STATEMENT OF FACTS

On February 24, 2007, Susan Morris Kline was fatally burned when her 1996 Jeep Grand Cherokee was struck in the rear and immediately burst into flames.

A Complaint was filed on November 26, 2008 for negligence against the vehicles involved along with Chrysler, LLC, the manufacturer, and Loman, the dealer, for products liability.

The Plaintiff was advised by experts that the products liability action against Chrysler was based on a design defect which caused a post collision fuel fed fire. The investigation revealed that Mrs. Kline survived the collision with minor injury but was caused to burn to death while she unsuccessfully attempted to get out of the burning vehicle.

The 1996 Jeep Grand Cherokee designed the location of the fuel tank outside of the protection of the axle and directly behind the bumper which left the fuel tank vulnerable in a rear end collision. Plaintiff alleged there were feasible alternative designs, at least one was a simple addition of a skid plate which was readily available, but only marketed for "off roading". The skid plate would cover and protect the fuel tank. This would have prevented the horrendous scenario leading to Susan Morris Kline's suffering and death.

In the course of preparing the case, Plaintiff hired several experts, namely a reconstruction expert, a fuel systems design expert, a fire cause and origin expert and a Chrysler/Manufacturer safety and management expert. Mr. Paul Sheridan, the safety and management expert is a former Chrysler employee, a former engineering programs manager at Chrysler's Jeep/Truck Engineering Department and a former Chairman and member of Chrysler's Safety Leadership Team possessing knowledge and information about matters involving safety and design of the Jeep Grand Cherokee. (See 12/15/09 Affidavit of Paul Sheridan annexed hereto as Exhibit A).

At no time did Plaintiff or Plaintiff's attorney have any information to indicate the dealers were separately at fault for the design defect which led to Susan Morris Kline's death. The dealer, Loman's Auto was included in the Complaint because of the New Jersey Products Liability Law which allows claims against those who place a product in the stream of commerce. Mr. Sheridan had never served in any capacity in a Jeep Grand Cherokee post collision fuel fed fire before this case. (Transcript of 5/7/10, pages 27, 32 & 33).

Butler Chrysler Jeep, Inc. was a dealer who serviced the Plaintiff's car on March 13, 2006 and March 20, 2006. The service was properly performed. Plaintiff had no information to indicate Butler was at fault for the design of the Jeep or that Butler knew that the location of the tank was a design defect rendering the Jeep Grand Cherokees from 1993 to 2005 unfit, unsuitable and unsafe. (Transcript of 5/7/10 pages 15, 16 & 18).

In April, 2009, Plaintiff's safety and management expert, Mr. Sheridan, learned for the first time ever that Chrysler was aware of the unsafe location of their tanks - a fact which Chrysler vehemently openly denies - even to today, that Chrysler knew a skid plate would protect the plastic tank in "on road" conditions and further that Chrysler communicated this safety problem and a way to repair the defect to all of their dealers. (Transcript 5/7/10 pages 18, 31, 44).

The information above was NOT available to the public (Transcript 5/7/10 pages 35 & 36) or to Plaintiff's attorney and the information was not a part of the NHTSA information as testified to by Mr. Sheridan. (Transcript 5/7/10, pages 35, 36, 37 & 40). Mr. Sheridan further testified that he was "flabbergasted" by the information, because for the first time Chrysler acknowledges in a document that the skid plate is not a device that a few customers may purchase for recreational "off roading" fun, but rather an item to repair or make safe, a defective, unsafe

vehicle. (Transcript 5/7/10, pages 43 & 79).

With this information Plaintiff became aware of the potential duty of the dealers to repair the vehicles or at least offer the skid plate to all customers including Susan Morris Kline. As stated by Mr. Sheridan, in April 2009 Plaintiff knew for the first time that dealer Butler Chrysler Jeep, Inc., had a duty to their customers separate from the duty of Chrysler.

As soon as the information became available to the Plaintiff on April 13, 2009, a Motion was made to amend the Complaint to name Butler Chrysler Jeep, Inc. as a Defendant. The Motion was sent by cover letter of May 12, 2009, returnable May 28, 2009. The Complaint was amended by Order of June 12, 2009.

