

In The Matter Of:

*Paul V. Sheridan v.
Chrysler Corporation, et al*

CLARENCE V. DITLOW

March 25, 1998

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STATE OF MICHIGAN CIRCUIT COURT FOR OAKLAND COUNTY PAUL V. SHERIDAN, Plaintiff, v. CHRYSLER CORPORATION et al., Defendants. Washington, D.C. Thursday, March 25, 1998

Deposition of CLARENCE DITLOW a witness, called for examination by counsel for Defendants pursuant to notice and agreement of counsel, beginning at approximately 9:34 a.m. at the law offices of Dickinson Wright, P.L.L.C., 1901 L Street Northwest, Washington, D.C., before Joan V. Cain, notary public in and for the District of Columbia, when were present on behalf of the respective parties:

APPEARANCES: On behalf of Plaintiff: COURTNEY E. MORGAN JR., ESQUIRE Chambers Steiner, P.C. 1490 First National Building Detroit, Michigan 48226 (313) 961-0130 On behalf of Defendants: THOMAS G. KIENBAUM, ESQUIRE ROBERT BRUCE BROWN, ESQUIRE Kienbaum Opperwall Hardy & Pelton, P.L.C. 325 South Old Woodward Avenue Birmingham, Michigan 48009 (248) 645-0000 On behalf of Deponent: COLETTE G. MATZZIE, ESQUIRE DAVID C. VLADECK, ESQUIRE Public Citizen Litigation Group 1600 Twentieth Street Northwest Washington, D.C. 20009 (202) 588-1000

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[1] PROCEEDINGS [2] THE VIDEOGRAPHER: Good morning. [3] This is the video deposition of Clarence [4] Ditlow taken by counsel for Chrysler in the [5] matter of Chrysler Corporation, a Delaware [6] Corporation, v. Paul V. Sheridan, Case [7] No. 94-489177-CZ, held in the State of [8] Michigan in the Circuit Court for the County [9] of Oakland, also taken by the counsel for [10] Chrysler, Case No. 97-552625-NZ, Paul v. [11] Sheridan v. Chrysler Corporation, et al. in [12] the same court.

[13] Deposition is held on the date [14] March 26, 1998, and at the time indicated on [15] the video screen, which is 9:40 a.m. My [16] name's Sylvanus Holley; I'm the videographer. [17] The court reporter today is Joan Cain from [18] the firm of Beta Reporting.

[19] Will counsel please introduce [20] themselves?

[21] MR. KIENBAUM: Thomas Kienbaum, on [22] behalf of the Plaintiff Chrysler Corporation.

[1] MR. BROWN: Robert Brown on behalf [2] of Chrysler Corporation, and in Sheridan v. [3] Chrysler, the individual defendants Fonger, [4] Bradley, and Krotche as well.

[5] MR. MORGAN: My name is Courtney [6] Morgan. I'm appearing today on behalf of [7] Paul Sheridan.

[8] MR. VLADECK: I'm David Vladeck. [9] I'm appearing today on behalf of the [10] deponent, Clarence Ditlow.

[11] MS. MATZZIE: Colette Matzzie, [12] appearing today on behalf of the dep-

onent [13] today, Clarence Ditlow. [14] THE VIDEOGRAPHER: Will witness [15] please be sworn? [16] MR. KIENBAUM: Before we do that, I [17] think it would be appropriate to reflect that [18] Mr. Sheridan is also present. [19] MR. MORGAN: That's fine. It's [20] appropriate. For the record, Mr. Sheridan is [21] a party to the action. He has a right to be [22] here and he is here.

[1] THE VIDEOGRAPHER: Will the court [2] reporter please swear in the witness? [3] Whereupon.

[4] CLARENCE DITLOW [5] was called as a witness and, having been [6] first duly sworn, was examined and testified [7] as follows:

[8] MR. MORGAN: Mr. Kienbaum, before [9] you begin your examination of Mr. Ditlow, I'd [10] like to place two objections on the record. [11] The first is that I was handed this morning [12] by Mr. Brown about five minutes ago a sheaf [13] of documents maybe an inch and a half thick [14] that has marked on the front of it "Received [15] December 12, 1996, TGK." I assume TGK is [16] you.

[17] You've had these documents, then, [18] since December of 1996. I object to their [19] being provided to me only at this time. [20] Since I believe you got these documents in [21] response to a subpoena, you should have [22] served them on me at the time that you

[1] obtained them, and we object to the [2] impropriety of your holding on to these [3] documents and not giving them to us, which [4] I'm beginning to detect is a pattern that you [5] have.

