SUPERIOR COURT OF DECATUR COUNTY
STATE OF GEORGIA

JAMES BRYAN WALDEN and LINDSAY NEWSOME STRICKLAND, Individually and on Behalf of the Estate of Their Deceased Son, REMINGTON COLE WALDEN,	*	
Plaintiffs,	*	CIVIL ACTION
vs.	*	FILE NO. 12-CV-472
CHRYSLER GROUP, L.L.C., n/k/a "FCA US LLC" and BRYAN L. HARRELL,	*	
Defendants.	*	

ORDER

Chrysler filed its motion in limine number 5 "to exclude evidence of or reference to a NHTSA investigation of Jeep vehicles." In this Court's March 12, 2015 Order on Motions in Limine of Plaintiffs and Defendant Chrysler Group L.L.C., this Court ruled that "this motion is deferred and the proponent of any such argument or evidence must bring the matter to the Court's attention before making any such reference to the subject matter." However, at the Pretrial Conference on March 13, 2015, Plaintiffs brought this matter to the Court's attention, and indicated that Chrysler intended to reference the said subject matter in its Opening Statement to the jury. Chrysler then confirmed that intention. Accordingly it has been necessary to revisit Chrysler's motion in limine number 5.

It is not disputed that commencing in 2010, before the subject wreck, NHTSA investigated Chrysler's Jeeps with rear gas tanks, including the subject vehicle; that NHTSA's Office of Defects Investigation made certain findings indicating a safety related defect existed with respect to the rear location of gas tanks on those Jeeps, and so informed Chrysler on June 3, 2013; that after meetings between Chrysler CEO Sergio Marchionne, NHTSA Administrator David Strickland, and Secretary of Transportation Ray LaHood, an agreement was reached that there would be no finding of "defect" but there would be a recall of certain Jeeps with rear gas tanks which involved the placement by Chrysler of trailer hitches on some of those Jeeps and inspection of trailer hitches already installed on other of those Jeeps; but there was no recall of the 1999-2004 Grand Cherokees.

Chrysler seeks to introduce the document by which NHTSA closed the investigation (labeled "ODI Resume" and dated 11/11/14), but simultaneously exclude the fact that an investigation ever occurred *and* the process that led to that closure of the investigation. It would be both inconsistent and misleading to admit evidence regarding the closure of the NHTSA investigation, but simultaneously exclude evidence that the investigation ever occurred. If Chrysler seeks to make arguments based on the closure of the investigation, then as a matter of fairness, Plaintiffs are entitled to introduce evidence about how that closure occurred, what that closure means, and what events led to the closure of the investigation.

Chrysler argues that admission of the fact the 1999-2004 Grand Cherokees (called "WJ" by Chrysler) were among those investigated by NHTSA is "irrelevant" and "prejudicial" – despite the fact Chrysler seeks to introduce into evidence a NHTSA document relating to the results of that very investigation.

Plaintiffs argue that the fact of NHTSA's investigation is admissible "because the ODI investigation put CG on notice that there was a danger as to which it should have issued a warning" and that the investigation "is directly relevant to Plaintiffs' failure to warn claim" under O.C.G.A. § 51-1-1 l(c). Plaintiffs argue that the fact of the investigation was additional notice to Chrysler of its duty to warn and that what Chrysler did in response to the investigation, rather than issue a warning, demonstrates conduct that was reckless and wanton, including the circumstances under which agreement was reached between Chrysler and NHTSA.

The Court concludes that the fact that an investigation occurred, ODI's findings as announced on June 3, 2013, and the circumstances leading to the closure of the investigation are admissible. The Court cannot admit the document that *closed* the investigation without allowing Plaintiffs to introduce evidence regarding other aspects of the investigation because so doing would be logically inconsistent, unfair, and misleading to the jury. *See* O.C.G.A. § 51-1-11(c) (statute of repose); § 24-8-803(8) (admissibility of 06/03/13 recall request letter and 11/11/14 ODI resume).

Chrysler further argues that the ODI's June 3, 2013 letter to Chrysler is not admissible because the letter is "inadmissible hearsay" and because ODI's finding was only "tentative."