On January 8, 2010 Butler Chrysler Jeep, Inc. made a motion to dismiss the Complaint claiming that simply because Plaintiff knew of Butler's existence the Plaintiff should have sued Butler. (See letter reply of Kelly Quinn, Esquire dated January 5, 2010 annexed hereto as Exhibit B). The Motion was opposed and the Court ordered a Hearing pursuant to Lopez v. Swyer, 62 N.J. 267 (1973).

The Court specifically stated that the issue to be decided was when the Plaintiff reasonably should have known that Butler was at fault. When should Plaintiff have learned that Butler knew of the defect that caused the injury, i.e. Susan Morris Kline's death. (See Transcript January 29, 2010 annexed hereto as Exhibit C).

On Friday, May 7, 2010, the Lopez Hearing was held.

Plaintiff addressed the issues as previously defined by the Court. Mr. Paul Sheridan was called as a witness and stated there was no way Plaintiff could have with reasonable diligence found the documents which revealed Butler's knowledge. (Transcript 5/7/10 pages 35, 26, 37 &

40). It was Mr. Sheridan's personal contacts which allowed him to access corporate documents. (Transcript 5/7/10 page 35). Defendant Butler did not produce any documentary evidence to rebut the statements of Mr. Sheridan on the issue of the time he discovered the information nor did Defendant Butler produce any testimony to refute Mr. Sheridan's testimony in any way.

The Court ruled against the Plaintiff and found that the documents did not reveal Butler's knowledge of the defect in Susan Morris Kline's 1996 Jeep Grand Cherokee ZJ.

POINT ONE

THE SOLE ISSUE FOR THE LOPEZ HEARING WAS WHEN SHOULD PLAINTIFF REASONABLY BE EXPECTED TO KNOW THAT THE PLAINTIFF'S INJURY AND DEATH WAS ATTRIBUTABLE TO THE WRONG DOING OF BUTLER CHRYSLER JEEP

The doctrine known as the Discovery Rule is well settled law in the State of New Jersey. The doctrine provides that a cause of action will not accrue until the injured party discovers or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim. Lopez v. Swyer, 62 N.J. 267, 272 (1973). A Plaintiff may invoke the Discovery Rule if he/she was unaware of an injury, for example, when a foreign body is left in a patient during surgery. However, the Discovery Rule also applies in other cases where the damage is apparent but the injured party may not know that the injury is caused by the fault of another. Id. at 274.

In the Lopez case, the Plaintiff was fully aware of the injuries of being burned by radiation therapy. She was also fully aware of the identity of the doctor responsible for the radiation therapy. However, the Plaintiff in Lopez was not aware that it was the doctor's fault or deviation that caused the radiation burns. The Court held that the Discovery Rule is applicable when the Plaintiff did not know that the radiation injury was attributable to the wrong doing of the known doctor.

In the Case at Bar, the Plaintiff knew of the existence of Butler Chrysler Jeep, Inc., who provided two regular services, and that the decedent was burned to death in a Jeep. However, the Plaintiff did not know that the injury/death was attributable to the wrong doing of Butler Chrysler Jeep, Inc.

Butler Chrysler Jeep, Inc. did not design the defectively designed Jeep, did not sell the defectively designed Jeep to the Plaintiff and did not negligently perform the routine services. The Plaintiff did not know that the Defendant may be at fault for the injury and death of the decedent until documents were uncovered showing that Defendant Butler Chrysler Jeep, Inc. not only had knowledge of the defect but the ability to fix or repair the defect and failed to do so.

Critical to the running of the Statute of Limitations is the injured party's awareness of the fault of another. Martinez v. Cooper Hospital-University Medical Center. 163 NJ 45, 52 (2000). A sub-category of the "knowledge of fault" cases is that in which a Plaintiff knows she has been injured and knows the injury was the fault of another, but does not know that a third party was also responsible for her plight. Savage v. Old Bridge-Sayreville Medical Group, 134 N.J. 241, 243 (1993); Martinez at 54.

The facts of the instant case clearly fit into the subcategory described by the Savage and Martinez cases. Mr. Thomas Kline, Executor of the Estate of Susan Morris Kline, knew his wife was caused to burn to death because of the negligence of joint tortfeasors and Chrysler's defectively designed vehicle. The facts will show that Susan Morris Kline survived the crash and that the Chrysler defect caused her horrendous death. But there were initially no facts available to the Plaintiff to suggest that a dealer who had no part in designing the fuel system of the Jeep was made aware of how the fuel tank could easily be protected by the addition of a skid plate which was readily available to all dealers. It was only through expert investigation that these new facts came to light. This occurred over two (2) years after the date of the accident.

