to regulate the registration of taxicabs and limousines. On August 26, 2003, the Governor signed Chapter 430 of the Laws of 2003, amending the General Municipal law and authorizing the County of Nassau to regulate the registration of taxicabs and limousines by Ordinance.

In Nassau County Ordinance No. 90 of 2003, Nassau County, acknowledging that "unlicensed passenger vehicles operating for-hire within Nassau County pose a danger to County residents because these vehicles may be uninsured and unsafe," now required the registration of properly licensed taxicabs, limousines and private livery vehicles by Nassau County and prohibited the operation of any unregistered vehicle as a taxicab, limousine or private livery vehicle." In this ordinance, Nassau defined "limousine" as "a chauffeured for-hire vehicle seating not fewer than seven nor more than ten persons, including the driver, used solely for hire in connection with funerals, weddings, proms, social events, sports and similar functions on a

prior agreement, fixed-rate basis." This ordinance required for-hire vehicles in Nassau to register annually with the Nassau County Office of Consumer Affairs, conspicuously display a registration certificate and a registration sticker from Nassau's Office of Consumer Affairs, and, when practicable, display Nassau County Taxi and Limousine Commission license plates. Nassau initially set its new registration fee as $750 per vehicle, with an annual renewal fee of $350.

Ordinance No. 90 of 2003 also established the Nassau TLC, in which five members appointed by the County Executive would serve for terms of three years, including an officer or employee from the Office of Consumer Affairs, representatives of taxi or limousine business coalitions or associations, with not more than one member to be appointed from any coalition or association, as well as a representative recommended by the Nassau County Village Officials Association. Each Town Supervisor and each Chief Executive Officer of a City of Nassau County was to appoint a member to serve for a term of three years. No members were to be entitled to any compensation. The Nassau TLC was to recommend any rules and regulations needed to effectuate the purpose of the ordinance; the Office of Consumer Affairs was empowered to issue notices of violations of the ordinance; and the Nassau County Police Department was empowered to issue summons for violations. Violations of any provisions of this ordinance were classified as Class A misdemeanors and subject to a sliding scale of civil fines, based upon the frequency of an individual's violation: a first offense was punishable by a fine of $750 to $1,500; a second offense within five years of the first was punishable by a fine of $1,500 to $3,500; and a third offense within five years of the two prior violations was punishable by a fine of $3,500 to $5,000. The Nassau TLC would hold a civil hearing on the alleged

violation, and the Commissioner of Consumer Affairs was empowered to issue a decision on alleged violations and determine the amount of associated fines.

In 2005, Nassau County amended Ordinance No. 90 of 2003, reducing the new vehicle registration fee from $750 to $300, and the re-registration fee from $350 to $250 per vehicle. In addition, Nassau lowered the penalties associated with violations of the registration requirements: a first time offense would now be punishable with civil fines of $300 to $1,500, a second offense within five years would be punishable by a fine of $600 to $3,500, and a third offense within five years of the other two would result in a fine between $1,000 and $3,500. Police officers and Office of Consumer Affairs agents were authorized to seize and impound vehicles found in violation of the registration laws. The 2005 ordinance also enabled the County to initiate civil action for forfeiture for offending vehicles. In addition, the 2005 ordinance boosted the number of Nassau TLC members appointed by the County Executive from five to seven.

Despite the 2003 ordinance and its 2005 amendment, by 2014 Nassau County was still plagued by unlicensed, for-hire vehicles, as the text of Nassau County Local Law 18-2014 makes clear:

> [M]any unlicensed passenger vehicles, some aided by modern digital or computer technology, continue to operate as for-hire within Nassau County and continue to pose a danger to County residents because these vehicles may be uninsured and/or safe; and . . . it is necessary and proper for this Legislature to enact a local law to provide for the proper level of control over for-hire taxis and limousines and meaningful registration procedures; and . . . in order to truly establish control over for-hire taxis and limousines and their registration it is desirable to establish a specialized office of County government devoted to this task.

As such, Nassau amended its County Charter to establish a separate Taxi and Limousine Commission, independent of the Office of Consumer Affairs. The new Nassau TLC Commissioner was now to be appointed by the County Executive, subject to confirmation by the

Nassau County Legislature. The Nassau TLC Commissioner was authorized to appoint a deputy and other Commission officers and employees within the bounds of the money appropriated for the new organization. Under the new Nassau TLC, the definition of limousine was expanded to mean "a chauffeured for-hire vehicle seating not fewer than seven nor more than fourteen persons, including the driver, used solely for hire in connection with funerals, weddings, proms, social events, sports and similar functions on a prior agreement, fixed-rate basis." In its latest iteration, more power was given to the County Executive, who now was to appoint nine voting members to the Commission, subject to the approval of the Nassau County Legislature; two members shall be appointed upon the recommendation of the Presiding Officer of the Nassau County Legislature; two members upon recommendation of the Nassau County Legislature Minority Leader; and one member upon the recommendation of the Long Island Taxi Operators Association ("LITOA"), or any successor organization to LITOA. Members were still ineligible for compensation. The County Charter was duly amended by this local law.

The history and experience of the Suffolk TLC is much shorter than that of neighboring Nassau. Although limited to its advisory capacity, the Commission promotes enforcement of taxi- and limousine-related laws and regulations by reviewing civilian complaints and working with local police departments. The Suffolk County livery law covers for-hire vehicle registrations, for-hire driver licensing, the Taxi & Limousine Commission, and for-hire-driver qualifications in the County; the livery law also contains penalties for violations of its provisions. The Suffolk TLC has two County employees associated with it, both from the Suffolk DLLCA. The Suffolk TLC itself, as noted above, does not have enforcement powers, therefore has to "rely

very heavily on Suffolk Highway Patrol" and the New York State Department of Transportation, said one of the organization's members.[40]

In contrast, one limousine executive indicated, Nassau County Taxi and Limousine Commission's investigators have numbered as many as 15 agents. The New York City Taxi and Limousine Commission ("NYC TLC"), too, is particularly active in investigation and enforcement activities; one limousine company's chauffeur's manual warns:

> The TLC police are always on patrol in NYC and the outer boroughs areas. During the holiday, the TLC police are especially active and will conduct sting operations to catch unscrupulous drivers. They will approach you, wearing plain clothes with luggage in hand and offer you cash to take them to the airport (or to drop them off at some other location). If you accept, you may be subject to arrest, fines, and seizure of our vehicle.

Said one of the original members of the Suffolk TLC, "if we could have a budget, give us a half a dozen, give us a half a dozen part-time enforcement agents on the weekends and I'm telling you, . . . we could really benefit the consumer." This Commission member envisioned the following employment of such investigators:

> Well, as an operator, I know where the safe havens are for illegal operators. And the illegal operator only hurts my business by taking your business away from me. And they do that by luring you with attractive pricing. And if the illegal operator needs to operate with the same insurance and same licensing requirements and a vehicle that is not a hunk of junk, then he has to raise his prices, of more reasonable market.

The industry representative estimated that there were "several hundred" of these vehicles, including some "buses" that are registered as "Ford trucks." For these vehicles, the limousine industry representative estimated that there were at least 50 illegal operators in Suffolk County –

[40] The Suffolk County Code provides the following with regard to enforcement of Suffolk TLC regulations: "The provisions of this article shall be enforced by the Department, the Suffolk County Police Department, the Suffolk County Sheriff's Office, and/or other agents as authorized by the Department."

"you know, there is always some guy who buys a used limousine and puts an ad in the Pennysaver."

In association with the Suffolk TLC's creation, limousine drivers now must register their license and photo identification, get fingerprinted for a criminal background check, submit to drug testing, and complete a six-hour defensive driving course. Criminal background checks are conducted through New York State's Division of Criminal Justice Services ("DCJS"), and drug tests involve a six-panel drug test. The Suffolk TLC also has issued a Vehicle and Operators Manual containing vehicle standards, rules, and regulations. One limousine industry representative hailed the new background checks and drug testing as long overdue: "[T]hey didn't have any controls at all until two years ago." The defensive driving course is non-limousine specific, however; "[i]t's the standard course," said one limousine company owner and Long Island Limousine Association director. A limousine driver in Suffolk must be 18 years of age or older; the NYC TLC, however, requires its licensees to be at least 19 years old.

The Suffolk TLC requires an array of fees from limousine companies and drivers. A new Suffolk TLC limousine driver license costs $50 and can be renewed for $50 annually. In addition to the fees, made payable to the Suffolk DLLCA, a driver applying to the Suffolk TLC for a license has to fill out a background questionnaire, provide proof of fingerprinting for a background check, give proof of the completion of a recent New York State-approved defensive driving course, and go through a drug screen. The applicant must also show a copy of a Class E or B New York State driver license or a driver license with correct endorsements and a social security card. Once a driver obtains a license from the Suffolk TLC, he can drive for any limousine company registered with the Commission.

It is worthwhile to note the differences between a New York City Taxi and Limousine Commission ("NYC TLC") driver license and a Suffolk TLC driver license. In order to apply for a new NYC TLC driver license for a for-hire vehicle, there are the following requirements: a completed application, a three (3) year license fee of $252 and fingerprinting fee of $75, a drug test fee of $26, sex trafficking awareness video training, a valid New York State ("NYS") Department of Motor Vehicles ("DMV") Driver License (a valid chauffeur's license or its equivalent (only Class A, B, C or E is accepted)) or, if an out-of-state driver license, a valid chauffeur's license or its equivalent. Applicants with out-of-state driver licenses must provide a current certified abstract (State Driver Record). NYC TLC applicants must take and pass a drug test, must provide a completed Medical Form stamped by a physician,[41] and must take wheelchair-accessibility training. Significantly, in New York City, a for-hire driver of a stretch limousine must "have an ACTIVE 19A commercial driver license status (class A, B or C),"[42] a classification that the next section of this report will address.

A new Suffolk TLC vehicle registration in Suffolk County costs $300 per year and annual renewals cost $250, fees that have drawn some ire from limousine company owners. The Suffolk TLC vehicle registration process places additional requirements on applicants. Individuals who register for-hire vehicles with the Suffolk TLC must fill out an affidavit attesting to the following: (1) that either "there have never been any judgments filed against the above named individual applicant or firm" or "all judgments against me have been discharged,

[41] The NYC TLC's medical certification form requires the applicant's physician to examine the applicant within 90 days prior to the application's submission and give the opinion that the applicant "is medically fit to safely operate a TLC licensed vehicle. . . Medically fit means that the applicant is of sound physical condition with good eyesight and no epilepsy, vertigo, heart trouble or any other infirmity of body or mind to the extent that it would render the applicant unfit for the safe operation of a licensed vehicle at all times of day."

[42] Emphasis in original.

are being appealed, or are being paid according to agreed scheduled payments with creditors and that there are no unsatisfied or unnegotiated judgments against either the above named individual applicant or firm"; (2) "[t]hat the above individual or firm is in compliance with section 1324a of Title 8 of the United States Code, with respect to the hiring of employees"; (3) "[t]hat the above named individual or firm is making all required payroll tax payments for the applicant's employees, including Social Security taxes, Medicare taxes, and state and federal unemployment taxes"; (4) "[t]hat I have been advised of Suffolk County Code 571 requiring Registration of For-Hire-vehicles & Drivers in Suffolk County"; (5) "[t]hat I have read and understand the Suffolk County Taxi & Limousine Rules and Regulations, and understand that violation of these rules may result in the suspension or revocation of the vehicle registration"; (6) "[t]hat each of the For-Hire-Drivers in my employ possess a valid For-Hire-Driver License from the Suffolk County Taxi & Limousine Commission as required by 571-10 of the Suffolk County Code"; and (7) "[t]hat I shall notify the Suffolk County Taxi & Limousine Commission within 10 days of any new hire that requires a For-Hire-Driver License as proscribed by law." Each vehicle being registered with the Suffolk TLC requires a separate application. In addition to the application, affidavit, and fee, a vehicle registration applicant must provide a copy of the NYS DMV registration, copies of two forms of identification from each owner, and a fingerprinting and background check for each owner. Since 2006, Nassau's TLC has required that its registered vehicles display Nassau TLC license plates, issued by the NYS DMV with Nassau TLC authorization. As of May 2016, the Suffolk TLC did not have the ability to issue its own license plates. Instead, the Suffolk TLC is issuing a decal, to be affixed to the front driver's side of the windshield, specific to Suffolk TLC registered vehicles.

Within Suffolk County, individual towns also have regulations governing taxi and limousine activity. For example, East Hampton regulates those vehicles that travel point-to-point within its borders, picking up passengers in East Hampton and dropping them off in East Hampton. According to one Suffolk TLC board member, such point-to-point limousine travel in East Hampton would not be subject to the regulations of the Suffolk County TLC, pursuant to Municipal Local Law.[43] East Hampton also requires licensing and background checks.

The Suffolk TLC's Vehicle and Operator's Manual requires that "all registered vehicles and drivers must operate and maintain their vehicles in a safe manner. That means obeying all the traffic and safety laws of New York State, Suffolk County as well [as] those of . . . the municipalities they [operate vehicles] in." If there were any state, municipal, or County laws limiting the maneuvers of stretch limousines, a driver in violation of those laws would also run afoul of the Suffolk TLC. In the event of an alleged violation of the Suffolk TLC's rules, a Suffolk County Police Department officer, an officer of the Suffolk County Sheriff's Department, or an authorized employee or agent of the Suffolk DLLCA can issue a notice of violation to the alleged offender. The Suffolk TLC, although denied direct enforcement power, can then hold a hearing by which it can attempt to hold such an offender accountable.[44]

Apart from certain mandatory suspensions and revocations of registrations,[45] an alleged violation of the Suffolk TLC's regulations will result in notice of the violation being served to

[43] A Suffolk TLC vehicle registration is not required for "a for-hire vehicle that is operated solely within the geographical boundaries of the County of Suffolk and has obtained a valid taxicab vehicle registration, license or permit issued by the Suffolk County town(s) or village(s) in which such for-hire vehicle is operated."

[44] Note that the New York City Taxi and Limousine Commission enforces compliance with its rules and regulations by using fines and vehicle impounds for violations.

[45] "A mandatory 30 day suspension will be imposed for a thirty-day period . . . upon the accumulation of . . . 5 points on their driver's license within a fifteen-month period. A mandatory revocation of a for-hire vehicle registration will be imposed if the driver accumulates an

the alleged violator. As per the Suffolk TLC Vehicle and Operator's manual, a hearing officer, designated by the Suffolk DLLCA Commissioner, "will be allowed to administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents pertinent to the investigation." The alleged violator has the right to be heard in his or her defense, may be represented by counsel or have counsel appear on his or her behalf, and has the right to call witnesses and produce evidence on his or her behalf.

The hearing officer, designated by the Suffolk DLLCA commissioner, may impose fines of up to $1,500 and suspend or revoke any for-hire vehicle registration, pre-arranged for-hire vehicle permit, and for-hire vehicle driver's license.[46] The willful violation of a Suffolk TLC hearing's resulting order constitutes a misdemeanor, making the offender subject to a fine of not more than $5,000 or imprisonment for not more than one year, or both.

The Suffolk County Police Department, its Motor Carrier Safety Section in particular, and the New York State Department of Transportation are gradually becoming more involved in the enforcement of Suffolk TLC regulations. This body of regulations may grow; the law establishing the Suffolk TLC gives room for it to evolve to changing circumstances and

---

additional 3 points on their license within a fifteen-month period." Summary Suspension or Revocation of a For-Hire Registration: "There are several instances that allow the [Suffolk TLC] to impose a summary suspension or revocation of a for-hire registration even before conducting a hearing. Those conditions include: When the hearing officer has reasonable grounds to believe that it is necessary, in order to insure the public health, safety or welfare. After the conviction of the for-hire vehicle driver of a serious criminal charge. When the summary suspension results from a non-payment of a fine or a failure to comply with [a Suffolk TLC] order." A hearing will necessarily follow any summary action.

[46] A hearing officer's determination may be appealed to the Commission of the Department of Labor, Licensing and Consumer Affairs.

priorities. The Suffolk TLC may, through the Suffolk DLLCA Commissioner's actions and public hearings, add additional requirements for for-hire limousine operators and owners.[47]

B. Driver Qualifications

The NYS DMV issues driver licenses in New York State. Most civilians have Class D licenses for their personal vehicles, but a Class E license, also known as a chauffeur's license, enables individuals to drive taxis and limousines for hire with himself and up to 14 passengers in a vehicle. Both Class D and Class E licenses are valid for the operation of vehicles up to 26,000 lbs. in gross weight. As such, limousine and taxi drivers in Suffolk County must at least possess the equivalent of Class E licenses.

The New York State DMV does not require any additional training for a Class D licensee to qualify for a Class E license. There are no road tests involved in the upgrade. As one limousine company owner stated, "There is really no driving test except for regular driving test that everyone goes through. No past experience or anything like that." In fact, in order to obtain a Class E license, a Class D license holder would only have to fill out an application, get an eye test, and pay a modest fee that is dependent on the expiration of the driver's current license. The DMV does not require drug testing, background checks, or limousine-specific road tests or

[47] "The Commissioner shall have the power [to] promulgate, amend and/or repeal rules and regulations not inconsistent with the provisions of this chapter as may be necessary with respect to the form and content of applications for registrations and licenses, for the reception thereof, for the investigation of applicants and their qualifications, for the conduct, including advertising, of occupations regulated by this chapter and for other matters incidental or appropriate to his powers and duties as prescribed by this chapter and for the proper administration and enforcement of the provisions of this chapter. No rule or regulation maybe promulgated, amended or repealed pursuant to this subsection unless a public hearing is held by the Commissioner. At least seven (7) business days' prior notice of such public hearing shall be published in the official newspapers of the County. A copy of all rules and regulations promulgated and any amendments thereto shall be filed in the Office of the Clerk of the County Legislature."

training for anyone who wishes to drive stretch limousines for hire. According to DMV regulations, a Class-E-licensed taxi driver could jump behind the wheel of a stretch limousine, even if he had never driven an oversized vehicle before. Although there are no specific limousine licenses required by New York State, local taxi and limousine commissions can regulate the operation of such vehicles in their respective jurisdictions.