[6] Secondly, we object to the notice [7] of the deposition in the Sheridan v. Chrysler [8] action for the reason that we believe it [9] should not be on a separate docket number, [10] separate from the action currently pending in [11] front of Judge Breck, but should have been [12] assigned pursuant to Rule 8.111 by the clerk [13] to the Breck action.

[14] MR. KIENBAUM: Well, Mr. Morgan, [15] just to be sure that there isn't a suggestion [16] that I don't disagree with something you just [17] said, number one, I note your objection on my [18] failure to provide you with the documents [19] provided to me by counsel to Mr. Ditlow. I [20] disagree with you that that was an [21] impropriety or that I was under any [22] obligation to provide you with those

[1] documents at this time, and, of course, the [2] court has ruled already that these

cases [3] apparently are to remain separate, so we've [4] got a court ruling in that regard. Why don't [5] we commence? Did you have a statement?

[6] MS. MATZZIE: No.

[7] EXAMINATION BY COUNSEL FOR DEFENDANTS/

[8] PLAINTIFF CHRYSLER CORPORATION

[9] BY MR. KIENBAUM:

[10] Q: I believe the witness has been [11] sworn. Good morning, Mr. Ditlow. My name is [12] Tom Kienbaum. I'm an attorney representing [13] Chrysler Corporation, and we appreciate very [14] much your appearing here today and providing [15] some information concerning a matter that is [16] in litigation back in Michigan.

[17] I'd like to ask you first some very [18] general questions about you and then get into [19] the subject primarily of some telephone [20] conversations that we understand from [21] deposing Mr. Sheridan occurred in the third [22] quarter roughly of 1994.

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[1] But starting with you personally, [2] could you give us a little rundown that your [3] background, your educational background and [4] what you do?

[5] A: I have a degree in chemical [6] engineering from Lehigh University, which [7] is — I also have the pleasure of being the [8] university where Mr. Iacocca, former chair of [9] Chrysler, graduated. We've had many [10] occasions to talk about that.

[11] After graduating from Lehigh [12] University, I went to work for the U.S. [13] Patent Office and then thereafter — [14] actually, while I was still at the Patent [15] Office enrolled at Georgetown, I got a law [16] degree from Georgetown, a JD, and then went [17] on and got a master's in law from Harvard and [18] in 1991 I went to work at the Public Interest [19] Research Group in Washington, D.C. and then [20] moved from there to the Center for Auto [21] Safety in December of 1975, where I've been [22] the executive director ever since.

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[1] Q: Listening to your educational [2] background, I don't believe I heard anything [3] about engineering. Did you take any [4] engineering courses, or do you consider [5] yourself an engineer by training or by [6] experience?

[7] A: My basic degree from Lehigh is in [8] chemical engineering.

[9] Q: Chemical engineering. How about [10] mechanical engineering?

[11] A: No mechanical engineering.

[12] Q: Do you consider yourself to be an [13] expert in any aspect of automotive [14] engineering?

[15] A: No.

[16] Q: Do you have any experience [17] specifically with respect to safety aspects [18] or engineering aspects of latches, automotive [19] latches?

[20] MR. MORGAN: Let me object to the [21] compound nature of your question. You've [22] asked two questions. Which one do you want

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[1] answered?

[2] MR. KIENBAUM: He's represented by [3] counsel, Mr. Morgan, and I'm sure he can [4] handle it.

[5] MR. MORGAN: I am protecting my [6] client's rights, Mr. Kienbaum, which is my [7] job to do.

[8] MS. MATZZIE: Mr. Kienbaum, why [9] don't you just clarify?

[10] BY MR. KIENBAUM:

[11] Q: Let me ask you and restate that. [12] Mr. Ditlow, do you have any experience or [13] background in the design of automotive [14] latches?

[15] A: No.

[16] Q: Do you have any background or [17] experience in the testing of automotive [18] latches?

[19] A: No.

[20] Q: It's my understanding that the [21] Center for Automotive Safety at times [22] addresses in a public forum issues that it

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[1] considers to be automotive safety issues?

[2] A: Yes.

[3] Q: Are there other organizations such [4] as the Center for Automotive Safety that do [5] that as well?

[6] A: Yes.