Plaintiffs argue that ODI's June 3, 2013 letter is "admissible under O.C.G.A. § 803(8) as "factual findings resulting from an investigation made pursuant to authority granted by law." Plaintiffs further argue that the said letter is admissible "on the issues of notice and recklessness because use of the letter for those purposes does not involve admitting the letter "to prove the truth of the matter asserted" under O.C.G.A. § 24-8-80l(c). With respect to Chrysler's argument about use of the word "tentative" in said letter, Plaintiffs assert that Chrysler can make to the jury.

This Court finds that that the ODI June 3, 2013 letter, or at least parts of it, are admissible under O.C.G.A § 24-8-803(8) (A), (B) and (C). This Court further finds that

allowing Chrysler to argue that the statements in the ODI Resume document mean Chrysler got a "clean bill of health" for the 1999-2004 Grand Cherokees would, given the contents of ODI's June 3, 2013 letter and the alleged circumstances leading to the closing of the investigation, be manifestly unfair, misleading, and prejudicial to Plaintiffs.

Chrysler further argues that "ODI's investigation involves incidents which are not substantially similar." Chrysler cites for that proposition the rule enunciated in *Cooper Tire & Rubber Co. v. Crosby,* 273 Ga. 454, 455, 543 S.E.2d 21, 23 (2001), ("the 'rule of substantial similarity' prohibits the admission into evidence of other transactions, occurrences, or claims unless the proponent first shows that there is a 'substantial similarity' between the other transactions, occurrences, or claims and the claim at issue in the litigation.") Chrysler notes "[i]t was that very lack of substantial similarity that Plaintiffs argued as a basis for excluding the testimony of Chrysler Group's witnesses Paul Taylor and Laurentius Marais." This Court notes that Chrysler argued against Plaintiffs' Rule 702 motion to exclude the statistics testimony of Taylor and Marais, but this Court granted that motion on March 12, 2015, for the obvious reason that Plaintiffs were correct: such evidence is inadmissible because it is not based on substantially similar incidents and indeed was based in part on incidents which both of those witnesses and Chrysler conceded were dissimilar.

Chrysler argues that "[b]ecause the documents related to the NHTSA investigation violate the rule of substantial similarity, they are inadmissible." Chrysler contends that "[t]he incidents investigated by ODI and discussed in both the ODI documents and Chrysler Group documents generated in the investigation are, to a large extent, not 'substantially similar' to the incident in this case and that such incidents and discussions must be excluded for that reason."

This Court concludes that Chrysler is correct: any NHTSA or ODI documents, or documents submitted to NHTSA by Chrysler, which reference statistical analyses or attempt to inject into the trial incidents that are not substantially similar must be redacted to conform to this Court's rulings. But Chrysler has not specified to which "documents" it refers. Chrysler and the Plaintiffs are hereby directed to redact any inadmissible statements from any such documents on their respective exhibit lists prior to showing any such documents to the jury. Chrysler and the Plaintiffs are directed to disclose to the other parties any such redacted documents prior to exhibiting them to the jury, so that an opposing party may request a bench conference if necessary. Chrysler and the Plaintiffs are instructed to exchange redacted versions of the documents they propose to exhibit to the jury prior to the start of trial, and to try to reach agreement about redactions consistent with this Court's rulings.

Chrysler is not foreclosed from stating to the jury that it commissioned statistical analyses, but Plaintiffs may certainly contend to the jury in response that such statistical analyses were rejected by ODI. However the statistical analyses are themselves inadmissible, as this Court has previously ruled.

Chrysler further contends that NHTSA's definition of the word "defect" is "inconsistent with Georgia's products liability law" and that therefore "the documents related to NHTSA's investigation are inadmissible." Once again, however, Chrysler has not specified the documents to which it refers. That particular argument seems one that should be addressed by a proposed charge to the jury, which Chrysler is invited to submit, and which can be discussed in the charge conference.

Chrysler's motion in limine number 5 is not sufficiently specific for this Court to either grant or deny, but the parties shall be governed by the terms of this Order. Otherwise this motion is DEFERRED and the party opposing any argument or evidence must object at the appropriate time during the trial.

SO ORDERED this 19th day of March, 2015.

J. Kevin Chason, Judge
Superior Court of Decatur County

Proposed Order prepared by Plaintiffs' counsel.
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CERTIFICATE OF SERVICE

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This 11th day of March, 2015.

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