As has been discussed in the previous section, local taxi and limousine commissions can and do issue licenses of their own with their own particular sets of requirements. Although background tests and drug tests have become mandatory in some counties, Nassau and Suffolk Counties do not impose any limousine-specific training requirements on chauffeurs in their jurisdictions. Any required defensive-driving courses are generic. Witnesses repeatedly commented on the advisability of limousine-specific driver training for the county's chauffeurs.[48] With regard to increased road-testing standards for state and TLC licensing, one limousine company executive indicated, "For a for-hire vehicle, you know, it probably, I hate to go on record as saying it, but it probably wouldn't hurt." One limousine industry representative discussed the possibility that the Suffolk TLC administer a road test prior to issuing limousine licenses.[49] Variations in TLC licensing requirements between the various counties, however,

[48] A NYSDOT investigator had the following to say: "I would personally go more into the direction of training drivers and companies as to safe operations. I have never been to a crash investigation in my life that was caused by a vehicle defect. Ever. I don't think they exist. I have been to crashes where the vehicle defect was a contributing factor in severity of crashes, or a contributing factor into the crash but it always boils down to someone making a decision that was incorrect. And that's really where my recommendation would be to concentrate on the human factors of the equipment."

[49] With regard to the Suffolk TLC requiring limousine road test prior to issuing limousine licenses: "I think who has been doing it for maybe three years plus should be grandfathered in, I think any new drivers should have to go to some kind of a course that is given. You know, some kind of drivable course."

have created a patchwork of different and competing requirements for limousine operators across the state.

In order to produce a standardized set of requirements for limousine drivers throughout New York State, several witnesses suggested that the DMV take charge of the issue. Even a member of the Suffolk TLC suggested: "What would improve safety would be first a statewide licensing requirement, so that when I hire a chauffeur and he's got 'X,' 'X,' and 'Y' license, I know that the government has already done some of the things that are otherwise left liable for me." Another limousine company executive recommended that the DMV should issue a special type of E license for oversized vehicles such as limousines and require a road test specific to such vehicles: "It should be an even playing field because if you just do it in Suffolk County, then Nassau County, they'll get licensed in Nassau County, and it defeats your purpose. It should be a state law, if anything." As part of a state licensing process, this limousine company owner suggested as follows: "If they are going to issue a license to drive a limousine, there should be some kind of driver course to drive a limousine."

Apart from any state- or TLC-mandated driver's course, some limousine companies provide robust, in-house driver training before allowing their chauffeurs to pick up their first customers. As part of these programs, some limousine companies distribute operation manuals to their chauffeurs to promote certain driving behaviors. One such manual, for a company with a 95-vehicle fleet and 125 employees, requires the following:

> [The company's] drivers pledge to provide safe, dependable service, transporting our passengers to their destination safely and expeditiously. Part of that includes, but is not limited to: keeping a safe distance from other vehicles, giving you ample time to stop and avoid an accident; no reckless driving; always have an out!; no speeding; completing a Defensive Driving Course (note: this is a requirement to renew your TLC license every 2 years); at all costs, avoid road rage!!!!! Driving can be stressful, especially in traffic. If another motorist needs

> to cut you off in traffic, let them. Better to have one more person in front of you in traffic than to be involved in an argument or an accident.

Another company's manual dictated chauffeur behavior as follows: "You must be aware of traffic and road conditions at all times. Constant knowledge of traffic around you will enable you to know which lane is available in case of a situation which could require a sudden change in lanes. Without this awareness, an incident could turn into an accident in a split second."

In addition to the manuals, some companies provide comprehensive in-house training to their drivers. One company's safety officer described a program in which a prospective driver must undergo classroom-based training, followed by a three-day driver course accompanied by an experienced chauffeur. During the three-day road test, the experienced driver begins driving with the trainee next to him. The trainer and trainee go out, meet customers, and drive them around to different locations. Once the rater feels comfortable enough to let the trainee drive, they switch places and the driver trainer makes sure that that the trainee is operating the vehicle safely and interacting with passengers properly. After the road test and a classroom exam, the company evaluates whether it will hire the driver. Moreover, at this particular company, if a chauffeur is involved in any motor vehicle crash, the company brings in the driver and conducts a retraining and recertification course with the company's safety officer.[50] One limousine company has the following policy, according to its owner:

[50] Some limousine companies install video-camera systems that run 24-hours-a-day, seven-days-a-week. The cameras film the interior of the vehicle as well as the driver's view of the roadway. The cameras also record sound. Under this observation, a company representative can see everything a driver has done for the entire day. One limousine company safety officer spoke approvingly of the camera: instead of having to rely on "he said she said . . . [w]ith the camera, it's what happened." This safety officer recommended that the limousine industry look into fitting out their vehicles with these cameras "to prevent bad drivers and to prevent many, many accidents." In the July 18, 2015 crash, the limousine had a video camera system, but it was not in operation at or leading up to the time of the impact.

> Once they're trained as a chauffeur and they've been working several weeks and they have a desire to drive a stretch limousine, we'll take them out once with a senior chauffeur and once with my safety manager. They'll go out and learn how to make turns, what to do, what not to do, and how to take care of their client in the back.

Another business owner said that he also uses in-house road tests to assess the qualifications of his drivers:

> We take every driver before we hire them, see how, what their ability is. I mean, it could be a van, a limousine, a Town Car, even a bus. We have a fleet manager that will take the driver out for about a half hour or so and try all different kind of maneuvers, see how he handles the road, making turns, stopping, you know, his ability to the drive a vehicle.

Other companies use combinations of road tests and driving simulators.[51]

Although large companies may have the resources to conduct such training programs, many limousine businesses operate small fleets of one to five cars, said a limousine company officer who has owned a 35-vehicle limousine company for 18 years and run a motor vehicle repair shop for 40 years. This officer is also a director of the Long Island Limousine Association and has served four years on the organization's board, as of April 2016. This witness stated that the companies themselves have a responsibility to ensure that their chauffeurs are well-trained and qualified:

> It's really up to the company, to that individual limousine company to set standards. And they should be, they should have a driver training course, inhouse driver training course, which we do, our company. . . . We screen very tough. We'll go through 20, 30 drivers before we hire one. You know, they have to have clean driving records. If you have one speed, we probably won't hire you if it's within two years, because of insurance reasons.

[51] A NYSDOT official commented: "I think road testing is one of the key elements of a great training program is to periodically road test the driver, even though he may be driving the same vehicle over and over again. I'll give you an example of, I know one company on Long Island that bought a driver training simulator so that he can put drivers in this simulator and simulate catastrophic incidents. That's an awesome tool to utilize. Any time you can get the driver behind of the wheel of a vehicle and throw things at him is a great tool. So I'm a big proponent of that."

Unfortunately, the Long Island Limousine Association officer said, most small companies do not have comprehensive in-house training programs.

Insurance companies look at things like driver training programs when setting insurance premiums for limousine companies.[52] Such premiums are a significant expense for limousine companies; one business executive estimated that 20 percent of his company's revenue goes toward insurance premiums:

> There is a big insurance problem, it's very limited insurance companies that will insure on Long Island, basically, Town Cars and limousines. Insurance costs run approximately $4,000 to assigned risk up to $15,000 on regular limousines, and buses can actually be from eight to $45,000 per bus per year. . . . [I]nsurance companies actually come down to your facility, they want to see how you run your business, they want to [see] your driver files, they want to see your maintenance files, they want to see like any accidents that driver may have had, they want to make sure they are in the files. Random drug testing on most drivers they like to see. It's the way you run your company. If you're disheveled, you have poor records, this and that, it's a good chance you won't get insurance.

Sometimes insurance company representatives themselves provide training for their insured's drivers. With regard to the Long Island Limousine Association, insurance company representatives attend and give courses. Limousine drivers, as well as limousine company executives, attend Association meetings. In addition, NYSDOT representatives sometimes attend meetings, according to one Association officer, and "tell us what they are looking for. They are very, very stringent. I think they are too stringent, to be honest. But it's in good interest of public safety." With regard to smaller limousine companies' training programs, the Long Island Limousine Association is encouraging an industry-wide driver training program, but

[52] Insurance companies also consider in-house drug testing. As one limousine company's Chauffeur's Operation Manual states: "[The company] is required by their insurance carrier to institute a mandatory drug and alcohol screening program. All employees of [the company] are affected and will be required, on a random selection basis, to submit to this screening. (You will be compensated for time spent at the screening office.)"

the group had not initiated one as of April 2016. As will be discussed, for drivers of stretch limousines designed for 10 or fewer occupants, however, no regulatory body in New York State or Suffolk County mandates any driver's training program.

Although some chauffeurs have made limousine driving their only occupation, many others are part-time employees. "Limousine drivers, they come and go," observed one limousine company executive. Others drivers are just getting back on their feet after being unemployed. A limousine company president indicated: "It's our hope that through the Department of Labor we'll be able to also employ people that have been previously unemployed, get them through the chauffer's license, and have a new pool of chauffeurs." One limousine company's application files showed that prospective drivers came from the following diverse backgrounds: unemployed, a limousine chauffeur for two years, a chauffeur for 12 years, a bank vehicle driver, a Staples copy and print center specialist, a "laborer," a title officer, a travel agent with an MBA, and a sales associate.

Some limousine companies pride themselves on having full-time chauffeurs,[53] although the seasonal nature of the East End's winery tours may require the hiring of additional drivers in busy months. One Motor Carrier Safety Section officer worried that part-time drivers can be subject to fatigue if they have been working other jobs when they are called away to chauffeur

[53] One limousine executive started to describe how he encouraged employees building careers at his company, but then he gave several quick examples of the previously inexperienced part-time workers that he was employing: "So our chauffeurs are full-time employees. This is their career. In my case I offer my chauffeurs an IRA, I offer my chauffeurs health insurance. And I match their contributions on their IRA. So in my case, a new chauffeur is driving a sedan in and out of the airport for two or three weeks at a minimum. And I just put two new chauffeurs on payroll the beginning of March. One is a court officer, right here somewhere, Suffolk County complex. And the other is a financial planner, just looking for part-time work. Neither had experience."

on short notice.[54] Indeed, one company's training manual indicates: "The Dispatcher can contact the chauffeur for job assignments at anytime, with as much as 24 hours[']notice, or as little as one[-]hour notice." Note that there may be short-fuse assignments, and there is nothing about how much a chauffeur might have been working prior to the limousine job. The pay for limousine drivers might also affect their quality; one limousine company officer said that, to some in the livery business, "their key to success is old cars – is old cars and less expensive chauffeurs." According to another company's records, some chauffeurs were getting paid $9 per hour in December 2014, December 2015, and March 2016. As noted, New York City requires its for-hire limousine drivers to be at least 19 years of age; Suffolk requires such drivers to be at least 18 years of age. One industry representative said that even 19 is too young for a driver to be entrusted with a high-occupancy limousine.[55]

Some, but not all, limousine drivers also possess Commercial Driver Licenses ("CDLs"). Whereas a Class E license enables a chauffeur to drive a for-hire vehicle of up to 14 passengers, CDLs allow drivers to transport 15 or more passengers.[56] Under New York State's Article 19-A

[54] In the next section there will be a discussion of the expansion of the commercial vehicle classification. This classification also makes more drivers subject to what is called the 15-hour rule. With regard to drivers of commercial vehicles, "you are allowed to drive for ten hours but you are only allowed to work for 15 hours on duty. So if you worked eight hours you would only be allowed to drive seven more hours." A Motor Carrier Safety Section officer indicated the difficulty for part-time limousine company employees moving into a chauffeur assignment directly after working a long day for another employer.

[55] He added, "Right now I hear advertisements they are looking for drivers of 19 years and older. I think it's a major mistake. I think the driver should be at least 25 years and older, to have at least five years of regular driving a car. It's something that is being promoted, it should be looked into. Most insurance companies, like our insurance companies, they want you to be 25 and older. Most of the limo companies on the island are 25 and older. But there is new companies coming out with different types of insurance they are providing and they are encouraging 19-year olds and up to drive these limousines and Town Cars. . . . [T]hat's a big safety factor, in my book."

[56] For interstate purposes, USDOT considers a commercial motor vehicle as one designed to transport 9 or more passengers (including the driver) for compensation. If a vehicle has capacity

of the Vehicle and Traffic Law, sometimes known as the bus driver certification program, however, bus driver employers must ensure their drivers have CDLs and also maintain Article 19-A bus driver licenses.[57] For NYSDOT purposes, Title 17 Official Compilation of Codes, Rules and Regulations of the State of New York, Part 720.1 defines a "bus" as a vehicle that is designed to carry 11 passengers or more, including the driver, and a business that used such a for-hire vehicle would qualify as a motor carrier requiring operating authority from the NYSDOT.[58] A company would apply for operating authority from the NYSDOT because it wants to transport passengers between two points in New York State for-hire. If a company requires such operating authority, the drivers of its 11-passenger vehicles would all need Article 19-A bus driver licenses.[59]

Article 19-A licensees are subject to much stricter requirements than Class E licensees or even non-Article-19-A Class C licensees.[60] An Article 19-A driver is subject to a yearly driver's abstract check, an annual review of his driving record, an annual defensive driving review, a

---

for nine personnel or more, including the driver, then it is a commercial vehicle for the purposes of the USDOT and, since 2014-2015, the NYSDOT. As such, it must have the USDOT number and the operator's name displayed prominently on its side, and it has to have a USDOT report filed. A vehicle that was designed for a maximum occupancy of ten, including the driver, will thus be subject to USDOT regulations, such as those regarding the display of USDOT numbers, but not New York State regulation of buses, such as Article 19-A licensing requirements.

[57] A NYSDOT official explained: "Article 19-A is really a New York centric thing. There is no other state that has the regulation over drivers in this country more than New York State. We do more in New York State with driver regulation and safety than any other state in the country."

[58] Note that elsewhere in the New York Vehicle and Traffic Law a definition of "bus" appears involving vehicles with occupant capacities of 16 or more, but that has to do with "bus plates and not Article 19-A driver's license requirements," said a NYSDOT official.

[59] Under New York State Law, a Class E license holder can drive a ten-passenger-including driver limousine in New York State. That person would have to qualify for a commercial driver's license "as soon as that vehicle has a seating capacity of eleven or more including the driver," said a NYSDOT official. "They would need to have a license from us, therefore that driver would need to have a[n] [Article 19-A] CDL."

[60] Note that the limousine driver in the July 18, 2015 crash had a valid class "C" New York State commercial driver license, with no active suspensions or revocations. He also had a valid Nassau TLC license.

biennial New York State Department of Transportation medical review, a biennial behind-the-wheel driver exam, a biennial oral and written examination, and, if they are diabetic, every six months their diabetic condition must be recertified by a medical doctor. Article 19-A road tests must be conducted by certified examiners. Those limousine drivers without Article 19-A CDLs, however, do not have to go through the biennial road tests or examinations.

For the road test, an Article 19-A driver must take the test in the vehicle for which he is being licensed to drive. A NYSDOT official indicated the following: "[I]f he's going to be driving a van for a company, he needs to be road tested in a van. He can't be road tested in a limousine. Or if he's going to be driving a motor coach for a company, that company has to actually road test him in a motor coach and not in a van." A sample biennial behind-the-wheel road test involves the following: pre-trip inspections; departing activities, such as signaling, observation, and using caution; en-route activities, such as lane changing, maintain proper speed, turning, and stopping; and parking and backing activities, such as proper positioning and not hitting the curb. Some of these tested activities are worth more points than others; "failure to use proper judgment in traffic," for example, results in a ten-point deduction from one's score compared with, for example, a five-point deduction for failure to check all gauges, heater, and defroster. Two 10-point deductions result in a driver's disqualification, and a failure to yield right-of-way during the biennial road test results in a driver's immediate disqualification.

In addition to the biennial behind-the-wheel road tests, annual defensive driving evaluations involve a certified examiner, from the motor carrier, observing a driver operating a vehicle with passengers; the driver operates the type of vehicle that he will be driving for the motor carrier with NYSDOT operating authority. The defensive driving evaluation cannot be conducted the same day as the biennial behind-the-wheel road test. The defensive driving

evaluation involves observation of the following: observation; traffic lane use (including center line violation); speed; properly signals intention; turning; vehicle control; obeys traffic signs, signals and road hazard signs; observes proper following distance; procedures for receiving and discharging passengers; and traffic interaction. The certified examiner memorializes the driver's performance on a New York State DMV "Report on Annual Defensive Driving Performance for Driver Under Article 19-A." A sample biennial written examination involved multiple-choice questions such as "As the Blood Alcohol Concentration (BAC) goes up, what happens?" and "Which of these is a good thing to do when driving at night?"[61] and "When the roads are slippery you should?"