[7] Q: Can you give me a couple of these [8] that you would consider to be significant [9] participants in that process?

[10] A: Consumers Union, Public Citizen, [11] the advocates for highway and auto safety, [12] those are the ones that come immediately to [13] mind.

[14] Q: You are aware, sir, are you not, [15] that there had been a controversy between [16] NHTSA and Chrysler Corporation concerning the [17] quality of its minivan latches in 1994 and [18] even a part of 1993?

[19] A: Yes.

[20] Q: And one of the organizations that [21] you have just mentioned primarily concerned [22] with dealing with that issue from their

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[1] perspective?

[2] A: I really couldn't answer that. I [3] mean, you have to clarify the question.

[4] Q: Does it occur at times that your [5] organization, the Center for Automotive [6] Study, will collaborate with another [7] organization and maybe one will assign to the [8] other a primary responsibility for dealing [9] with a particular issue?

[10] MR. MORGAN: Let me object to the [11] form of the question. His organization is [12] the Center for Auto Safety, Mr. Kienbaum.

[13] BY MR. KIENBAUM:

[14] Q: Auto safety, I'm sorry.

[15] A: There are a number of public [16] interest organizations and insurance [17] organizations that deal with auto safety [18] issues. There's no formal coordination [19] between them. If someone is taking a lead [20] role in something, we respect that. [21] Sometimes we get together and file joint [22] petitions, but there's no formal, indeed,

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[1] very little, you know, interaction in terms [2] of planning the agendas.

[3] Q: Are you aware whether any of the [4] organizations you've mentioned took a lead [5] role with respect to the minivan latches in [6] the 1994 time frame?

[7] A: The — I know that the Insurance [8] Institute for Highway Safety was concerned [9] with the Chrysler minivan latches, but in [10] terms of the lead role, I'm not — the record [11] would have to speak for itself at the agency.

[12] MR. KIENBAUM: There's been an [13] indication that there may be a call or [14] something that may cause an interruption. [15] Could we go off the record for a moment?

[16] MR. VLADECK: Sure.

[17] THE VIDEOGRAPHER: We're going off [18] video record at 9:50.

[19] (Recess)

[20] THE VIDEOGRAPHER: We're back on [21] video record at 9:51.

[22] BY MR. KIENBAUM:

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[1] Q: Mr. Ditlow, a moment ago we were [2] talking about what role might have been [3] played by your organization and other [4] organizations that have a similar mission to [5] that of the Center for Auto Safety, what role [6] they might have been playing in the dispute [7] involving the Chrysler liftgate latch of the [8] minivans. Can you tell me what role, if any, [9] the Center for Auto Safety was playing in [10] that particular issue?

[11] A: Well, the center has done two [12]

things primarily in the area of minivan [13] latches, one of which is specific to the [14] Chrysler minivan latch and the other which is [15] generically to van latches.

[16] Since the late 1970s, we had urged [17] the government to extend the latch standard [18] for side doors on passenger cars to tailgates [19] on minivans and hatchbacks. In 1990 we [20] became aware of an accident involving a [21] Chrysler minivan where a little two-year-old [22] boy — I believe his name was Noah George —

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[1] was in a child seat and the minivan was in a [2] crash, and he was ejected from the van out [3] the rear latch or rear hatch and I believe [4] ended up in a stream and drowned.

[5] And we brought that to the [6] attention of the agency in May of 1990, and [7] at the time the focus was on the seatback [8] which collapsed versus the hatchback, and, [9] frankly, we missed a good opportunity to [10] spotlight the latch at an earlier point in [11] time.

[12] **MS. MATZZIE:** If I may just [13] interrupt for one second. Mr. Ditlow, can [14] you speak up?

[15] **THE WITNESS:** Sure.

[16] **BY MR. KIENBAUM:**

[17] **Q:** Focusing now more on 1994 and when [18] the issue of the minivan latch apparently was [19] the subject of discussion between Chrysler [20] and NHTSA, certainly, was there any role that [21] your organization played with respect to that [22] issue?

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[1] **A:** Well, I don't believe that we made [2] any formal submissions to the agency. I [3] certainly talked to people at Chrysler and [4] told them they should do a recall, but, other [5] than that, I think the jawboning was [6] basically what we were doing because the [7] investigation was in fact underway.

[8] **Q:** And how early would you say you [9] were talking with people at Chrysler as [10] you've just described about that subject?

[11] **A:** Sometime in — probably in 1994.