In a Case such as this the crucial inquiry must be whether the facts presented would alert a reasonable person exercising ordinary diligence that he/she was injured due also to the fault of

another, or third-party Defendant. Szczuvelek v. Harborside, 182 N.J. 275, 281 (2005).

Until the discovery of the TSB/recall by Mr. Sheridan there were absolutely no facts available or discoverable by the Plaintiff or Plaintiff's attorney exercising ordinary diligence that Butler had knowledge of the problem and an ability to act vis a vis the Klines. Only if the Klines or their attorney had access to the Defendant's computer could the TSB be discovered.

The application of the Discovery Rule may result in different dates for the accrual of a cause of action against different parties. Szczuvelek at 283. The Courts in New Jersey have upheld application of the Discovery Rule because it is inequitable that an injured person, unaware that he has a cause of action, should be denied his day in Court solely because of his ignorance, if he is otherwise blameless. Guidardo v. Rubinfeld, 177 N.J. 45 (2003).

Susan Morris Kline was certainly blameless. There is not one scintilla of evidence which could be presented that in any way shows Susan was negligent. There is no way a Chrysler customer or their attorney without access to the internal computers of Chrysler and the Chrysler dealers could have found the documents which show Butler Chrysler Jeep, Inc., an additional third party, could be at fault for the injury.

When a Plaintiff reasonably remains unaware that an additional Third Party may also be at fault the accrual clock does not begin ticking against the third party until the Plaintiff has evidence that reveals the third party's possible complicity. Caravaggio v. D'Agostini, 166 N.J. 237, 250 (2001). More is required than mere speculation or uninformed guess that there is a causal connection between the Plaintiff's condition and the third party's fault. Vispisano v. Ashland Chemical Company, 107 N.J. 416, 437 (1987); Guichardo, at 51-52.

The attorney for the Defendant Butler clearly states in reply papers to this Court that the mere

knowledge of the existence of Butler required the Plaintiff to sue Butler initially. Clearly this is contrary to the law as set forth in Caravaggio and Vispiano. The Plaintiff did not have any **evidence** at that time and any lawsuit would be based on speculation.

The testimony of Plaintiff's safety and management expert, Paul Sheridan, was presented at the Hearing on Friday, May 7, 2010. Mr. Sheridan was a former Chrysler employee and a member of Chrysler's Safety team. Mr. Sheridan indicated that he began a search after he was retained and he discovered documents which in his opinion indicated that Butler Chrysler Jeep, Inc. knew of a design defect, i.e. the unprotected tank and knew how to repair it, i.e. with a skid plate, yet did nothing to advise the Klines about the safety issue.

Mr. Sheridan's testimony was uncontroverted after being tested on cross examination and defendant Butler Chrysler Jeep, Inc. produced no witness or document to rebut Mr. Sheridan's testimony as follows:

1. Mr. Sheridan was retained by the Plaintiff on March 12, 2009. (Transcript 5/7/10 page 12).

2. At the time of retention and at all times prior to March 31, 2009, he was not aware of any facts to support a claim of wrongdoing or fault on the part of Butler Chrysler Jeep, Inc. (Transcript 5/7/10 pages 15, 16, 18).

3. The fuel system or alleged defect of Chrysler's unprotected fuel tank was not involved in any service performed by Butler Chrysler Jeep, Inc. (Transcript 5/7/10 page 18)

4. No reason for anyone to believe Butler Chrysler Jeep, Inc. had any fault in the defectively designed unprotected fuel tank. (Transcript 5/7/10 pages 18, 57, 58, 61 & 62).

5. Only after an investigation into Chrysler's computer system did Mr. Sheridan first learn of the fact that Chrysler acknowledged the defect, NOT publicly, but to its dealers through the Chrysler internal computer system in the form of a TSB with a recall provision. (Transcript 5/7/10 pages 19, 35, 36, 54, 56, & 57).