If the NYSDOT has to give operating authority to a for-hire passenger-carrying business, then those 11-occupant-capacity vehicles of the business constitute "buses." For NYSDOT purposes, a "bus" is a vehicle containing eleven passengers including the driver owned by a motor carrier that requires operating authority. A Motor Carrier Safety Section officer explained the occupancy calculation: "It's what it's design[ed] to carry, not what the company says it is. So they have to go to an inspection site, and New York State DOT inspectors will inspect by measuring the seating spacing. It's so many inches per adult seat. 16 inches, I believe, is the number for that." "In general, every 16 inches, this is a federal standard, every 16 inches on a seat is a person," confirmed a NYSDOT investigator. Pursuant to its enforcement activities, the NYSDOT often encounters stretched and modified vehicles. "If they seat eleven passengers or more including driver, then we regulate it," said the NYSDOT investigator.[62] In fact, NYSDOT has a special manual, entitled, "NYS DOT Altered Vehicle Safety Inspection Procedures," for

[61] Note, however, that one of the possible answers was "Wear sun glasses."
[62] The NYSDOT Altered Vehicle Safety Inspection Procedures provides diagrams of stretch limousines for determining seating capacity.

such cases. NYSDOT investigators have access to DMV data systems and can check the bus driver lists to make sure the operator of a qualifying vehicle is certified through the Article 19-A bus driver certification program.

A limousine company safety officer had the following to say about state licensing requirements for chauffeurs:

> I believe that limousines, stretch limousine drivers should be [Article 19-A] CDL qualified, just like a bus driver is, because really, you are driving around six to ten people. There is no difference six to ten people of 14 or more. You are still driving around a lot of people. You should not be able to go to Motor Vehicles and hand them 20 bucks and say I need a chauffeur's license. That should be a written test, some kind of driving test so they qualify behind the wheel.

In addition, the safety officer pointed out that, in Suffolk TLC-required drug tests, a drug-abusing license applicant just had to stay clean long enough to take the initial test and then would be free to use drugs for a year. His company's CDL licensees, however, face a different standard:

> [They] have to be subject to a random drug testing. We belong to a consortium, so the consortium picks them randomly, so they have to go for a random test. Taxi and limousine, you go just before you renew your license. So if you are a drug person or have an alcohol problem, you know when your test is coming up. Random doesn't work that way. So our guys are subject to random.[63]

[63] According to one of its investigators, the NYSDOT mandates "drug tests through an adoption of the federal regulations. Its applicability is 16 or more including driver, in accordance with the federal standard. . . . It's a drug testing is really a program administered but companies and it's monitored through compliance reviews. So when a driver is hired, they, again, 16 or more passengers including the driver is the applicability, a driver is hired, he must have a pre-employment drug screen done. This is a special DOT test. It's not a kit you buy at CVS or anything like that. It's a special test that the manual on this is about . . . [s]ix inches thick. It's very difficult for a company to administer on their own. They generally all hire a third party to administer for them. So a driver is hired, or prospective driver, has to get a pre-employment drug screen. Negative results, obviously. Once he is hired they have to enroll that driver in a random testing program that randomly test them for drugs and alcohol. Up until January 1st of this year, the random testing rate was 50% for drugs on all drivers. Federal government reduced that to 25% on all drivers, for 2016. So right now 25% all drivers have to be randomly selected for a drug screen, and 10% have to be randomly selected for an alcohol screen. Further, the company must employ a person called a designated employee representative. That person has to

This limousine company officer concluded that Article 19-A-type requirements should apply to his industry's chauffeurs: "It should be a state law. State and federal laws really mandate all our bus drivers. They should mandate the limousine drivers, too."

C. Mandatory Inspections of Limousines and Other Requirements

Prior to 2015, stretch limousines designed to seat fewer than 11 total occupants[64] only required an annual DMV inspection. Whereas New York State Vehicle and Traffic Law Section 301 required the annual inspections of these motor vehicles, there were no limousine-specific or commercial-vehicle checks required for these vehicles. The state-certified inspectors for these annual checks did not need to undergo any limousine-specific training. Any local mechanic who was certified could perform annual safety inspections on such stretch limousines, even if he had never dealt with one before. Moreover, the nascent Suffolk TLC had not and has not dictated any additional safety checks that limousines must undergo.[65]

---

be, have one hour of training on drug, the drug awareness and alcohol awareness. And that training consists of them being able to tell the telltale signs of someone who may be under the influence of drug, illegal drugs or alcohol. And if they come to that conclusion, they are required under the law to do what is called a reasonable suspicion test on that driver."

[64] Thus avoiding the NYSDOT classification of "bus." According to NYSDOT Altered Vehicle Safety Inspection Procedures: "A NYSDOT bus inspection is required when a vehicle is providing passenger transportation and is required to have NYSDOT operating authority (also known as a Certificate of Authority, or NYSDOT number). For-hire transportation of passengers in vehicles which have a seating capacity of more than 10 passengers including the driver are generally required to have NYSDOT Operating Authority (a Certificate of Authority or NYSDOT Number)."

[65] According to Suffolk County Local Law No. 17-2014: "Each pre-arranged for-hire vehicle shall be inspected no less frequently than every 12 months by an official inspection station licensed pursuant to section 303 of the New York Vehicle and Traffic Law, or, in the case of a vehicle registered in another state, by the agency responsible for vehicle registration and inspection in that state, [if] any. If no inspection is required in the state of registration, then each for-hire vehicle shall be inspected in New York by an official inspection station licensed pursuant to section 303 of the New York Vehicle and Traffic Law."

Since 2015, limousines with occupant capacities of nine or more have become subject to more scrutiny in order to bring the State in line with federal regulations. By not harmonizing the state's regulations with those of the USDOT, NYSDOT had been in jeopardy of losing federal funding. In addition to the NYS Vehicle and Traffic Law and the regulations of the NYS DMV, certain vehicles are newly subject to NYSDOT regulations as "commercial motor vehicles," including any vehicle that "is designed or used to transport more than 8 passengers, including the driver for compensation."[66] The NYSDOT investigator explained the details of how a for-hire limousine with a capacity of nine including the driver would now have to comply with all of the Federal Motor Carrier Safety Regulations:

> There is really six parts. Part 390 of the Federal Motor Carrier Safety Regulations has to basically outline applicability. That's where it says nine or more is in the book. Part 391 has to do with driver qualifications, making sure the company has properly qualified the driver to drive the vehicle in which they are operating. That has to do with doing their due diligence when you hire a driver.[67] Part 392 has to do with making sure your drivers comply with basically Vehicle & Traffic Law-type driving regulations. Part 393 is all the parts on the vehicle, they have to make sure all those parts are in proper working order. Part 395 is the hours of service of driver regulation. And part 396 has to do with the periodic inspection and general maintenance end of the business where they have to do preventative maintenance and keep records on that. And then that would be what those companies would have to comply with. If they get into the world where they are 16 or more including the driver, then further there is a federal commercial driver's license requirement and a drug and alcohol testing component.

As of June 2015, the Motor Carrier Safety Section could, according to one of its officers, stop, inspect, and take enforcement actions with regard to a limousine that has eight passengers plus one driver:

> There are required certain markings. The DOT number they are required to have displayed on the sides of their vehicle; the name. Nobody wants their name and

[66] Prior to that, the standard for a commercial vehicle in New York was an occupant capacity of 16 or more including the driver.

[67] Note that this required due diligence is nowhere as demanding as the Article 19-A bus certification program.

> DOT number displayed on the limousine door, but they are required to have their name and DOT number displayed. If I don't see that I can pull them over. Now I can inspect their vehicle. They are required to have certain equipment in the vehicle. With limousines, they are required to have certain emergency exits for the amount of seating that you have. That's where we, they fall into the federal regulations now.

While inspection requirements for a commercial vehicle may not have substantially differed from those of a more common passenger car,[68] limousine operators decried the prospect of the aesthetic disfigurement of the exterior of their luxury vehicles. According to Federal Motor Carrier Safety Regulations and now the New York State Department of Transportation Law: "[Operators] have to put their legal name on both sides of the vehicle, visible from 50 feet away during daylight hours. The lettering has to be in a contrasting color to the vehicle and they also have to display their USDOT number preceded by the letters 'USDOT.'" These commercial vehicles, however, are still not subject to the semiannual NYSDOT inspections that so-called buses go through.

"Buses" that are in a limousine company's fleet must undergo a stringent NYSDOT inspection process every six months. The inspection covers the vehicles from front to back, as well as underneath. The New York State Department of Transportation assigns inspection sites to the vehicles, and these sites may feature pits in which inspectors may examine the undercarriage of the limousines. One limousine company owner who also owns a bus company

[68] A NYSDOT official discussed the federal- and state-mandated inspections: "The USDOT's [inspection requirement] is any commercial vehicle has to have a, they call it periodic inspection. What that means is, in the way it's defined in their regulations, is that the vehicle must go through a multi-point inspection every year. Now, certain states, such as New York, we have our own state inspection program that was implemented by New York State DMV, and that inspection would suffice as that federal inspection. So what I just described, this multi-point inspection that is required is really a self-certifying inspection that every company must make sure a certified mechanic does an inspection once a year. In New York we have New York State DMV that requires vehicles to be inspected. That inspection would meet the federal requirement."

had the following to say about his relationship with the New York State Department of Transportation: "I found the DOT tough, I have failed DOT inspections, and I have found that the best – that they catch things that I didn't catch, which in the end wound up to be a benefit for my client." Nevertheless, as another limousine company owner said of the NYSDOT inspections: "They have their own inspectors, but they are not checking for safety. They are not checking for side airbags or any kind of safety, or on how the car was built. They are only checking to make sure your brakes are good, . . . along those lines." Although the NYSDOT has specific Altered Vehicle Safety Inspection Procedures, NYSDOT does not provide for the examination of the interior structure of the vehicle or the side-impact protection system in the vehicle's doors and panels. A NYSDOT inspector described the difference between a DMV inspection and a NYS DOT inspection:

> Well, really the main way is it's done by a DOT employee. Following, you know, a lot of the inspection, there may be a lot of similarities in the inspection but our DOT inspector is a highly trained inspector. All they do is inspect buses, they follow the guidelines as outlined in [Title 17 Official Compilation of Codes, Rules and Regulations of the State of New York,] Part 720 of the regulations, to make sure all the parts and accessories on the vehicles are operating correctly. And they have the authority to place vehicles out of service for defects that they find.

Rather than subject their vehicles to the sometimes unforgiving NYSDOT bus inspections – and the possibility of a vehicle being placed out of service – some limousine companies attempt to falsify their occupant capacity paperwork. Limousine owners have gone to the DMV and changed their vehicle registrations to indicate occupant capacities below the "bus" threshold. "I could tell my insurance company that a [Ford Motor Company Qualified Vehicle Modifier ("QVM")] stretch holds thirteen and they'll write me an insurance certificate for 13 people. I could go to DMV and tell them my Lincoln seats 13, and they'll write 13 on the registration," one limousine company executive said. "[Y]ou could register a vehicle to seat

however people you want. . . . I literally can take my Lincoln Navigator and say it seats 12." This executive also indicated, "[W]hat many operators did is they just changed their registration . . . [w]hich then didn't require [NYS DOT inspections]," said one industry representative.

A Motor Carrier Safety Section officer corroborated these accounts:

> Believe it or not, companies lie. . . . And they may say ten-passenger on the registration because they go to New York State Department of Motor Vehicles and get their vehicle registered and say it's only a ten passenger. We get it, it's eleven. That makes it a bus. We have to get DOT notified, get them involved, because a bus inspection required two inspections a year. More stringent than the annual.

The Suffolk TLC has announced that it will require limousine owners to accurately represent their vehicles' seating capacities. In its Vehicle and Operator's Manual, the Suffolk TLC states: "The owner of the for-hire vehicle will be responsible for ensuring that the seating capacity indicated on the [Suffolk TLC] registration matches the actual seating capacity within the for-hire vehicle."

In addition to any occupancy numbers on registration documents, however, each stretch limousine builder must place a manufacturer's placard on the doorframe of the vehicle.[69] This decal indicates the designed vehicle capacity, the vehicle's weight limits, and date of manufacture, among other things. The original manufacturer of the vehicle, pre-modification,

[69] The NYSDOT Altered Vehicle Safety Inspection Procedures describe these tags: "Title 49 Code of Federal Regulations Part 567 requires that all vehicle manufacturers, including all modifiers, alterers and repair shops provide a FMVSS certification tag or label on the vehicle. The FMVSS tag or label is placed on the vehicle hinge pillar, door-latch post, or the door edge next to the driver's seated position. For vehicles built in multiple stages, each entity that completes that stage will affix a supplemental FMVSS tag as required. You may see 'incomplete chassis' or other similar wording on multiple stage supplemental FMVSS tags. The final FMVSS tag should show 'MANUFACTURED BY' or 'MFD BY' or information showing that the vehicle was altered, 'ALTERED BY.'"

also must place a placard on the doorframe.[70] False placards, however, have been known to appear to downplay occupancy, and NYSDOT inspectors have had to take measurements to determine the actual occupancy of vehicles. A NYSDOT investigator indicated: "[W]e do our due diligence to make sure it's not fictitious tags." NYSDOT has a specific procedure for determining the seating capacity of a stretched vehicle.[71] The NYSDOT investigator explained, "I have a vehicle it says ten. But clearly it seats more than that. That's when I would have to go

[70] According to the NYSDOT Altered Vehicle Safety Inspection Procedures: "Title 49 Code of Federal Regulations Part 567 requires that all vehicle manufacturers, including all modifiers, alterers and repair shops provide a FMVSS certification tag or label on the vehicle. The FMVSS tag or label is placed on the vehicle hinge pillar, door-latch post, or the door edge next to the driver's seated position. For vehicles built in multiple stages, each entity that completes that stage will affix a supplemental FMVSS tag as required. You may see 'incomplete chassis' or other similar wording on multiple stage supplemental FMVSS tags. The final FMVSS tag should show 'MANUFACTURED BY' or 'MFD BY' or information showing that the vehicle was altered, 'ALTERED BY.'" "The OEM FMVSS certification labels must contain the following: Name of the Manufacturer; Month and Year of Manufacture; Gross Vehicle Weight Rating; Gross Axle Weight Rating; The Statement[:] 'This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards in effect on the date of manufacture shown above'; Vehicle Identification Number assigned by the manufacturer following the format and conventions specified in 49 CFR Part 565; Type Classification of the Vehicle as defined in 49 CFR Part 571.3; Multiple GVWR-GAWR ratings where more than one GVWR-GAWR tire rim combinations are possible on a vehicle." "The OEM FMVSS label must indicate the proper 'vehicle type' for which the vehicle is presented. These types must be either 'bus,' 'multipurpose passenger vehicle' or 'MPV,' 'passenger car,' 'school bus,' or 'multifunction school activity bus.'" "The Supplemental FMVSS Tag is attached by entities open to the public that alter or modify the vehicle that affects the vehicle's compliance with FMVSS, a label or tag must be attached in a similar fashion as the OEM FMVSS label or tag."

[71] "1. Identify the seating surface. All seat areas should have cushions that are a minimum of 15 inches in depth (measured without depressing the seat padding), a minimum of 16 inches in width. Any seating area with less than 15 inches in depth is not considered a seating area and should not be measured. A seating area that is uninterrupted and is not a corner is measured as a continuous seating surface. Any width dimension broken by a space of 1 inch or more shall not be calculated as continuous width. 2. A minimum of 35 inches of head room is required (if manufactured after Jan 1st, 200) for each seat. . . . 3. Measure each seat separately to determine how many passengers can fit in that area. 4. Measure each seating area in inches and divide by 16. Round all numbers down to the nearest whole number. The result will be the number of seating positions in the measured seating area. 5. Measure corner seating area as indicated in the diagram below. When measuring corner seating, a minimum of 24 inches is required to be considered a seat. 6. Measure main aisle space access to all seating positions. Main aisle space is required to provide a minimum of 10 inches in width from floor to ceiling."

measure, I would do some measurements based on the Federal Motor Vehicle Safety standards." Although it is a common practice for limousine builders to remove the front passenger seat to lessen the weight of the vehicle, the NYSDOT investigator said that such a move would not change the capacity of the original design:

> If the VIN tag says ten, that is, it's ten. If you take out the front seat, the capacity is still ten. If you take out the front seat and do something there, which is very common in limousines, like make a refrigerator or cooler or you weld over the seat fittings so nothing can be put there ever again easily, then it's still a ten. Until you get the manufacturer to retag it as a nine. So it's always what the VIN tag says."[72]

One legitimate way by which a vehicle can avoid NYSDOT bus inspections, if not the complications of commercial vehicle status, is through its operator's acquisition of an exemption letter. NYSDOT procedures with regard to altered vehicles, such as stretch limousines, specifically direct investigators to determine if a vehicle has been built by a Ford Motor Company QVM or a Cadillac Master Coachbuilder ("CMC"):

> Check to see if (QVM, CMC) is applicable. Note: Although the size of a vehicle manufactured by aftermarket modifiers that are registered under the Ford (QVM) or the Cadillac Master Coachbuilder (CMC) programs may be similar in size to other vehicles inspected, they may be specifically manufactured to be a 9 passenger or less vehicle and will not normally need to be inspected if they have not been modified after the final FMVSS tag was attached.

These classifications will be more fully discussed below.

Limousine companies with QVM-made and CMC-made vehicles have been able to acquire exemption letters from the NYSDOT, indicating that they did not have to undergo semiannual inspections: "[I]f your vehicle was built by a QVM qualified builder or CMC qualified builder, then that vehicle is exempt from . . . the [New York State] Department of

[72] The limousine in the July 18, 2015 crash had a tag that had listed its capacity as ten occupants; an exemplar limousine's tag had a listed capacity of nine occupants. Each vehicle had its front passenger seat removed.