[12] **Q:** Early 1994?

[13] **A:** When the investigation got upgraded [14] to an engineering analysis, which I believe [15] was probably around April — early part of [16] '94.

[17] **Q:** And can you tell me who at Chrysler [18] you would have been speaking to in this [19] fashion, as you've just described?

[20] **A:** Yes, Lewis Goldfarb.

[21] **Q:** And who's Mr. Goldfarb?

[22] **A:** He's an assistant general counsel

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[1] at Chrysler who does regulatory work for the [2] corporation.

[3] **Q:** Do you recall speaking, and now [4] excluding for a moment Mr. Sheridan, with any [5] other Chrysler employees in this time frame [6] of 1994 about the subject of the liftgate [7] latches?

[8] **A:** There was a meeting in Washington [9] involving a class action against Chrysler on [10] liftgate latches, and I believe people [11] representing Chrysler were at that meeting, [12] and I'm not sure whether they were Chrysler [13] employees versus Chrysler attorneys, but, [14] yes, there was some interaction with Chrysler [15] attorneys regarding the class action.

[16] **Q:** Now, you've known Mr. Goldfarb for [17] some time, have you not?

[18] **A:** Yes, I have.

[19] **Q:** And do you feel that, if you need [20] any information from Chrysler Corporation, [21] that you are able to pick up the phone and [22] call him?

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[1] **A:** Yes, I feel that I can make the [2] request. I don't know that I'll get the [3] answer.

[4] **Q:** And how often would you say you [5] speak with Mr. Goldfarb in a typical year?

[6] **A:** That's hard to say. I mean, I'm [7] sure that there's not a month that goes by [8] that I don't speak to Mr. Goldfarb once or [9] twice on average.

[10] **MR. KIENBAUM:** Now, your office has [11] been kind enough to provide us with some [12] documentation, and I believe this came in two [13] submissions, which I ask the reporter to [14] mark. I'm going to show this to Ms. Matzzie. [15] This was a submission from Mr. Graham dated [16] December 11, 1996. I'm going to ask the [17] reporter to mark that Deposition Exhibit 1, [18] and I believe Ms. Matzzie has a copy for you, [19] and I believe Mr. Morgan also has a copy of [20] that.

[21] (Ditlow Deposition Exhibit No. 1 [22] was marked for identification.)

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[1] **MR. MORGAN:** Are you merely marking [2] the top letter or are you marking the whole [3] packet as an exhibit?

[4] **MR. KIENBAUM:** I'm going to mark [5] the top letter and then refer to Bates [6] stamps, which are the identifiers for the [7] remaining pages.

[8] **MR. MORGAN:** Is your intent to have [9] the entire submission of, the inch and a half [10] there, as Exhibit 1?

[11] **MR. KIENBAUM:** Yes, that's really [12]

for identification. Again, I don't [13] anticipate that there will be much use of [14] this, but I just want to have the witness [15] identify it, and then there will be a couple [16] of questions about that.

[17] **BY MR. KIENBAUM:**

[18] **Q:** Mr. Ditlow, if you could please [19] take a look at what's been marked Deposition [20] Exhibit 1, and if you could maybe identify [21] the Bates on that? And please feel free to [22] consult with Ms. Matzzie about this, and, if

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[1] you can identify that as the submission of [2] documents provided to us in that time frame [3] in response to a subpoena. I'm sorry. I [4] referred to Ms. Matson, and it should be [5] Matzzie, and I apologize.

[6] **A:** The cover letter to Exhibit 1, [7] which is Bates number 1 million and one, [8] something like that, is a letter from Robert [9] Graham to you, Mr. Kienbaum, which was [10] responsive to a — the subpoena you served on [11] me.

[12] And just looking through the items [13] in here — obviously, it's an inch thick — [14] these look like the materials that were in [15] our files that relate to Mr. Sheridan and [16] that were responsive to the subpoena. If you [17] bear with me just for a minute, I'll flip [18] through.

[19] Yes, they are the documents that [20] Mr. Graham assembled.

[21] **Q:** Now, if you would look at [22] Mr. Graham's letter, the first sentence

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[1] reads, "Per our conversation of December 10, [2] please find enclosed copies of all materials [3] of which we are aware that Paul Sheridan has [4] sent to Center for Auto Safety," and there [5] are some other documents in there, by the [6] way, that are identified in that letter as [7] not being documents sent by Mr. Sheridan, [8] but, excluding those, can you confirm for us [9] that to your understanding these documents in [10] Exhibit 1 were indeed sent by Mr. Sheridan to [11] the Center for Auto Safety?