6. The Klines and their attorney cannot gain access to the computer system and did not become aware of the recall because Chrysler deliberately confined it to the WJ, a later model with the same defective design. (TSB marked as Exhibit P-2 on 5/7/10). (Transcript 5/7/10 pages 35, 36, 37 & 40).

7. The ZJ owned by the Klines had the same problem addressed by the recall/TSB of the WJ. (Transcript 5/7/10 pages 27, 43 & 48).

8. The public has no way of obtaining intra company communication such as the TSB in question. Mr. Sheridan asked the head of the Consumer Product Safety Commission, Clarence Ditlow to search NHTSA documents and this TSB recall could not be obtained or discovered. Mr. Sheridan contacted Mr. Ditlow because Mr. Ditlow's connection in Washington with NHTSA is superior even to Mr. Sheridan. (Transcript 5/7/10, pages 32, 36, 37 & 40).

9. On April 13, 2009, by Federal Express, Mr. Sheridan told the Plaintiff's attorney about the TSB and its significance in illustrating that the dealer's were aware of the defect being an unprotected tank designed in a vulnerable area which could be protected by a skid plate. (Transcript 5/7/10 page 33).

There is absolutely nothing in the record which would refute Plaintiff's contention that the information obtained by Mr. Sheridan could not be reasonably obtained by the Plaintiff or Plaintiff's attorney. In presenting a case of products liability involving a fuel system design defect the Plaintiff would only be required to present expert testimony of a fuel system design expert to say that the product car was not fit, suitable or safe for its intended purpose and that there was a feasible alternative design.

Plaintiff may also be required to produce expert testimony in the area of accident reconstruction and maybe even an expert for fire cause and origin even though the facts of the immediate explosion do not allow reasonable minds to differ.

However, because the Plaintiff learned that the Defendant Chrysler had settled other post collision fuel fed fire cases with non-disclosure agreements and required attorneys to sign protective orders and in other ways thwarted discovery, Plaintiff sought assistance from Mr. Paul

Sheridan. It was solely through the efforts of Paul Sheridan that the Plaintiff was able to uncover the TSB and that did not occur until approximately two (2) years and one (1) month after the date of Susan Morris Kline's death.

It is only because of the discovery of the TSB/recall information that Plaintiff now has "evidence" which reveals a third party, Butler Chrysler Jeep's possible complicity, in accordance with Caravaggio, at 250.

POINT TWO

THE COURT CORRECTLY OUTLINED THE ISSUES OF THE LOPEZ HEARING IN THE PROCEEDING OF JANUARY 29, 2010

At the Lopez Hearing of May 7, 2010, the Plaintiff relied on the parameters as set forth by the Court in the initial proceeding on January 29, 2010. As the Court stated "...I've pretty much, I hope, explained what would be an issue in that hearing". (Page 38 Transcript of January 29, 2010 Proceeding).

They were stated succinctly as follows:

> "The question before the Court is what information did the Plaintiff have within the two year period. And on this record I am – this was a very valuable argument, I am really without sufficient information in that regard. Lopez versus Swyer also allows the Court, indeed requires the Court, to conduct a hearing to determine what the Plaintiff knew and when the Plaintiff knew it." (Page 30 Transcript of January 29, 2010 Proceeding).

In the instant case, the Court specifically stated, " I am troubled by the knowledge of the Plaintiff's expert and whether that knowledge was communicated, or certainly, implicitly available to the plaintiff at a time within the statute would still have allowed the cause of action to have been filed". (Page 30 - 31 Transcript of January 29, 2010 Proceeding).

The Court went on to ask "What did the Plaintiff know and when did the Plaintiff know it, and what facts did the plaintiff have which could reasonably lead the plaintiff to believe that a valid cause of action should have been brought against Butler. These are issues which I think I cannot address on this cold record". (Page 31 Transcript of January 29, 2010 Proceeding).

Mr. Paul Sheridan stated the Plaintiff first knew about Butler's knowledge that the unprotected tank was a defect which could be made fit, suitable and safe by the addition of a skid plate, on April 13, 2009 when he sent his Fed Ex to the Plaintiff's attorney. A cause of action

would begin to accrue from that date. Szczuvelek v. Harborside and Caravaggio.