Transportation" inspection requirements. One limousine company executive believed that QVM-certified vehicles are exempt from NYSDOT inspections because of their inherent[73] safety: "When it comes to the 120-inch stretch, the vehicles that I offer my clients are only QVM and CMC. . . . So when it comes to the [New York State] Department of Transportation, those vehicles are granted an exception because Ford or Cadillac is already certifying that they are safe and reliable." He continued: "[T]he QVM and CMC vehicles have an exemption because of the Ford and the Cadillac already regulating those vehicles." According to this limousine company owner, upon being shown proof that a vehicle was QVM-made, NYSDOT officials would look the vehicle over to make sure and then provide the exemption letter due to its inherently safe construction. "[T]he QVM and CMC vehicles have an exemption because of the Ford and the Cadillac already regulating those vehicles," he said.

A NYSDOT official emphatically denied that safe design or manufacturer self-regulation were the reasons for the exemption:[74]

> I don't know that we rely on it as being the gospel of a safe vehicle. In fact we don't. All we do is when a company comes to us and they say I would like to get this vehicle inspected, and we see that it's a QVM vehicle, by definition we know it's [at most] a ten-passenger-including-the-driver vehicle. It's not subject. That is not to say that they didn't modify it after the fact. So it may be a, they may be showing us a registration or document that it's a QVM vehicle but it could have been chopped in half and stretched out to fit 25 people. So we'll do our due

[73] The peace of mind that may come with a QVM-made product does not necessarily come without a price tag: "[T]o own a limousine that is not QVM would probably be five or $10,000 less expensive than buying a vehicle that is QVM. . . . [W]hen you purchase a QVM or CMC vehicle, then that vehicle is covered under manufacturer's warranty. So when I'm buying my Lincolns or my Cadillacs, they are covered under the manufacturer warranty that is bumper to bumper 150,000 miles." One 2013 stretch Lincoln MKT from the Limousine Builder cost $89,000. Another 120-inch stretch 2013 Lincoln MKT ordered from the Limousine Builder cost $75,000.

[74] The NYC TLC, by contrast, appears more to have equated a QVM or CMC pedigree with quality. Prior to 2011, the NYC TLC would not register stretched for-hire vehicles unless they had been stretched by QVM or CMC builders.

> diligence to make sure that vehicle is the not being put into service as an altered vehicle.

Therefore it is the vehicle's maximum occupancy, not the fact that it is a QVM- or CMC-built vehicle, that gains the vehicle an exemption letter from NYSDOT.

One such exemption letter reads, in pertinent part, as follows:

> This letter will certify that the vehicle described below, does not require an inspection by the New York State Department of Transportation (NYSDOT), as the owner has described the intended use of the vehicle as a type that does not fall under the jurisdiction of NYSDOT in accordance with the NYS Transportation Law and department regulations. . . . Rather than a NYSDOT inspection, the vehicle will require either a NYS annual vehicle or heavy vehicle inspection as required by New York State Department of Motor Vehicle regulations (15 NYCRR 79.2). . . . Reason for exemption: The vehicle has a seating capacity of 10 passengers or less (including the driver) at time of exemption. . . . Year: 2011 Make: Lincoln Model: Town Car – Limousine . . . Notes: QVM – 120 inch stretch – 10 passenger including the driver – front passenger seat is removed.

As the NYSDOT investigator explained, an exemption letter merely takes into account that a QVM-built, 120-inch stretch limousine would not have the occupancy capacity to make it rise to the level of a bus for semi-annual inspection purposes. A NYSDOT inspection, however, can be more thorough than a DMV inspection, especially with regard to high occupancy vehicles. One limousine company executive indicated the following portions of an effective annual inspection:

> I think it should have a lift that is sufficient to pick up a limousine and do, you know, underneath inspection and a full regular safety inspection. Only because these cars are cut, you have to make sure the welds are good, not corroded. That's what makes weak points in a car, if the welds were not done properly.

Now, with the creation of the Suffolk TLC, there exists another inspection mechanism. By registering a vehicle with the Suffolk TLC, a limousine owner acknowledges that the vehicle is subject to inspection:

> By signing and submitting the application form, the person applying acknowledges that [if] they are granted a SCTLC for-hire vehicle registration and

> are subject to compliance inspections by the Suffolk County Police Department, the Suffolk County Sheriff's Department or any authorized employee of the SCTLC, or other agents, as authorized by the Commissioner of the [Suffolk DLLCA].

IV. LIMOUSINE SAFETY

A. The Qualified Vehicle Modifier (QVM) Program

In stretch limousine construction, there is an inherent tension between the maximization of occupant capacity and the minimization of a vehicle's weight. The more passengers a limousine company can fit in a vehicle, the higher the price the company can charge its customers. Too much weight, however, will exceed the vehicle's maximum carrying capabilities. In limousine builders' attempts to fit the most passengers into a vehicle while lightening the limousine itself, the standards for vehicle components, including safety features, may be affected. In its 2008 Builders Guide for QVM vehicles, Ford Motor Company makes the following points about stretch limousines' weight:

> The mass weight of the Lincoln limousine conversion and its distribution throughout the vehicle is important to the design of body structure and to the durability of the chassis component systems such as brakes, tires, axles, etc. Use of lightweight interior materials is recommended. Exceeding the gage of materials specified in this builders guide may affect fit and structural function.

One limousine company executive, who also owns a motor vehicle repair shop, discussed the difficulties entailed in strengthening the sides of stretch limousines: "It's easy to say put heavier steel on the sides, bolster it up, . . . [but it] will make the vehicle too heavy, then it won't meet federal guidelines. . . . [W]eight factor is a big problem."

To make a stretch limousine, the builders, also known as upfitters, take base models such as Lincoln Town Cars and "literal[ly] cut these cars in half[.] [T]hey put one end on one end of the building, build the midsection and weld it all back together," said one industry representative.

The NYSDOT official described the process as follows: "They cut the thing in half and put a piece in and put it back together again. That's the simplest way to describe it." As a Motor Carrier Safety Section officer pointed out, stretching a limousine "requires extending the brake lines, the fuel lines, the chassis, and making it more reinforced to hold the extension." Given the nature of the stretching process, one limousine company officer stated: "you really have to enforce the middle of that car" for safety purposes. A limousine owner and collision repair shop emphasized the importance of making sure the components in a stretch limousine were attached properly: "[B]ecause these cars are cut, you have to make sure the welds are good, not corroded. That's what makes weak points in a car, if the welds were not done properly."

The limousine involved in the 2015 crash and the exemplar that was taken apart for inspection during the Grand Jury's investigation were both originally 2007 Lincoln Town Cars. The Lincoln brand is a division of Ford Motor Company, according to Ford's current QVM program manager. The QVM builder who had stretched the limousine involved in the crash, as well as the exemplar vehicle, (hereinafter, "The Limousine Builder") had stretched each vehicle 120 inches, bringing each body's length to approximately 28 feet.[75] Other vehicles, although not necessarily made by a QVM builder, have been stretched anywhere between 80 inches to 260 inches; one limousine company owner indicated that the most common stretch limousine is the 120-inch stretch. The maximum allowable extension of a QVM-built limousine is 120 inches.

Ford Motor Company had developed its QVM program in the wake of a tragic 1987 Lido Beach, New York limousine crash, in which members of a wedding party were killed when a collision ripped their vehicle apart. Public outcry prompted the National Highway Traffic Safety Administration ("NHTSA") to investigate the limousine industry; NHTSA found that many of

[75] The Limousine Builder has been a QVM builder for more than 20 years.

limousine builders either disregarded or were ignorant of the Federal Motor Vehicle Safety Standards.[76] In response, Ford Motor Company assembled a team of engineers to design a Town Car chassis to meet all federal safety requirements when stretched up to 85 inches; subsequent testing demonstrated that the Town Car chassis could be successfully stretched up to 120 inches. Ford Motor Company thereby created a limousine-modifier program called the "Qualified Vehicle Modifier" ("QVM") program. Ford openly distributed manufacturing guidelines for stretch limousines, based on its Town Car chassis, that its engineers believed would satisfy Federal Motor Vehicle Safety Standards. Ford initially paid QVM participants $2,000 to $3,000 for each Lincoln Town Car they properly converted.

A QVM-built vehicle does not mean that the vehicle itself has been subject to an inspection by Ford. QVM refers to Ford's approval of a limousine builder's stretching process rather than to a specific vehicle. "We are not necessarily blessing the design," said Ford's current QVM program manager. "[W]e review their manufacturing process, their materials. We review their assembly process to make sure they've got good control, good engineering management, things like that." Rather than embarking upon unannounced spot inspections, Ford conducts pre-arranged annual audits of its QVM builders to ensure that they are using the appropriate standards for construction. While it was producing Lincoln Town Car base models

[76] A NYSDOT official explained that the National Traffic Safety Board ("NTSB") "is a group under the USDOT that reports directly to the president on – what they do is investigate major crashes that occur in the United States, and all different modes of transportation, and then they make recommendations based on their findings to the various regulatory agencies such as [the Federal Motor Carrier Safety Administration] or NHTSA as to things they may be able to do to improve safety. And they may also make recommendations to the actual operators of the vehicles." The NYSDOT official described NHTSA as the oversight agency that enforces the Federal Motor Vehicle Safety Standards: "When NTSB does an investigation and they find that it was some kind of vehicle issue involved in the crash, that was a . . . contributing factor, then they would make a recommendation to [NHTSA] as to maybe this rule should be changed or certain practices you guys put out can be amended."

for stretching purposes, Ford held annual meetings for QVM manufacturers. In 2007, Ford sponsored a meeting at the Taj Mahal Resort and Casino in Atlantic City, New Jersey, paying for the QVM builders' hotel rooms and dinner at Morton's Steakhouse. In 2008, Ford invited QVM builders to the Paris Hotel in Las Vegas, paying for the builders' airfare and hotel rooms. Modifiers such as the Limousine Builder – again, the QVM builder that had stretched the limousine involved in the 2015 crash – were authorized to issue QVM certificates with the vehicles that they manufactured.[77] The QVM program has been in existence for approximately 24 years, but the number of QVM builders has shrunk over time. In 2006, there were 17 QVM builders across the country. In 2016, Ford was down to eight QVM builders, a decrease that the company's QVM program coordinator attributed to the economy and some limousine builders' decision to stretch base models from other companies, such as Cadillac.

In a 2003 agreement with the Limousine Builder, the builder of the limousine involved in the 2015 crash, Ford listed the following qualifications for a limousine builder to belong to the QVM program:

> To qualify for the QVM Program, Modifier shall: A) Complete or modify vehicles in the United States, Canada or Mexico. B) Complete or modify the types of vehicles identified by Ford as included in this Program. C) Make facility, personnel and records available for inspection and review by Ford for the purposes of rating Modifier's engineering capability, design and build process controls, and quality control procedures. D) Achieve a QVM rating for each facility that manufactures the types of vehicles identified by Ford as included in the Program. E) Adopt and follow Ford guidelines and recommendations as from

[77] A standard QVM certification letter reads as follows: "Please let it be known that [the Limousine Builder] is a Charter Company of Lincoln's[] 'Quality Vehicle Program' or Q.V.M[.] Program as it is known. [The Limousine Builder] has been in the 'Q.V.M. Program' for twenty-three (23) years and is recognized by New York's Taxi & Limousine Commission (or TLC) as being both a Registered NY Dealer and a Qualified Vehicle Modifier for Lincoln Town Car Limousines, Lincoln Navigator Limousines, and Ford Excursion Limousines. . . . Please be advised that the following Limousine has been built by [the Limousine Builder] and is built to QVM Standards by a QVM Builder. . . . 2013 Lincoln MKT Limousine White/Black 120" Limousine."

> time to time may be issued or updated. F) Make facility, personnel and records available for periodic reinspection. G) Send a representative to a yearly meeting at a mutually agreed time and place. The purpose of the meeting will be to improve communication by reviewing future product changes, new guidelines, and any requests from the qualified Modifiers. H) Notify Ford of any change in ownership of the Modifier in the facility, in its location, or of the addition of a new manufacturing facility. I) Maintain at all times a minimum limit of $5 Million per occurrence of Commercial General Liability insurance including products, completed operations and blanket contractual liability (or contractual liability coverage specific to this Agreement) with insurers rated at least A VI by A.M. Best Company, or other underwriters agreeable to Ford. The Modifier shall arrange to provide Ford with a certificate or insurance showing the coverage specified in this paragraph. The insurance policies providing the foregoing coverage shall provide that the insurance company issuing such policy shall give Ford at least 30 days prior written notice of any material alterations, including: substantial reduction of aggregate limits, if such limits apply; or any change or cancellation.

In the same agreement, Ford promised that, in order to support the QVM program, it would do the following:

> A) Provide administration and coordination for the Program. B) Visit and inspect Modifier's facility to determine a rating, and review the results of that rating with Modifier. C) Advertising and promote the QVM Program. D) Provide communication to Modifiers on current production engineering revisions and future product engineering revisions, including communication support through the Body Builder Advisory Service. E) Provide limited technical support for Modifier designs that interface with Ford systems (not to include Modifier system design) and guidelines for modifications.

B. Limousine Weight

The issue of vehicle weight significantly informed QVM builders' limousine modification decisions. A forensic automotive engineer explained the problem of weight for limousine builders:

> [O]ne of the issues with building these vehicles is trying to keep the weight down. They are trying [to] keep the weight down not only for, just to keep the economy better, but also because the braking systems, for example, are not modified to meet the extra weight requirements. So they are trying to keep the weight. The engine has to have enough power to properly accelerate, to perform, to go up

> hills, not that we have hills here, but to go up hills. And if you increase the weight too significantly, you will now have to modify how the engine operates and the brakes perform because it's a much heavier vehicle.

The Lincoln Town Car base model that Ford provided for its QVM builders was modified for livery service, featuring heavy duty brakes and heavy duty tires, because, as one limousine company points out, "you have to handle more abuse." Base models "come with a heavier duty package for the drive train, brakes, frames, springs, things of that nature," said a Limousine Builder representative. Some stretched vehicles "had a very heavy entertainment package in it or something like that, then in order to keep the weights under what our limits are, they would have to limit the seating capacity in the back. In some cases they had to take out the right front seat to make sure there was not somebody riding up there," said Ford's QVM program coordinator. Whereas some components were heavier in base Lincoln Town Cars destined for modification than they were in other vehicles, QVM-built limousines generally arrived at the end purchaser with their front-passenger seat removed. One limousine industry representative explained:

> [M]any coach builders in an effort to stay under the [weight limitations], bolted down the arm rest. There was an arm rest that flipped up. Many of the coach builders bolted it down and removed the passenger seat so that they can stay within their weight restrictions of how Ford told them they were supposed to build this car, while also being in the passenger size.

With regard to the removal of the front passenger seat, one limousine executive said, "it's certainly my understanding it really was the weight" that was at issue. Of the thirty to forty 120-inch stretch limousines that this individual obtained from the Limousine Builder, the company that had stretched the limousine involved in the 2015 crash,[78] "all of them had the front seat next to the chauffeur removed," he said. The limousine involved in the July 18, 2015 crash and the

[78] One limousine company executive had the following to say about Limousine-Builder-made vehicles: "[F]rom an overall standpoint of longevity, I have found that the [Limousine Builder] product is a good, sturdy build." Another said as follows: "[The Limousine Builder], they're the best ones in the country."

exemplar limousine each did not have a front-passenger seat installed. Moreover, in issuing its New Vehicle Limited Warranty, the same Limousine Builder instructed purchasers of its stretch limousines as follows: "The spare tire and jack are included with these vehicles but must be removed to keep the vehicles within the limits of the gross vehicle weight rating established by Ford Motor Company."

As per its manufacturer decals, the QVM-built 120-inch stretch limousine involved in the July 18, 2015 crash was configured to carry one driver and nine passengers in the back, for a total of ten occupants. At the time of the crash, it was carrying the driver and eight passengers. Although this and other QVM-built, 120-inch stretch limousines are not configured to carry more than ten people, one limousine industry representative testified that it is common for limousine companies to advertise that the vehicles can carry "the driver plus ten" because "quote unquote that is how it's always been done":

> [Y]ou are still seeing this, the ten-passenger limousines which, when we purchase them from the coach builder, typically had stickers on the back door, and depending upon the seat configuration, either said seven-passenger capacity, eight-passenger capacity or nine-passenger capacity. Everybody has been selling them – excuse me, almost every company that I know has been selling them as ten-passenger limousines.

On the day of an event, however, "if you were able to cram ten of you in the back of these cars, you were likely pretty miserable."

To determine a gross vehicle weight rating, a manufacturer determines the weight at the vehicle's maximum seating capacity and adds the weight of a full tank of gas and cargo. The gross vehicle weight rating is "the most the vehicle can ever weigh," said an industry representative. "[T]he more weight you put in a car, it takes that much longer to stop," stated one limousine company owner. For the limousine involved in the 2015 crash, its gross vehicle weight rating was 7,500 lbs., as shown on the Limousine Builder manufacturer tag in its

doorframe. The New York State Police reconstructionist estimated that the limousine weighed approximately 6,930 lbs. at the time of the crash.

C. Vehicle Safety Features

i. Airbags

Whether coming from a Lincoln Town Car or MKT base model, stretch limousine passenger compartments lack some of the safety features found in smaller vehicles. QVM-built limousines, although featuring driver compartment airbags, do not have airbags in the passenger compartment. A limousine company officer indicated that passenger compartment airbags might reduce the risks associated with breaking glass and items bouncing around the compartment in the case of a crash. The officer went on to say that air bags could come down over the windows in the case of an impact to prevent injuries from flying shards of glass. Another limousine company owner said that while the weight of such a system might be tolerable for a stretch limousine, technical difficulties would prevent an aftermarket addition to the vehicles:

> [T]hey're not that heavy. It's not a heavy object. The problem is when you, if you put in an aftermarket airbag system in, it's very hard to tie it into the original system of that limousine. . . . I don't see how they are going to do it. There are airbag systems that they make for the older cars that can be put in the steering column, but that wouldn't help you in a side airbag collision. They don't really make anything like that.

Relevant to airbag considerations are the different seating arrangements that are possible in QVM vehicles. QVM builders can, by using different seating configurations in the passenger compartment, produce 120-inch stretch limousines that have total seating capacities of nine or ten. Stretch limousines generally feature perimeter seating in which passengers sit with their backs against the interior side of the passenger compartment. Nevertheless, the variation in possible seating arrangements has made it difficult for manufacturers to install airbag technology

in stretch limousines. "Airbags by themselves are not going to completely eliminate intrusion,"[79] said Ford's design engineer, who said that without "certain regulated seat positions" it would be difficult for Ford to determine the best way to recommend an air-bag system in its QVM-built stretch limousines. "[I]n the stretch portion of limos you have a lot of variance in seating positions. It could be a front impact for a person in the front row of the vehicle. Could be a side-impact if you're facing sideways."

ii. Seatbelts

With regard to other safety features, a NYSDOT official stated that federal law and state law do not require seatbelts to be used in the back of limousines. If New York State mandated the use of seatbelts in the back of limousines, there would be no conflict with existing federal law, he added. Currently, in New York State, only the chauffeur must wear a seatbelt in a stretch limousine. "Occupants in the back of a limousine or any vehicle, without seatbelts on, are just projectiles, like anything else," a NYSDOT official said. "They are apt to get hurt during any type of incident whether it be a fender bender or severe crash." Although a limousine passenger compartment may be equipped with seatbelts, an industry representative reported that most passengers do not use them. Another limousine owner agreed that, despite signs in the vehicles recommending seatbelt use, "very rarely does the customer wear them, to be honest with you."

Ford Motor Company, in its 2008 Builders Guide, noted that "[d]eleting the right front passenger seat is not recommended by the QVM Engineering Office." Nevertheless, the 2008

[79] Another witness, a forensic automotive engineer, discussed the meaning of intrusion: "I'm talking about moving inward. The forces of intrusion are those that cause the outside of the panel to move toward the center line, the imaginary center line that travels from the rear to the front and the front to the rear of the car. So when I talk 'intrusion' I'm talking anything that is moving toward that center line, perpendicular, toward that imaginary center line of the vehicle."

Builders Guide anticipated the removal of front passenger seats in the process of stretch limousine construction:

> Once the front seat is removed, the rear securing bolts must be removed and the front bolt holes welded over. This process has been put in place to reduce the possibility of the front passenger seat being reinstalled after it has been delivered to the customer. If you must remove the front passenger seat to meet weight requirements, every effort must be made so a seat cannot be installed.

As for rear seating, the 2008 Builders Guide instructs that seat belts accompany each seating position:

> A designated seating position is defined as that portion of the seat surface that accommodates a seated passenger and must be at least 16.5 inches wide, but not more than 20 inches wide as measured between seat-belt anchorages. Each designated seating position must be equipped with a seat belt as prescribed by FMVSS/CMVSS 208.

The potential installation of additional safety features runs up against the reality of weight limits for stretch limousine. Because of this dilemma, one limousine company executive has wrestled with questions of limousine safety:

> [Y]ou could probably add a reinforcement bar here or there, but it depends on the weight you are installing into the vehicle to make it safer. It's a very hard recommendation. You can come out with roll cages and all different kind of tubings to make it stronger, but there again is the weight factor. So it's a hard recommendation.

This witness mentioned the possibility of roll cages being introduced into stretch limousines, but he again cited weight as an issue:

> Like a race car would be, if the car rolled over, the car would not really just crush, it would be more sturdy. The cars are made pretty good in rollover situations and stuff like that, but with side impacts it's very hard to make any stronger unless you put more steel in the car, which might make the weight a big situation.

With regard to front-end and rear-end crashes, repairs can cost between $1,000 and $50,000. "[T]he cars are made, like everybody's car is made, with front crumple zones, rear crumple

zones, so it takes the impact away from the driver," said one limousine owner. Without crumple zones on the sides of the vehicle, side-impact crashes can prove even more catastrophic.

D. Side-Impact Safety of Limousines

i. Anti-Intrusion Beams

To provide some protection to passengers from side-impact collisions, manufacturers will install anti-intrusion beams, also known as anti-intrusion bars, inside the doors and side panels of a limousine.[80] In the course of repairing limousines, one collision shop owner stated that he has seen some anti-intrusion beams "wider than others" – some manufacturers use a panel of flat steel, others use tubular steel. Different manufacturers place side-impact anti-intrusion beams at different heights off the ground, as well; the collision shop owner said, "It could be in the center, could be upper or even more toward the lower portion. There is no specific height . . . it has to be at." The height of an anti-intrusion beam is important in relation to the profile of a vehicle hitting the side of a limousine; the front of a high-riding pick-up truck coming up over a low-riding anti-intrusion beam could frustrate the protection that the beam was intended to provide.[81] Another limousine company executive testified that he had dealt with multiple motor vehicle crashes involving limousines, and he said that the profile of the vehicle that hits a limousine "absolutely" has much to do with the damage it causes. In the July 18, 2015 crash, the pick-up truck "went right over the top of the mainframe" of the limousine, noted a Limousine Builder representative.

---

[80] The anti-intrusion beam also contributes to the structural integrity of the vehicle.

[81] An automotive engineer had the following to say with regard to trends in high-profile vehicles on the roadways: "The trends have been obviously to SUVs and trucks. We still see an increase in more and more SUVs on the road, more and more sport utilities, more and more trucks with increasing heights. There are mandates on the positioning of bumpers and safety systems on the outside of these vehicles, but they are getting higher and heavier."

ii. **Crash Tests**

There is a great deal of confusion between limousine owners and limousine modifiers with regard to the crash tests that have been conducted on QVM-built vehicles. One limousine company owner claimed that "there were crash tests done on these vehicles. . . . [The Limousine Builder] has their own crash test that they did." Another limousine company owner agreed that the Limousine Builder was responsible for ensuring the safety of its vehicles, and Ford merely approved what the modifier had already determined as safe: "Ford will approve . . . the way they cut and stretch the vehicle from the Town Car, MKT, or whatever they're cutting and stretching. And Ford says okay, your procedures are great, we like your safety, we like what you do, you're a QVM builder." By contrast, a Limousine Builder representative indicated that thought that Ford was conducting the testing to justify the safety requirements in its QVM Builders Guides: "They do all the testing to meet the FMVSS standards." With regard to requirements for the Limousine Builder to conduct dynamic occupant side impact safety crash tests, he concluded, "There are none. They are done by QVM or Ford Engineering."

In association with its 2008 QVM Builders Guide, discussed below, Ford Motor Company's Vehicle Crash Safety Department issued a letter, dated June 18, 2002, in which it stated that it had conducted front and rear impact crash tests on the "longest wheelbase extension (120") conversion allowed by the QVM program." With regard to "Side Impact Performance" the letter indicated the following:

> The basis for applying engineering judgment to predict the side impact performance of the 2003 model year Limousine comes from the following: The 1998 base car side impact tests and 1998 base car and Limousine [Computer-Assisted Engineering (CAE)] models combined with the 2003 base car side impact tests.

The attachments to this letter included the crash test reports for various front and rear collisions with a four-door 2003 Lincoln Town Car. In an appendix, entitled "Side Impact Performance," Ford stated as follows:

> The basis for applying engineering judgment to predict the side impact performance of the 2003 model year Limousine comes from the following: The 1998 base car side impact test and 1998 base car and Limousine CAE models combined with the 2003 base car side impact test.

The appendix does not specify which length of limousine was the basis for such simulations; it does not indicate whether CAE models involved a 120-inch stretch version. The appendix on side-impact performance concludes: "Based on the information provided above, it is expected that the 2003 limousine would perform slightly worse than the 2003 base car, but would still be very well below the FMVSS acceptance criteria." There is no indication that any of Ford's side-impact crash tests actually involved real-world stretch limousines; the only references to testing involve CAE models.[82]

Ford's QVM program coordinator stated that Ford conducts side-impact tests on "the base car before it's stretched." Acknowledging that Ford conducts crash tests on its base vehicles for front- and rear-impact collisions, the Ford QVM program coordinator indicated that Ford would not conduct any side-impact testing with regard to the modified or stretched portion of a vehicle. He added that the crashworthiness of any side-impact anti-intrusion beam would be the responsibility of the upfitter, the limousine builder that stretches the vehicle. Ford did conduct a structural durability test in which a QVM stretch limousine "[got] shaken and bumped around and turned and all this kind of stuff, and you're looking for the integrity of the body to be

[82] In the Limousine Builder's business records, as provided to the Grand Jury, there is a report for the results of a brake performance test on a 2003 Lincoln Town Car with a 240" total wheelbase, but the company did not provide anything to the Grand Jury showing a crash test involving a T-bone crash similar to the type that occurred on July 18, 2015.

maintained," according to Ford's QVM program coordinator. The test did not involve any side-impact crash testing to the side panels of a modified vehicle, however.

iii. Side-Impact Testing Exemptions

In fact, the very size of 120-inch stretch limousines had exempted them from certain side-impact safety standards, said a design analysis engineer for Ford's automotive safety office. The engineer stated that, in the years of the Lincoln Town Car's construction, if the gross vehicle weight of a vehicle was more than 6,000 lbs. then the vehicle would be "exempted from the dynamic side-impact requirements of [Federal Motor Vehicle Safety Standard] 214." As such, he said, 120-inch stretch limousines using the Lincoln Town Car base model were exempted from the following test that otherwise unmodified Lincoln Town Car models had to undergo:

> It involves a cart, it's about a three thousand pound cart, basically to mimic a passenger car, a small midsize passenger car, about three thousand pounds. And it is propelled at about thirty-three miles per hour, at an angle, so it can simulate the T-bone type intersection where one car is traveling at thirty miles an hour and another car is stationary. There is some angulation as if you're coming to a T-bone type intersection. That is the cart that we use. And that test is performed on the Lincoln Town Car passenger car.

"Just on the modified portion we don't have dynamic standards," he said. "I don't believe we did just a dynamic test for that portion." Stretch limousines, however, even those stretched to 120 inches, would have to meet "strength requirements for the door beam and door structures," he added; vehicles up to ten thousand pounds gross vehicle weight are subject to those strength standards. Strength tests, however, are not crash tests; a strength test for a door would involve applying a steadily increasing amount of force on a door and determining the point of failure. In the days of the Lincoln Town Car's manufacture, Ford's design analysis engineer stated that Ford conducted "a strength test of the door structure and surrounding subsystem structure."

Ford's design analysis engineer spoke of Ford's inability to conduct meaningful occupant safety crash testing on stretch limousines based on the Lincoln Town Car base model: "We should know the seating location and the seating package so we can design for particular seating locations." As was discussed above with regard to airbags, because limousine builders use a variety of different seating configurations in the rear passenger compartment, Ford cannot accurately anticipate where the occupants would be for a given vehicle, said the Ford engineer. And because Ford does not know where the occupants will be sitting in the modified Lincoln Town Car, Ford does not attempt to design an appropriate occupant-safety system for each variation, he concluded. Ford did, however, provide suggestions on seating configurations in its 2008 Builders Guide.

Federal side-impact protection standards have changed since the production of the 2007 Lincoln Town Car. Ford's design analysis engineer indicated that, in the last three or four years, new standards have been phased in, requiring dynamic side-impact testing for vehicles with a gross vehicle weight of up to 10,000 lbs. The new testing involves sending the side of a vehicle into a pole at 20 miles per hour. Nevertheless, stretch limousines enjoy a "manufacturing class exception," the Ford engineer said. The "agencies have not included modified weight in that class," he explained. Again, the Ford engineer pointed to uncertainty regarding seating as the reason for the lack of testing at Ford's level: "See, the thing is for the manufacturer to have a basis to make a design for occupant protection. We should know the seating location and the seating package so we can design for particular seating locations."

Ford took the results of side-impact tests on its Lincoln Town Car doors, which themselves have anti-intrusion beams, and extrapolated recommendations for the anti-intrusion beams in QVM-built stretch limousine side panels. "So the principles learned from door design

are extended as recommendations and guidelines for other body panels," said Ford's design engineer. These recommendations took the form of what has previously been stated as the 2008 Builders Guide standards for side-impact protection.

In 2001, the Limousine Builder had ordered its own crash test pertaining to its stretch limousines' side-impact-crash protection; significantly, however, the side panels containing anti-intrusion beams were not the subject of the test. The report relating to the crash test states the following:

> This final test report contains the results from a test program performed at Veridian Engineering Transportation Sciences Center for [the Limousine Builder] on July 26 through August 1, 2001. The test program included FM VSS 207/210 (seating system anchorage and seat belt anchorage strength) for two (2) rear facing seating positions and FM VSS 214 (side door strength) on a 5th passenger, 52" door.

This crash test addressed the passenger-side door immediately to the rear of the front passenger door, not the side panel behind it.

V. THE LIMOUSINE STRETCH PROCESS

A. The Modification of the Limousine Involved in the 2015 Crash

With regard to the limousine involved in the July 18, 2015 crash, Ford Motor Company finished production of the unaltered 2007 Lincoln Town Car in December 2006. At the time, it was a four-door black Lincoln Town Car which, minus dealer account and fleet account adjustments, the Limousine Builder bought for $37,816.15. The vehicle was not just a Town Car, however; in its 2008 Builders Guide, Ford described the additional components that base Lincoln Town Cars feature in anticipation of their modification into stretch limousines:

> Limousine Builders Package (418) (7,500 pound GVWR) Executive Series Only, Unique Components: Steering gear – 72.18mm rack travel; 485 spring rate (HD); Engine oil cooler; Unique upsized rear stabilizer bar; Police shock in front; Base

> shock absorbers in rear; 3.55 ratio Traction-Lok heavy-duty axle with 4-wheel disc brakes; Unique ABS brakes (4-wheel disc); 245/60TR17 (reinforced) tires; 17x7 aluminum wheels-8 spoke; Full-size spare tire with matching aluminum road wheel in QTR Panel; 78-amp heavy-duty/extended life battery; 130-amp alternator; Heavy-duty frame; Heavy-duty jack; Manual front passenger seat; Rear seat armrest with cupholders; Wider opening rear door hinges (trunk kit); Fuel tank protection kit (trunk; Engine fuel rail shield (trunk).

The Limousine Builder took 366.00 hours of work to put together the limousine, including 4.00 hours of quality control. By March 2007, the Limousine Builder had converted the vehicle into a 120-inch stretch limousine with capacity for 10 occupants – the driver and nine in the passenger compartment. The modified vehicle had a maximum load of occupants and luggage of 1,600 lbs. and its Gross Vehicle Weight Rating was 7,500 lbs.

Along with the base model, Ford supplied the Limousine Builder with a 2007 Town Car Incomplete Vehicle Manual. The manual provided the following guidance to the Limousine Builder with regard to Federal Motor Vehicle Safety Standard 208, Occupant Crash Protection:

> This vehicle, when completed, will conform to Standard 208, Occupant Crash Protection, if: the Unloaded Vehicle Weight is a minimum of 2335 kg (5150 lbs) and does not exceed 2495 kg (5,500 lbs). The maximum GAWR's and GVWR, as identified on the cover of this document, are not exceeded. The steering column, steering intermediate and coupling shaft, steering wheel, steering gear, steering linkage, related structural components and attaching hardware as installed by Ford Motor Company are not removed, relocated, altered or modified in any way. No components are added which could influence the rearward displacement of the steering column. The front seat belt components installed by Ford Motor Company are not removed, relocated or altered. Front seats installed by Ford Motor Company are not removed, relocated, or altered. No additional components or modifications are made to interior areas from the B-Pillar forward. The Air Bag Supplemental Restraint System as originally installed, is not removed, relocated, modified or altered in any way. The Air Bag Supplemental Restraint System Information Label that is affixed to the driverside sunvisor is visible, and not altered, modified or removed. No alterations or modifications are made to the body, chassis (including front bumper), drivetrain, body mounts or front suspension from the B-Pillar forward. The seat belt warning system, as originally installed, is not removed, replaced, modified or altered in any way. No compressible material is installed between front seat assembly and the floor pan. Any seat belt assemblies added to a vehicle must conform to the applicable requirement of this standard. Any extension of the vehicle frame must be

> constructed and attached so as to perform as a continuation of the vehicle frame when the completed vehicle is tested in any manner specified by applicable provisions of Standard 208.

In addition, the manual provided the following guidance to the Limousine Builder with regard to Federal Motor Vehicle Safety Standard 214, Side Impact Protection:

> This vehicle, when completed will conform to Standard 214, Side Impact Protection, if: No alterations, modifications or replacements are made to the door assembly structure, surrounding door opening structure, door hinges, door latches and strikers, or attaching hardware as provided by Ford Motor Company. Any side door and surrounding door opening structure added to this vehicle, if a designated seating position is within 254 mm (10 in.) inboard of that door, must conform to the requirements of this standard. Canadian Requirements: CMVSS 214, Side Door Strength is applicable to passenger cars only.