The Court went further and undertook the interpretation of the document which Plaintiff relied on to "discover" the fault of the Defendant, Butler Chrysler Jeep, Inc. In so doing, the Court disagreed with the Plaintiff's expert who was a former Chrysler employee and who submitted an Affidavit, a 21 page report and gave expert testimony stating the meaning and significance of the TSB recall document.(Transcript 5/7/10, page 90).

No expert or other testimony was presented which in any way contradicted Mr. Sheridan. While it is certainly possible that a Jury will make a finding of fact that the TSB does not prove Butler was aware of the Chrysler defect, this is not an issue to be decided by the Court at a Lopez Hearing. Discovery is ongoing. Further, by the time the issue is before the Jury, Plaintiff will have conducted the depositions of pertinent persons from the dealers and Chrysler and Plaintiff anticipates that they will provide even more information regarding the TSB and the knowledge of the dealers.

POINT THREE

THE PLAINTIFF EXERCISED ORDINARY DILIGENCE IN ACCORDANCE WITH LOPEZ V. SWYER 62 N.J. 267 (1973)

The information which precipitated Plaintiff's Motion to amend the Complaint was the information contained in the TSB/recall, Exhibit ___ and its interpretation by the Plaintiff's expert, Paul V. Sheridan. (Transcript 5/7/10, page 33).

The clear, undisputed testimony of Mr. Sheridan was that the Plaintiff could never have obtained this TSB/recall (Transcript 5.7.10, page 35). Further, even a Washington, D.C. expert and head of the Center for Auto Safety who conducted a governmental search, including NHTSA search on behalf of Plaintiff and Mr. Sheridan was unable to obtain the TSB/recall. (Transcript 5/7/10, pages 36 & 37). As Mr. Sheridan frankly stated in response to the Court's inquiry as to why the TSB/recall was not in the NHTSA files,

"I - - I have the same question"...[however], "It was not". (Transcript 5/7/10, page 40.

Mr. Sheridan testified that it took a thirty year relationship with a dealer in Michigan for him to gain access to the Chrysler computer which led to the TSB/recall discovery. (Transcript 5/7/10, pages 34 & 35). This would not ordinarily be available to members of the general public. (Transcript 5/7/10, page 35).

The Court went on to question the timing of Mr. Sheridan's discovery of the TSB/recall. Mr. Sheridan stated he only did his investigations after being retained on March 12, 2009. (Transcript 5/7/10, pages 12, 25, 26 & 29).

Before being retained, Mr. Sheridan had general conversations with Plaintiff's attorney, as a former Chrysler employee with knowledge of corporate practices. Mr. Sheridan stated that the

information he gave to the Plaintiff was with respect to knowledge he already had from his employment with Chrysler. (Transcript 5/7/10, page 30). He was merely providing information regarding discovery issues with respect to Chrysler Corporation. (Transcript 5/7/10, page 65). He never conducted any investigation of the Jeep fuel system defect (Transcript 5/7/10, page 33) and he never did any product litigation on a Jeep until the Kline case. (Transcript 5/7/10, pages 27 & 32).

The information Mr. Sheridan discussed with the Plaintiff was information he already had as a former employee of Chrysler Corporation. It did not encompass any new work or investigation. Mr. Sheridan did no new work on behalf of the Klines until he was retained. (Transcript 5/7/10, pages 27, 29 & 30).

In the case at bar, Mr. Sheridan exercised extraordinary diligence in prevailing upon a friendly relationship in persuading the dealer/friend to conduct a company computer search. (Transcript 5/7/10, pages 34 & 35). The Court must be aware of the great efforts which Chrysler has taken and continues to take to thwart any meaningful discovery. Chrysler has sealed prior litigation and required non-disclosure settlements. Chrysler, although no longer part of this litigation, continues to seek unnecessary protective orders through its "custodian" and continues to object to Plaintiff's request for pertinent information. In fact, Chrysler has never provided any TSB/recall regarding the Jeep in discovery.

The fact that Plaintiff found this TSB/recall through Mr. Sheridan, even despite the resistence of Chrysler and its representatives underscores the diligence of Plaintiff and Plaintiff's representatives in the face of calculated concealment.

Plaintiff has met its burden under Lopez of providing this Court with the information initially

requested, namely the Plaintiff did not know, nor could it with reasonable diligence known that the Chrysler dealers, including Butler, were privy to information citing the vulnerable tank location as a design defect and the fact that a skid plate could "repair" the defect.