Ford also published Builders Guides to govern the stretching of Lincoln Town Cars by QVM companies. There were 1990, 1998, 2003 and 2008 editions of the guide, with multiple revisions and updates between these years. For example, the 1990 Builders Guide dealt with 60-inch and 75-inch extensions of Lincoln Town Cars; the 2003 and 2008 Builders Guides included the 120-inch limousine as an option for QVM builders.

The 2008 Builders Guide states that it governs conversions with regard to 2007 Lincoln Town Cars and "will be applicable for all further model years until modified." The 2008 Builders Guide includes the following qualifications:

> This builders guide is not a 'how-to' book; it should be used as a checklist to help ensure that certain important steps in the modifying process have been considered. While Ford is providing these guidelines to assist modifiers, it does not warrant the products, methods, materials, the workmanship of the modifier, or against failure that result from the modification of a vehicle. Following the guidelines and procedures contained in this guide does not assure individual modifiers that the products they manufacture comply with U.S. or Canadian Federal Motor Vehicle Standards in effect at the time of the modification. The guidelines set forth are based on engineering analyses of typical extended wheelbase vehicles. If followed, the modifier's efforts in certifying vehicles to applicable standards should be aided. Compliance testing that may be required for certification of specific vehicle configurations or constructions is, however, the sole responsibility of the individual modifier.

The 2003 edition of the Builders Guide[83] had indicated the following requirements for the anti-intrusion beam in the side of the vehicle:

> The side impact beam for the extended section of the converted vehicle must meet or exceed the following guidelines: 1010 steel (SAE #J526); Tubular design – standard 2" x 2" x 0.09511 square tube or other cross-section of equivalent or greater bending strength; Maximum unsupported span (distance between B-pillars) of 70 inches; Rigidly attached at each B-pillar.

As the forensic automotive engineer pointed out: "[I]t just indicates that it needs to be rigidly, quote, rigidly attached to each B-pillar. It doesn't indicate much more. It doesn't indicate anything else about the attachment, only about the material that's to be used in the beam itself." A Ford design engineer explained the phrase "rigidly attached" as "usually welded or bolted." The 2008 Builders Guide provided the following requirements:

> The side impact beam for the extended section of the converted vehicle must meet or exceed the following guidelines: 3.9 Mechanical Requirements: The steel tube furnished shall meet the following mechanical properties (when tested per ASTM A370):

Mechanical Properties	**Type 1 Grade A**	**Type II Grade A**	**Type II Grade B**
Ultimate Tensile Strength (Mpa)	1475 min	1500 min.	1300 min
Yield Strength (Mpa)	1170 min	1410 typ	1230 typ
Total Elongation (in 50mm)	10% min	3.5 min	3.5 min

> 1010 steel (SAE #J526); Tubular design – standard 2" x 2" x 0.09511 square tube or other cross-section of equivalent or greater bending strength; Maximum unsupported span (distance between B-pillars) of 70 inches; Rigidly attached at each B-pillar.

[83] The cover letter to Ford's 2003 QVM Builders Guide, dated January 31, 2002, indicated that the new Builders Guide must be used in conjunction with the 1998 Builders Guide and the Engineering Addendum Reference Book.

Another portion of the 2008 Builders Guide again indicated that "[r]oof bows and side anti-intrusion beams are required." The 2008 Builders Guide also had the following to say about QVM builders' maintenance of high standards in production:

> A formalized Process and Quality Assurance system may be helpful in consistently producing high-quality products. An overview of some of the key items for such a system are outlined in this section. . . . 'Critical' torques, welds and parts should be designated by engineering and monitored by the Production and/or Quality Assurance activities. A 'critical' item is a torque or weld or part that could have a significant impact on the quality or safety of the vehicle. Examples of 'critical' items include seat belt bolts/nuts and the torques used for installation, fuel system bolts/nuts/torques and the welds used for seat belt/shoulder harness anchorage bars/plates.

The 2008 Builders Guide provides a series of steps for a QVM builder to follow at each state of the stretch limousine's production. Toward the end of the process, the Guide specifies that the builder do the following:

> Fabricate the body side panels in these assembly fixtures. To simplify the construction, portions of door inner panels can be used; a front segment of the rear door and a rear segment of the front door. These segments will be connected by new upper, middle and lower members followed by an anti-intrusion beam and outer skin. (See illustrations page 18.)

This step is followed by the following: "Fabricate and install the extended section side impact anti-intrusion beams. (See Engineering Guidelines-General Information [Manufacturing Notes].)." The reference to page 18's illustration is puzzling, however. That illustration depicts a "bodyside panel sub-assembly" that features a wide, flat anti-intrusion, beam, rather than the tubular steel specified in the manufacturing notes earlier in the Builders Guide. A Ford design engineer acknowledged that "[T]he illustration shows that it is a flat banner model." The 2008 Builders Guide's Manufacturing Notes indicate the need for "[r]ustproofing" and the Conversion Sequence specifies that QVM builders "[c]oat non-galvanized surfaces and all exposed welds with rust inhibitor. Paint and/or undercoat frame and underbody areas."

Upon the completion of the stretch limousine that ultimately became involved in the 2015 crash, the Limousine Builder issued the following statement regarding the vehicle's conformity with federal occupant-crash-protection-standards:

> This vehicle as completed by CCB conforms to [Federal Motor Vehicle Safety] Standard 208, Occupant Crash Protection, since: The maximum GAWR (3825 lbs Front, 3675 lbs Rear) and GVWR (7500 lbs) as identified in the latest version of the QVM Limousine/Hearse Builders Guide are not exceeded. The maximum unloaded vehicle weight is a minimum of 2335kg (5150lbs) and does not exceed 2495kg (5500lbs) as identified in the latest version of the QVM Limousine/Hearse Builders Guide. The steering column, steering intermediate and coupling shaft, steering wheel, steering gear, steering linkage, related structural components and attaching hardware as installed by Ford Motor Company are not removed, relocate, altered or modified in any way. No components are added which could influence the rearward displacement of the steering column. The front seat belt components installed by Ford Motor Company are not removed, relocated or altered. Front seats installed by Ford Motor Company are not removed, relocated or altered. No additional components or modifications are made to interior areas from the B-Pillar forward. The Air Bag Supplemental Restraint System as originally installed, is not removed, relocated, modified or altered in any way. The Air Bag Supplemental Restraint System Information Label that is affixed to the driverside sunvisor is visible, and not altered, modified or removed. No alterations or modifications are made to the body, chassis (including front bumper), drivetrain, body mounts or front suspension from the B-Pillar forward. The seat belt warning system, as originally installed, is not removed, replaced, modified or altered in any way. No compressible material is installed between front seat assembly and the floor plan. Seat belt assemblies added to a vehicle conform to the applicable requirements of this standard. Extension of the vehicle frame is constructed and attached so as to perform as a continuation of the vehicle frame when the completed vehicle is tested in any manner specified by applicable provisions of Standard 208.

The Limousine Builder also issued a statement of conformity with regard to federal side-impact protection standards:

> This vehicle as completed by [the Limousine Builder] conforms to [Federal Motor Vehicle Safety] Standard 214, Side Impact Protection, since: No alterations, modifications or replacements are made to the door assembly structure, surrounding door opening structure, door hinges, door latches and strikers, or attaching hardware as provided by Ford Motor Company. Side door and surrounding door opening structure added to this vehicle, if a designated seating position is within 254 mm (10 in.) inboard of that door, conforms to the requirements of this Standard.

The Limousine Builder sold the now nearly 28-foot-long limousine to the Limousine Company for $71,500 before tax. A revised sales order indicated that the Limousine Company was trading in a 2005 120-inch-stretch Limousine Builder limousine, for a trade-in allowance of $40,000. The Limousine Company, having taken delivery of the limousine on or about March 5, 2007, assigned payment of a $1,000 Lincoln customer cash incentive to the Limousine Builder to be used as part of its downpayment.[84]

Along with the modified limousine, the Limousine Builder issued a letter to the Limousine Company, dated March 5, 2007, indicating the following:

> The vehicle above was built by [the Limousine Builder] under the Ford QVM (Qualified Vehicle Modifier) program and complies with the FMVSS Brake Standards effective on the date of manufacture. The gross weight of the above vehicle cannot exceed 7500lb/3402kg. The stretch of this vehicle does not exceed 120 inches.

B. Safety Features in the Limousine Involved in the 2015 Crash

The Limousine Builder – again, the company that stretched limousine involved in the 2015 crash – production manager who has supervised the production line for the QVM process for approximately 17 years described his company's role as follows: "Basically, we're the fabricators. We cut, obviously, the car in half, and we fabricate the middle car parts of the car." In the period between 2007 and 2011, the Limousine Builder would stretch approximately 150 Lincoln Town Cars per year. Since the transition to Lincoln MKT base models, the Limousine Builder now stretches approximately 100 Lincoln limousines per year.

[84] For stretched QVM Town Cars, Ford offered end-user incentives, ranging from $750 to $2,000.

The Limousine Builder's representative said that his company built the limousine involved in the 2015 crash to the standards of the 2008 QVM Builders Guide. In a Limousine-Builder-modified stretch limousine, the company uses the original Lincoln Town Car doors – "two forward and two aft" – and manufactures the other doors in-house, said a Limousine Builder representative. With regard to the side panels of the stretched portion, the Limousine Builder makes them in-house by rolling flat sheets of steel. The Limousine Builder obtained the side-impact anti-intrusion beam and other components from a QVM-certified supplier, Infinite Innovations. The Limousine Builder representative indicated that "[w]e are required to use a certain bar that is supplied to us through a QVM supplier." With regard to this kind of side-impact protection system, the Limousine Builder's representative said, "That is what is required for us to use in the QVM program."

The anti-intrusion beam itself spans approximately 54 inches and weighs about eight lbs. A piece of tubular steel that length costs the Limousine Builder approximately $50, and the steel that makes up the mount costs even less. The Limousine Builder's representative indicated that, while his company obtained the beam itself from Infinity Innovations, the Limousine Builder purchased the flat steel stock and cut the mounts for the limousine involved in the July 18, 2015 crash. The Limousine Builder then did a "MIG-weld, full seam weld" to connect the mount and the intrusion beam, one of the limousine builder's officers said. "A MIG weld is a machine that actually melts steel together. . . . A MIG weld is basically you put a ground to a metal part and then you take a wand. When you activate the wand, it actually sends a current which burns the steel together." The Limousine Builder's representative indicated that a weld wire of .035 steel came out of the welder and melted to create a weld of about one-quarter-inch thickness. With regard to attaching the anti-intrusion beam to the mount, the Limousine Builder used a MIG

weld, and a thickening should have resulted from the melted steel wire at the place where the bracket and beam are joined. With regard to the mounts, the limousine builder's representative said, "These would be mounted rigidly to the pillar itself with a backing plate that would be all welded together as one. . . . They would be MIG welded." With regard to the welding of the rocker panel to vehicle pillars, he added: "Those would be called a spot weld. . . . Basically a contact that hits and melts the steel together is the spot weld. . . . A MIG weld you would have to drill a hole into it and do what we would call a puddle weld."

Today the Limousine Builder still uses the same type of anti-intrusion beams in the sides of its 120-inch stretch Lincoln MKTs. However, the Limousine Builder's stretch Lincoln MKTs now feature two anti-intrusion beams on each side. The lower is about seven inches higher than the one in the 2007 Lincoln Town Car and "six inches above that there's another unit with gussets attached," said a company representative. The Limousine Builder representative explained the reason for the change: "We did a [Compressed Natural Gas] test for some cars that were being tested for natural gas conversion, and when we did the building of the natural gas cars we were required to have crash tests done ourselves, and we had to build the car strong enough for the fuel not to leak out of the cylinder."

C. Ford's Audits of the Limousine Builder

More than a decade prior to the crash, the Limousine Builder's side-impact anti-intrusion beams became subject to the criticism of Ford's annual audit. On October 4, 2004, the Ford Program Coordinator, QVM Limousine / Hearse Programs, wrote a memorandum, with the subject of "2005 QVM Follow-Up Memo," to officers of the Limousine Builder. In this memorandum, the Ford Program Coordinator summarized the open items noted during that

year's audit and instructed that "[d]ocumentation demonstrating compliance with these items must be submitted to the QVM Engineering Office." The Ford Program Coordinator indicated that there was a "Mandatory Process Improvement" required regarding the side-impact anti-intrusion beam: "Add a reinforcement to both A and C pillars so the beam support is attached to more than just the pillar flange. Show with a process sheet and/or digital photo."

The Ford Program Coordinator gave the Limousine Builder a week to comply, and the Limousine Builder duly photographed its new installation configuration, featuring mounting brackets welded to the pillars that framed each end of the side panel.[85] This was the configuration that would appear in both the crashed limousine, as well as the exemplar vehicle. In one of two photographs, a substantial amount of welding material is shown around the place where the mounting bracket meets the pillar. In addition, the Ford Program Coordinator pointed out that the Limousine Builder had to follow up on written and visual process direction: "Lack of visual written and visual direction throughout the manufacturing process was noted. The Process Book given to [the Limousine Builder] at the QVM meeting will/should direct you to see where this is lacking. Process Book discussed."

In building its stretch limousines, the Limousine Builder used In Process Quality Inspection Checklists, which detailed the necessary actions at each work center with regard to the side-impact anti-intrusion beams and other components. The Limousine Builder updated these checklists on November 14, 2005 and included the new specifications regarding the side-impact anti-intrusion beams. On the checklists were actions for the Limousine Builder's employees to complete at the company's Panel Work Center, among others. At the Panel Work

[85] A Limousine Builder representative denied that the company had to change its anti-intrusion beam mounting system. "That's the only way they've ever been attached," he said of the configuration in the vehicle from the 2015 crash.

Center, Standard Operation Steps 11, 12, 19, and 24, several of which were in bold type and starred so as to indicate they were "critical processes," dealt with the side-impact anti-intrusion beams, as well as panel welding: "11. Weld side impact beam to car with the bottom of beam 8" from the car outer floor; 12. Weld side impact beam support plate to pillar. . . . 19. Weld panels to car welding every 2 ½ inches apart. . . . 24. Grind all welds & excess fusor." The Limousine Builder's In Process Quality Inspection Checklist for the Panel Work Center specified the following: "Side intrusion beams positioned and tubing welded to B-Pillars. . . . Side impact beam support plate installed."

Subsequent Ford audits did not discuss the Limousine Builder's new side-impact anti-intrusion protection beam mounts or the beams themselves. As part of the limousine stretching process, vehicles would be accompanied by quality control checklists that included sections for each stage of the modification. In Ford Motor Company's 2006 QVM Follow-Up Memo, dated December 8, 2005, the QVM Coordinator did indicate that the Limousine Builder needed to take the following action:

> Make sure that travelers are filled out in the proper order of manufacturing. We noticed vehicles in areas that had missed sign-off sheets. These sheets say that the vehicle must not move any further until complete. The vehicles had moved without being signed off. This is a process improvement that will insure end of line quality.

The following year, in October 2006, Ford's QVM Coordinator notified the Limousine Builder that it would be subject to a 2007 annual audit and specified particular processes that would be checked. The follow-up report of that audit required the Limousine Builder to "[l]ook into visual aids at key areas and critical items of the build process to ensure all workers in the area are reminded on a constant basis of the importance of the procedure."

Despite the 2006 QVM follow-up's findings with regard to the problems of incomplete checklists, the paperwork for the construction of the vehicle ultimately involved in the 2015 crash revealed significant gaps in quality control tracking. As part of this Grand Jury investigation, the Limousine Builder provided what it titled as "Additional Vehicle Records, 2007 Lincoln Town Car, 1L1FM88W87Y616205." These records included the in-process quality checklist for the limousine involved in the crash. Of the 15 pages of checklists, only five pages had any checks on them. The vast majority of the checklist items had not been checked off or signed off. There was no check on the documents for the following items: "Rocker Panels – Floor – Roof Rails – Roof Bows welds inspected"; "All B-Pillars dimensionally checked and welds inspected"; "Side intrusion beams positioned and tubing welded to B-Pillars"; and "Side Impact Beam support plate installed." Of the relatively few items checked on the checklists, several dealt more with the limousine's appearance, rather than its structure: for example, "headliner for proper appearance," "moldings aligned," "painting," and "vinyl top with no bubbles."

D. Analysis of an Exemplar Limousine

In order to aid the Grand Jury investigation, one limousine company owner made an undamaged, 120-inch-stretch 2007 Lincoln Town Car, modified by the same Limousine Builder that had stretched the vehicle involved in the 2015 crash, available to the New York State Police as an exemplar vehicle. On May 25, 2016, a New York State trooper reported to a local collision shop to examine the exemplar 120-inch stretch limousine, made by the same manufacturer in the same year, 2007, as the limousine that had been involved in the July 18, 2015 crash. Collision shop employees dismantled the vehicle, and the State Trooper took pictures, measurements, and

a video recording of the event. The collision shop worker who opened up the limousine's side panel for the New York State Trooper was able to do so without damaging the limousine itself. The process to expose the side-impact anti-intrusion beam for inspection took less than five minutes. The video recording, as well as the State Trooper, were available to the Grand Jury during its investigation.

In order to view the side-impact anti-intrusion beam within the passenger-side vehicle panel, between the "C" and "D" pillars,[86] a collision shop employee had to remove the beverage bar that was inside the limousine. The back of the beverage bar was set into the side panel. Although there was a single anti-intrusion beam present inside the side panel, the beverage bar's back was set inside the panel above the anti-intrusion beam in such a way as to have prevented another, similar anti-intrusion beam from being installed higher up within the side panel. Because of the beverage bar's placement, the State Trooper said, "I don't feel there would be room to put a similar [intrusion beam] the same way that is constructed here, up higher."

Upon the removal of the beverage bar, the exemplar's side-impact anti-intrusion beam became visible, running from one pillar to the other. The approximate length of the beam was 52 inches, according to the New York State Trooper. The approximate thickness of the tubular anti-intrusion beam was one-and-a-quarter inches, he added. Each end of the anti-intrusion beam was fastened to a pillar: the end closest to the front of the vehicle was attached to the "C" pillar, and the end closest to the rear was attached to the "D" pillar. The anti-intrusion beam was attached

[86] The passenger side of the exemplar limousine featured the following, working from front to rear: the original door from the driver's compartment, framed by "A" and "B" pillars; a second door immediately to the rear of driver's compartment door, framed by the "B" and the "C" pillars; and a stretch of side panel, framed by the "C" and "D" pillars. As the forensic automotive engineer described it: "For reference purposes, at the windshield post there is a pillar that we call the A-pillar. The pillar behind the forward door is the B-pillar. The pillar between the B-pillar and/or where the door latches for the intermediate door here would be the C-pillar, and another pillar, the D-pillar and we end with E at the back, at the rear door."

to each pillar by means of a welded mount; the end of the beam was welded to the mount, and the mount was welded to the pillar. The bracket was approximately two inches in height. The New York State trooper was able to insert his fingers behind the support bracket, demonstrating "a void between the sheet metal of the exemplar limousine in comparison to where the bracket reaches," he said. "So there is an empty space in between the actual bracket and the sheet metal." The New York State trooper also investigated a exemplar limousine's passenger-side door behind the driver's compartment, between the "B" and "C" pillars. The interior of the door also featured an anti-intrusion beam, which stood approximately 21 inches from the ground outside.

As part of the investigation, New York State Police personnel had taken measurements of an exemplar Dodge Dakota, which was the vehicle that had hit the limousine on July 18, 2015. They found that the pick-up truck's front bumper was covered in plastic, and that behind the bumper cover was the bumper's metal frame – approximately seven inches in width. From the ground to the bottom of the metal portion of the bumper, the distance was approximately 17-and-a-half inches. The plastic portion of the bumper sat approximately 23-and-a-half inches off the ground. So with regard to the vehicles involved in the July 18, 2015 crash, the plastic part of the Dodge Dakota's front bumper would have passed over the limousine's side-impact anti-intrusion beam and the metal portion of the Dakota's bumper would have struck the intrusion beam directly.

E. Forensic Automotive Engineering Analysis

i. Expert Qualifications

The Grand Jury heard testimony from a forensic automotive engineer who had worked in the industry for 27 years. The engineer's firm conducts vehicle analysis, specializing in damage analysis and failure determination – "why cars crash," as he stated. He had specialized training through professional associations and had participated in programs that addressed specific types of vehicle systems and vehicle design aspects, including brake systems, vehicle construction, and electrical systems. The witness was a licensed New York State professional engineer, a certified Master Collision Repair Technician, and Master Automotive Repair Technician. He presents regularly to peer associations, including those involved in accident reconstruction and investigation. He also has presented his methodologies and techniques to members of the Suffolk County Police Department, New York County Police Department, postal inspectors, and private engineers.

ii. Forensic Examination

On June 15, 2016, the forensic automotive engineer personally examined the vehicles involved in the July 18, 2015 crash at the Westhampton Police Impound Yard. During the course of his time at the impound yard, he performed an examination to establish the structural integrity of the limousine, "why it may not have stayed together the way it should have as a result of the collision," as he stated. He looked at areas where components moved, parts deformed, welds failed, and flooring tore to establish why these items responded the way that they did.

iii. Side-Impact Anti-Intrusion Beam Examination

While he was at the impound yard, he examined the remains of the side-impact anti-intrusion beam that had been on the passenger-side of the limousine, the side that the pick-up truck had hit.[87] The anti-intrusion beam had been cut in half by a jaws-of-life device during rescue efforts the day of the crash; on June 15, 2016, one half of the anti-intrusion beam was still attached to the "D" pillar by a mounting bracket, and the other half was loose in the vehicle, no longer attached to the "C" pillar. When the two pieces of the damaged beam are held together, their total length is approximately 52 inches. The intrusion beam was made of hollow, tubular steel and was approximately an inch and a half in diameter, rather than the two inches referenced in the 2008 QVM Builders Guide. Observing the portion of the vehicle that had been intruded, the automotive engineer determined that the "C" pillar had been the focus of the primary impact forces. "[I]ndividual components do not prevent the intrusion on their own," he said. "It requires the system, the integrity of the entire system to be held together. That is represented in part by an intrusion beam that is located both in doors and in the side body panel."

The automotive engineer explained that vehicle manufacturers place anti-intrusion beams in doors and in side panels of stretch limousines for intrusion-prevention purposes. The side panel itself only offers slight resistance to intrusion; the beam within the side panel is the primary defense against such forces, as it pulls on the two pillars to which it is attached in absorbing the force of a crash. The engineer reiterated: "Side impact protection is a system. Side impact protection is a number of components working together." The anti-intrusion beam sits close within the skin of the side panel so something that does hit the panel does not have far to go before encountering the beam.

[87] The Limousine Builder's representative also identified the beam about which the automotive engineer was testifying as the passenger-side anti-intrusion beam.

With regard to the anti-intrusion beam from the passenger-side side panel, the automotive engineer could see the compression of the beam at the cut location, where the jaws of life had pinched and then severed the beam. The beam itself was slightly bowed inward, but the crash did not appear to significantly deform its tubular steel. "Had the beam had significant bend to it, it would have reduced some of the intrusive forces. That did not occur," the engineer said. The mounts that had attached the anti-intrusion beam to the pillars, however, showed signs of great distress. The end of the loose portion had bent nearly 90 degrees; the other end, which was still barely hanging onto the "D" pillar, also demonstrated significant deformity. In fact, when the automotive engineer reached for the still-attached end, the piece fell off in his hands, separating easily from the pillar.

F. Forensic Examiner Conclusions

i. Anti-Intrusion Beam

From his inspection, the automotive engineer found that it was not the anti-intrusion beam that had failed during the crash. "I observed the intrusion beam [between the C and D-pillars on the passenger side] had not failed as a result of the collision forces," he testified. Instead, the beam's mounts had come loose from the pillars to which they were attached. He noted as follows:

> The mounting of the beams was also significant because although they appear to remain attached during the majority of the collision event itself, the original connections to the structure of the vehicle showed indications of poor welding and connection to the pillars where they are meant to be welded.

ii. Welding Failures

The forensic automotive engineer drew the Grand Jury's attention to the end of each of the anti-intrusion beam's mounting bracket. These were the portions of the beam's mounts that

had been in direct contact with the "C" and "D" pillars. He indicated that "this area is intended to be welded to the pillar through another piece of steel that also welds to the pillar." Pointing out what he considered a scarcity of weld material on the end of one bracket, the automotive engineer told the Grand Jury that the weld was "extremely poor":

> This area of weld material failed. It shows that it failed. Now at what point in the collision, we are not sure when it failed, but it did fail. . . . The weld not only shows it's insufficient in contact along the sides, it shows there is no penetration of the weld area into the material itself.

The engineer drew similar conclusions from the end of the mounting bracket from the other end of the anti-intrusion beam:

> Actually, there is less weld on [the other bracket]. It's almost, in a sense, absent. We are not really sure how it actually stayed in place. This issue of poor welding was observed not only on this intrusion beam but we found it in other areas of the vehicle, especially in that side system that we are so concerned about and outside the manufacturer's original systems.

The engineer did not recall seeing any welding material left on the pillar when the beam swung free. The Limousine Builder's representative testified, however, that there would "not necessarily" be any welding material left on the end of a component when a weld breaks.

The automotive engineer explained how the welding process should have worked:

> The welding process is one where the two materials being welded are melted together and a filler is added so you create one homogenous seam. In this case, the weld did not create that condition. The other thing that was found was that in welding a bracket of this type not only should it be welded on both sides, but this area, this edge, these edges – here is our area of weld. This small area of weld is not consistent from end to end and it doesn't exist on the opposing side. Also there is no what we call the heat zone inside that shows the metal is actually . . . which it doesn't have, the heat zone inside, small weld areas, no welding on the opposing side, limited heat zone welding, no welding on both sides. The other thing with a piece like this is that the proper welding process would also suggest that you should bevel both edges to increase the surface area and penetration and improved heat zone when the fill material is put in. The weld material here is a very limited heat zone, so it's not welded to the steel, and nothing on the opposing side. And we are missing the bevels which should be placed there for proper welding.

The forensic automotive engineer continued:

> And again, there is no measurable weld. It's almost welded in a manner that we call, just for position, utilizing what is called a tack weld. It's basically a small weld area that is just used for construction purposes and not meant to permanently position a component in there yet so things like the measurements and other components are in place.

The engineer concluded that the welding used to secure the intrusion beam to the pillars "was woefully inadequate and unacceptable." The Limousine Builder's representative acknowledged that "[t]ack welding only holds a part together temporarily," but he insisted that his company uses MIG welds to attach the anti-intrusion beam's mounting brackets to the pillars. The forensic automotive engineer indicated that a systematic failure had taken place:

> I did establish it was not the failure of the intrusion beam alone that was the factor here. Its positioning did not assist in restraining the [pick-up truck] from moving, and its design was such that it could not maintain the position of the pillars and keep them in place so that the system could work to oppose those intruding forces.

In contrast to the anti-intrusion beam's mount welds, the automotive engineer addressed the welds that had secured the body mounts to the floor. The Limousine Builder's representative had indicated that the crash "[t]ore the body mounts right off the floor, with the floor" – "one body mount is torn. The other body mount is torn from the floor and still attached to the frame." The engineer used the body mount that was still attached to the frame as an example of a successful weld: "In actuality, this was not a bad weld, because it actually tore the material and not the weld when it failed. If you would look closely, the metal is still remaining as part of the weld process." The engineer faulted the other body mount's weld, however, concluding that one of the body mounts failed as a result of welding issues while the other failed as a result of stress.

In other areas of the vehicle, the engineer compared the Ford factory welds with the aftermarket welds in terms of frequency and depth of penetration. With regard to the Ford

factory welds at around the original front passenger-side door, he praised described them as pinch-type welds, "generally speaking about two inches apart. And there is a lot of them." He noted that these welds had held steady during the crash. At the impound yard, the engineer found an aftermarket passenger-side rocker panel loose in the limousine. A rocker panel, the engineer said, "provides lower support for the system that reduces intrusion. It ties the pillars together. The pillars in the center are attached to the rocker panel at the bottom. So this is, the rocker assembly, is very significant in maintaining the position of the pillars on the side of the vehicle." Based on his investigation of the rocker panel, the engineer concluded, "One of the reasons we believe it became detached was because of welding issues that were similar to those of the intrusion beam." At issue, the engineer said, was that the welds around the edge of the aftermarket rocker panel were inadequate: "It's metallurgically . . . one step beyond using a clamp holding two things together."

The engineer also took issue with what he viewed as evidence of not enough welds securing the rocker panel to the pillars:

> [T]he rocker panel is a major part of the crash energy management system. Now, there is the issue of intrusion but there is also the issue of what do I do with the forces and energy that is applied to the side of the car. I have to get rid of it somehow. I have to move it to another portion of the car. And the rocker panel in its consistencies from end to end is what is utilized in distributing the energy around the passenger compartment. . . . When we don't have the structure of the vehicle connected sufficiently to each other along the side, that energy management system fails.

The Limousine Builder's representative disagreed, saying that the type and the frequency of the welds on the perimeter of the rocker panel were dictated by "QVM standards." "I believe there is a distance apart they're supposed to be, which is within six inches," he said. Finally, the engineer testified that the weld area for each weld was too small and the back of the rocker panel

demonstrated that there was insufficient heat penetration for a tight bond to form between the pillar and the rocker panel. He drew attention to what he called "a small heat effect zone":

> The heat effect zone is associated with the welding, as I discussed earlier, where the two materials have to mix to actually become one homogeneous material with a filler. What we are seeing is insufficient penetration along here. We should have a lot of what we call burn marks on the opposing side. We don't have that. So this portion is probably detached in part because it just was not secured properly to the assembly.

The automotive engineer assessed that the welds inadequate for three reasons:

> [The rocker panel welds] were applied using probably a MIG welder from the outside. They clearly had what we call insufficient penetration, meaning that the metals had not joined sufficiently for the two submetals that they were trying to combine. Compare to the manufacturer's welds, which were what's called a squeeze type resistance welds, which is basically a device that pinches the two pieces of metal together and welds it from both sides, joining the welds more thoroughly. So the difference between the two [is] that the welds on the rocker panel that had been modified in this area did not replicate those of the manufacturer. They also did not replicate the quantities of welds to the manufacturer. We found welds approximately every two inches or so by the manufacturer. And this one had, you know, three, four inches before each weld, seemingly random placement of the welds. So it's the weld type, the amount of welds, and the weld quality that was the significant difference.

Although the driver's side of the limousine did not bear the brunt of the crash, the engineer's inspections of exposed components on that side led him to find evidence of "extensive corrosion" where the "D" pillar was mounted and other "hidden areas that you don't see because of the outer structure and the fascia." The engineer explained how corrosion undermines a vehicle's ability with withstand a crash:

> The problem with this is, as you can imagine, since I already established that the pillars themselves are very significant to collision resistance, deteriorating them with corrosion and rust will only make them weaker, and what makes it worse is it won't be detectable. So what happened here is the modification process did not include return of the original corrosion resistance.

The engineer did indicate that the extensive damage on the passenger side prevented him from determining how corrosion had affected the failure of that side, if at all.[88]

iii. Construction Shortcuts

Overall, the forensic automotive engineer blamed "[s]hortcuts in construction" for the degree of intrusion that the limousine sustained. As to whether, if the welding had been done properly and the vehicle had been properly engineered, the limousine could have been safer, the engineer said, "Absolutely, yes. Absolutely. Certainly a lot safer." The engineer concluded as follows: "I believe a better side impact system with, actually, some minimal engineering put into side intrusion beams and things like that, could certainly have increased [the passengers'] survivability."

VI. CURRENT STRETCH LIMOUSINE BASE MODELS

Ford Motor Company reduced production of the Lincoln Town Car model in 2006 and moved its manufacturing plant from the United States to Canada. In the period between 2007 and 2011, Ford produced approximately 1,500 base model Lincoln Town Cars per year for stretching. Ford ended the Lincoln Town Car's production in 2011 and has since provided the Lincoln MKT as a base vehicle for stretch limousines. Ford now produces fewer Lincoln MKTs

[88] The 2008 Builders Guide's Manufacturing Notes indicate the need for "[r]ustproofing" and the Conversion Sequence specifies that QVM builders "[c]oat non-galvanized surfaces and all exposed welds with rust inhibitor. Paint and/or undercoat frame and underbody areas." With regard to rustproofing the frames during the manufacturing process, the Limousine Builder representative said: "We use an oil base undercoating, petroleum base. . . . It's a protection at the purchase of the car. We undercoat all vehicles, just for road rash, you'd call it, or road salt so to speak."

for stretching than it did Lincoln Town Cars – approximately 1,000 to 1,300 per year. Some limousine company owners have taken issue with the newer base model. Said one owner:

> They were making Lincoln Town Cars for so long that they knew where the problem areas were. And they had not really, from an operationally standpoint they had that car down pretty well. And our last Lincoln Town Cars, the regular black sedans, we got 350,000 miles out of them, original engine, original transmission, you know, in our case we would re-upholster them to clean them up, compound them, wax them manually, and we stayed on top of dealer maintenance. So those things just ran. They were great cars. The MKT is now a crossover type vehicle, which is an all-wheel drive vehicle. The regular sedan model, the non-stretch model, regular sedan model has had so many issues nationally and internationally, they were made with this glass – it's been a little tough. While all in all, they raised the price of that MKT. So you were still looking for a Lincoln Town Car and we are still trying to figure out well how do we change your terminology and give you something that you expect.

The limousine industry executive, who has several Lincoln MKTs in his fleet, faulted the Lincoln MKT stretch limousines for sitting "a little low. We are scraping driveway aprons, but, you know, I have not broken any yet." Another limousine company owner was more vocal: it's "just a horrible ride, a horrible vehicle. Also, there's not much choice for people in our industry. We have to buy them, and they're expensive. It's terrible."

Since the transition to the Lincoln MKT, Ford Motor Company no longer produces the Lincoln Town Car to serve as the base model of stretch limousines. Nevertheless, Lincoln Town Cars remain part of limousine fleets on Long Island. In addition to ordering the production of new limousines from modifiers such as the Limousine Builder, who stretched the vehicle involved in the 2015 crash, limousine companies often buy their limousines secondhand. As noted above, one limousine company officer said that, for some in the livery business, "their key to success is old cars – is old cars and less expensive chauffeurs." One limousine company owner has ordered the production of more than 50 stretch limousines from companies including Crystal Limousines, Tiffany Limousines, and US Coach Works, noting, however, "a couple of

those are out of business right now." This particular limousine company executive has never ordered a limousine from the Limousine Builder, though he has purchased used ones. Terming the market for used limousines "very strong," he had the following to say:

> We buy, most of our cars we buy new unless we buy a company that comes with limousines. We buy a lot of companies. A lot of small limousine guys, because a typical limousine runs approximately $90,000 for 120-inch like the MKT Town Car limousine. So they would buy one, one or two-years old, for like maybe $60,000 or $50,000, so it's less expensive for them to purchase a used one than a new one.

VII. THE QUESTION OF FEDERAL PRECLUSION AND FEDERAL OVERSIGHT OF SAFETY ISSUES

The NYSDOT official described the federal oversight of motor vehicle manufacturing as follows: "There is the Federal Motor Vehicle Safety Standards that they have to follow, which is, it's everything from how to, the design capabilities, all the different design components, from design, to manufacture, to putting the vehicle together is all in the Federal Motor Vehicle Safety Standards." NYSDOT itself does not regulate the construction of motor vehicles. New York State has adopted the Federal Motor Vehicle Safety Standards by incorporating them by reference into the State's regulations. Moreover, New York State cannot adopt motor vehicles that conflict with the federal standards.[89] A NYSDOT investigator pointed out that "the Federal Motor Vehicle Safety Standards is the standard the manufacturers must follow when they build vehicles. We adopt those standards for the purpose of making sure that the vehicles that we are semi-annually inspecting and roadside inspecting meet those minimum standards." The

[89] United States Code, Title 49: Transportation, Subtitle VI-Motor Vehicle and Driver Programs, Section 30103(b), in pertinent part, has the following to say about the potential federal preemption of state attempts to regulate motor vehicle equipment: "(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter."

NYSDOT investigator also indicated that New York State can, in some cases, adopt motor vehicle standards that are higher than those imposed by the Federal Motor Vehicle Safety Standards:

> I believe we can for, if those standards aren't enumerated on the Federal Motor Vehicle Safety Standards. So our regulations, they don't conflict with the Federal Motor Vehicle Safety Standards, as far as I know, but we couldn't come out with a standard for let's say tires that would be greater than what has already been put out.

Likewise, the Suffolk TLC has not attempted to regulate the safe construction of the stretch limousines that drive the streets of Suffolk County. The Commission does not require anything with regard to side-impact protection, the quality of the side pillars, or the reinforcement of vehicle doors. Nor does Suffolk County place any requirements on stretch limousine builders who operate in or make cars for use in Suffolk County. The Suffolk TLC does not dictate the number and placement of emergency exits or air bags that such a vehicle must have. With regard to emergency exits for 120-inch stretch limousines, New York does not require any additional exits, apart from "the two rear doors with manual handle releases," according to a limousine company owner. One NYSDOT official explained the connection between emergency exits and their signage requirements. "[V]ehicles need to have emergency exits depending on seating capacities. If they are under ten-thousand pounds gross weight rating then those exits don't have to be identified with markings. If it's above ten-thousand pounds, they have to be identified." One Motor Carrier Safety Section officer recommended that stretch limousines have more emergency exits than are currently required:

> I believe they need more emergency exits. Anybody that has been in a limo, ten passenger, nine passenger limo, two rear doors in limos, and I just took one, and sometimes you don't even have the roof hatch. Do they have enough emergency exits, yes, but when all of them are to the rear, that person sitting in the front, that's a problem. He or she is not going to get out through the back. It's all into the back.

Another limousine industry representative referred to California legislation requiring a stretch limousine's side windows to also function as emergency exits. He added that all of his newer Lincoln MKT-based stretch limousines now feature these side exits in the form of push-out windows, because it is a requirement in California. Another limousine company officer also referred positively to the California legislation:

> [T]hey actually put into effect you have to have flip-out windows. We actually bought one as soon as, we bought it out of California. . . . [T]hese windows open very easily, easy to open and get out. The older vehicles have pop-out windows, but it takes a lot of strength to really kick them out to get out of a vehicle. That's something that should be looked into.

California enacted its legislation in response to two limousine fires that occurred in May 2013 and June 2013. In the May 2013 incident, a limousine caught fire on a bridge, killing five passengers who were unable to escape the vehicle. In the June 2013 incident, nine passengers were able to successfully exit a limousine after it caught fire while idling. California passed its legislation with regard to stretch limousines designed to carry up to ten occupants, including the driver. In order to facilitate the transition to the new emergency exit program, California required limousine companies to provide a list of all modified limousines used in transportation for compensation the previous year, as well as their terminal locations. Going forward, the limousine companies had to provide annual reports to the state of vehicles used in transportation during the preceding year. California, through its Public Utilities Commission, would provide the Department of the California Highway Patrol with lists of modified limousines and their locations in order to assist in enforcement. As a result of the California legislation, a modified limousines now had to have at least two rear side doors and two rear windows that could open from the inside of the vehicle in case of fire or other emergency.

Prior to this legislation, California had a similar regulatory framework to New York's. Like the NYSDOT, the California Highway Patrol could inspect for-hire vehicles with more than 10 occupants as so-called "buses"; modified limousines with fewer than eleven occupants, however, were initially beyond the California Highway Patrol's reach. As a result of the legislation, however, the California Highway Patrol was empowered to inspect "modified" limousines that could hold ten occupants or less.

Prior to the passage of the California legislation, the state's Public Utilities Commission, which oversees limousines, conducted an analysis to determine whether the new state requirements regarding emergency exits would be subject to federal preclusion:

> State law pertaining to commercial vehicle safety must be compatible with the Federal Motor Carrier Safety Regulations. Relevant safety standards include provisions regarding power-operated windows and door locks. Federal Motor Carrier Safety Regulations regarding windows, partitions, and roof panels are intended to 'minimize the likelihood of death or injury from the[] accidental operation,' of those features. For instance, Federal Motor Carrier Safety Regulations require power-operated windows, partitions, and roof panels to stop and reverse direction when contacting a test rod of a certain strength. Federal Motor Carrier Safety Regulations also require each door to be equipped with at least one locking device which, when engaged, shall prevent operation of the exterior door handle or other exterior latch release control and which has an operating means and a lock release/engagement device located within the interior of the vehicle. The purpose of these provisions is 'to minimize the likelihood of occupants being ejected from a vehicle as a result of impact.' [The proposed state legislation] does not conflict with any of these provisions. Thus, the bill does not conflict with federal law.[90]

Neither the federal government nor New York State currently regulates the standards for side-impact anti-intrusion beams on stretch limousines. Pursuant to NYSDOT Bus & Passenger Vehicle Regulations, Title 17 Official Compilation of Codes, Rules and Regulations of the State of New York, Part 720.4(b)(1)(a), effective July 18, 1999, the component parts of a vehicle

[90] References omitted.

"shall be permanently installed in a workmanlike manner." Nevertheless, the NYSDOT Altered Vehicle Safety Inspection Procedures do not currently address the examination of the interior structure of the vehicle or the side-impact protection system in the vehicle's doors and panels.

CONCLUSIONS

The Grand Jury makes the following conclusions based upon the stated findings of fact:

On July 18, 2015, Lauren Baruch, Stephanie Belli, Amy Grabina, and Brittney Schulman were killed and Alicia Arundel, Melissa Crai, Joelle DiMonte, and Olga Lipets were seriously injured at the intersection of County Road 48 and Depot Lane. The deaths and injuries were entirely preventable, caused by driver failure, improper limousine construction, and inadequate regulatory oversight.

Prior to the 2015 limousine crash, the intersection of County Road 48 and Depot Lane in Cutchogue, Suffolk County, New York had experienced high volumes of unsafe traffic maneuvers by stretch limousines. These high occupancy vehicles were in large part related to the winery traffic in the area. The intersection's history – both with regard to accidents, near misses, and police citations – clearly demonstrated the dangers of the intersection. Local residents and others had long warned of the hazards of the intersection, and several residents had presciently predicted a catastrophic crash such as that of July 18, 2015.

Although an eastbound stretch limousine on County Road 48 might physically be able to make a U-turn into the westbound lanes on the north side of the intersection, such a turn would not be legal. In order to complete such a turn, an eastbound stretch limousine in the left turning lane would have to swing out wide to the southern portion of the intersection, blocking other eastbound traffic, before circling back into the westbound lanes. In the process, the turning limousine would also block westbound traffic. Furthermore, given the width of the median between eastbound and westbound traffic on County Road 48, a stretch limousine could not possibly enter the intersection from the left eastbound lane and make a turn into the left westbound lane in accordance with the dictates of the New York State Vehicle and Traffic Law.

The intersection is not configured to allow for stretch limousines to make proper U-turns, but stretch limousines continue to attempt – and fail – to execute U-turns at the intersection, partially due to its placement at the eastern end of many wine tours. While attempting these U-turns, stretch limousine drivers often have to make multiple-point turns, in the process endangering their passengers and other motorists. Limousine companies have instructed their chauffeurs not to make U-turns at this and other intersections in Suffolk County. These warnings have not stopped the U-turns, however. With ever-increasing traffic congestion on the North Fork, chauffeurs' misguided attempts to make U-turns on this and other, more narrow roads in Suffolk County are likely to result in more crashes.

The current traffic signal at the intersection does not solve any of the underlying problems that resulted in the July 18, 2015 crash. There is nothing to stop stretch limousines from attempting to make illegal turns, and there is nothing to stop oncoming traffic while the stretch limousines are turning and blocking the roadway. In some ways the new traffic signal is worse. Instead of flashing yellow lights in each direction, at least advertising caution, now both eastbound and westbound traffic can face green lights while the stretch limousines attempt their dangerous maneuvers. The green lights actually encourage oncoming traffic to proceed through the intersection at the very moment when the danger is the greatest.

Suffolk County, rather than the Town of Southold, has the authority to make changes in the present traffic light at the intersection of County Road 48 and Depot Lane. Traffic volume and turning movement counts at the intersection are insufficient to warrant the installation of protected left-turn signals at the intersection, according to Suffolk DPW's criteria for such a signal. Nevertheless, some additional restriction on stretch limousine maneuvers is necessary for

the protection of local residents, winery goers, and other motorists passing through the intersection.

As can be seen from the pole video camera figures, the vast majority of U-turns at the intersection are made by passenger vehicles, such as local residents attempting to get home. A no-U-turn sign at the intersection would inconvenience residents and perhaps result in unsafe second-order effects.

The July 18, 2015 crash was not due to the failure of any equipment specified under New York State Vehicle and Traffic Law Section 375. The brakes and tires of the vehicles involved were not at issue. Instead, the crash resulted from failures on the part of the limousine driver. Enhanced driver certification requirements for stretch or modified limousine operators might have prevented the crash. Some, but not all, limousine companies administer comprehensive driver training programs to their chauffeurs. There currently exists a rigorous bus driver certification program pursuant to Article 19-A of the New York State Vehicle and Traffic Law. The drivers of stretch limousines that have occupant capacities of 11 or more already must go through the certification program, which involves biennial road tests on the driver's specific vehicle type, annual defensive driving observation, written tests, and other requirements. Drivers of stretch limousines with capacities of nine and ten would benefit from being part of such a certification program.

Companies have used the possible variations on seating arrangements in a stretch limousine passenger compartment as a justification not to conduct crash tests or pursue airbag technology for such vehicles. A standardization of accepted seating arrangements would facilitate progress in these areas.

Although the Limousine Builder now uses two side-impact anti-intrusion bars in its stretch Lincoln MKTs, the Lincoln Town Car is a popular brand and stretch models remain on the road, especially given the strong secondary market for limousines. If welding and other issues render some of these limousines unsafe, such vehicles need to be identified and inspected. As this investigation demonstrated, it took less than five minutes for a collision shop employee to lay bare the side-impact anti-intrusion beam of the exemplar limousine. NYSDOT has experienced and thorough inspectors who execute the State's semi-annual bus inspections, although they do not, at this time, inspect a vehicle's structural integrity. The Suffolk TLC may provide a good regulator of such vehicles, but the Commission is undermanned and has little enforcement ability of its own. Nevertheless, the Suffolk TLC's registration and licensing requirements may provide a good way to ensure accountability for any County regulatory changes regarding limousines.

Given the gaps in federal regulation of stretch limousines, New York State, like California, could enact legislation that would make the streets of the State safer and protect limousine customers from any hidden defects in the vehicles they ride. As a result of the California legislation, the California Highway Patrol was empowered to inspect "modified" limousines that could hold ten occupants or less. NYSDOT can inspect nine-occupant limousines as commercial vehicles but these do not qualify as buses and do not require rigorous semi-annual inspections. As with the Article 19-A bus driver certification program, a change of the statutory definition of "bus" might bring stretch limousines as well as their drivers under a more suitable oversight for ensuring safety.

On July 18, 2015, four women were cut down in the prime of their young lives. The following recommendations will do nothing to bring these women back to their families. If

nothing changes, however, there is bound to be another tragedy at the intersection of County Road 48 and Depot Lane.

RECOMMENDATIONS

Based upon the stated findings of fact and all of the evidence heretofore had before this Grand Jury and in order to protect drivers and passengers from death and serious physical injury, to provide improved statutory and administrative remedies, NOW THEREFORE, by the authority vested in this Grand Jury by Criminal Procedure Law Section 190.85(1)(c), the following legislative, executive, and administrative actions are recommended in the public interest:

Legislative

I. The New York State Legislature should modify the New York State Vehicle and Traffic Law to prohibit modified or stretch limousines, with total occupancy capacities of nine or more including the driver, from making U-turns on all of the roadways of the State.

II. The Suffolk County Legislature should prohibit U-turns by modified or stretch limousines within the County's borders or, in the alternative, on the County's roads.

III. The Suffolk County Legislature should prohibit U-turns by all commercial vehicles on the roadways of Suffolk County.

IV. The Southold Town Board should prohibit U-turns by modified or stretch limousines within the Town's borders or, in the alternative, on the Town's roads.

V. The New York State Legislature should modify New York State Department of Transportation Bus & Passenger Vehicle Regulations, Title 17, Parts 720 et seq., to include stretch or modified limousines, with occupancy capacities of nine or more including the driver, to fall under the definition of "bus."

VI. The New York State Legislature should modify Article 19-A of the New York State Vehicle and Traffic Law to extend all driver certification requirements, including vehicle-specific road tests, to stretch or modified limousine drivers who operate vehicles with total occupant capacities of nine or more.

VII. The Suffolk County Legislature should create a statutory scheme to make the Suffolk County Taxi and Limousine Commission an independent entity within the Suffolk County government, rather than a part of the Suffolk County Department of Labor, Licensing, and Consumer Affairs.

VIII. The Suffolk County Legislature should appropriate monies to ensure the independence and operation of the Suffolk County Taxi and Limousine Commission, enabling the Commission to employ investigators and expand its regulatory reach.

IX. The New York State Legislature should modify the New York State Vehicle and Traffic Law to require all passengers in the rear compartment of a stretch or modified limousine to fasten their seatbelts and keep them fastened while the vehicle is in motion.

X. The New York State Legislature should modify New York State Penal Law Section 15.05(4), the definition of "Criminal Negligence," to expressly apply to professional drivers, who, in the course of their for-hire activities, cause fatalities in motor vehicle crashes where the professional driver is at fault.

XI. The New York State Legislature should modify the New York State Vehicle and Traffic Law with respect to holders of commercial driver licenses actively engaged in for-hire activities by holding the drivers strictly liable for the personal injury, serious physical injury, or death of the drivers' passengers resulting from the drivers' negligent operation of such a vehicle. Such negligence would expressly include unreasonable

speed, failure to yield right of way, improper U-turns, failure to obey traffic control devices, and/or the operation of a motor vehicle in violation of New York State Vehicle and Traffic Law Section 1212.

XII. The New York State Legislature should modify the New York State Vehicle and Traffic Law to raise the minimum age of a Class E driver license holder to 25.

Executive

I. The Governor of the State of New York should introduce legislation consistent with the legislative recommendations in this report or, in the alternative, he should support legislation introduced by others. The Governor should commit appropriate budgetary resources necessary to implement the legislative recommendations including appropriating additional resources to law enforcement.

II. The Suffolk County Executive should introduce legislation consistent with the legislative recommendations in this report or, in the alternative, he should support legislation introduced by others. The County Executive should commit appropriate budgetary resources necessary to implement the legislative recommendations including appropriating additional resources to law enforcement.

III. The Southold Town Supervisor should introduce legislation consistent with the legislative recommendations in this report or, in the alternative, he should support legislation introduced by others. The Town Supervisor should commit appropriate budgetary resources necessary to implement the legislative recommendations including appropriating additional resources to law enforcement.

IV. The Governor of the State of New York should create a task force in conjunction with limousine industry officials and community groups to study the safety of stretch limousines, including the feasibility of requiring multiple anti-intrusion bars in stretch limousine side panels, and report its findings to the National Transportation Safety Board.

V. The Suffolk County Executive should create a task force in conjunction with limousine industry officials and community groups to study the safety of stretch limousines, including the feasibility of requiring multiple anti-intrusion bars in stretch limousine side panels, and report its findings to the National Transportation Safety Board.

Administrative

I. State and local agencies affected by the changes implied in the legislative recommendations should be given the necessary authority to adopt administrative rules and regulations necessary for the effective implementation and execution of the legislative recommendations.

II. The Suffolk County Department of Public Works should conduct a priority study of intersections where there have occurred motor vehicle crashes involving high-occupancy vehicles and multiple fatalities.

III. The Suffolk County Department of Public Works should modify the existing traffic light at County Road 48 and Depot Lane to include a protected left turn (green arrow with a red phase) for both eastbound and westbound traffic.

IV. The Suffolk County Taxi and Limousine Commission should require owners of registered stretch limousines to report the name of the company that modified the vehicles to the Commission.

V. The Suffolk County Taxi and Limousine Commission should require evidence of an in-house driver training program when registering more than one stretch limousine for a particular owner or company.

VI. The New York State Department of Motor Vehicles should complete all administrative actions necessary to support the raising of the minimum age of a Class E driver license holder to 25.

VII. The Suffolk County Taxi and Limousine Commission should raise the minimum age of its TLC driver license holders to 25.