[12] **A:** Yes. I would note — make one [13] modification to that. I note that some of [14] the newspaper clippings in here look like [15] they may have come from articles that were [16] not sent by Mr. Sheridan but that were simply [17] put in a folder relating to Sheridan because [18] they referred to him. For example, I see one [19] Bates number — oh, it's D 000094 — says [20] NHTSA Daily Clips, Wednesday, February 22, [21] 1995, "Feds Query Ex-Chrysler Planner on [22] Van's Safety." I doubt that Mr. Sheridan had

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[1] access to NHTSA's Daily Clips, and it looks [2] to me like that's something we

obtained [3] independently of Mr. Sheridan.

[4] **Q:** That was going to be my next [5] question. Is there any way for you to [6] identify which of these documents came from [7] Mr. Sheridan?

[8] **A:** Well, if I look through them, the [9] ones that relate to the Sheridan litigation, [10] the pleadings, I believe, come from [11] Mr. Sheridan. The news clips, I would [12] suspect that the vast majority of the news [13] clips that are in here are ones that we [14] obtained. I do note that there is a letter [15] which is pointed out in the — pointed out in [16] the cover letter, which is a letter to — a [17] letter to Dr. Martinez from Congressmen [18] Dingell and Oxley, which came from our files, [19] certainly, and our phone records obviously [20] came from our files. If you would like me to [21] — I mean, I could go through them one by [22] one. I suppose we could.

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[1] **Q:** No, I don't think we want to take [2] the time for that. Thank you. With respect [3] to the phone records, Mr. Ditlow, we have [4] discussed this with Ms. Matzzie, and she has [5] indicated that they will check whether there [6] are any 1994, third quarter 1994, records [7] that involve phone calls from Mr. Sheridan —

[8] **MS. MATZZIE:** Just to respond to [9] that. The cover letter, I believe, makes [10] clear that a search was conducted for phone [11] records dating back to September 1, 1994. We [12] did agree at the beginning that we don't mind [13] looking again for those few months in 1994, [14] but it is my understanding that all the [15] records responsive to the subpoena were [16] produced.

[17] **MR. KIENBAUM:** I understand that [18] and I assumed that to be the case. I simply [19] inquired because there were some completely [20] blanked out for other periods and none for [21] '94 and if you could just do me a favor and [22] check on that and communicate with me?

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[1] **MR. MORGAN:** When you do so, [2] Ms. Matzzie, I would ask that you call me as [3] well so I can remain abreast of what's going [4] on.

[5] **MS. MATZZIE:** That's fine.

[6] **BY MR. KIENBAUM:**

[7] **Q:** Mr. Ditlow, focusing on whatever [8] documents were sent to you by Mr. Sheridan [9] and excluding, therefore, the Dingell letter [10] and the phone logs and let's altogether [11] exclude the newspaper articles, can you think [12] of any source other than Mr. Sheridan who [13] would have sent you, for instance, mem-

os [14] concerning Mr. Sheridan at Chrysler or [15] litigation materials concerning Mr. Sheridan?

[16] **A:** No, I cannot.

[17] **Q:** And, looking at documents in front [18] of you, do you have any recollection as to [19] when certain documents might have been [20] received by you?

[21] **A:** Well, my recollection is that the [22] documents that are in here would have all

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[1] been sent sometime after January 1995.

[2] **Q:** Do you recall whether it would have [3] been during 1995?

[4] **A:** No, I wouldn't recall that [5] specifically.

[6] **Q:** Now, have you ever met Mr. Sheridan [7] in person prior to today?

[8] **A:** I met Mr. Sheridan once.

[9] **Q:** And can you tell us about that [10] occasion? How did that occur?

[11] **A:** I was in San Francisco, I believe [12] it was, in 1996, although I'm not certain [13] about that, and I met Mr. Sheridan for coffee [14] at a coffee shop one morning before I was [15] returning to Washington.

[16] **Q:** Was this something that had been [17] arranged at his initiative or at your [18] initiative?

[19] **A:** My recollection is that he had [20] called me and we — I noted that I was going [21] to be in San Francisco, and he said, oh, I'm [22] out in California, too, and why don't we get

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[1] together for coffee, and whether — that's my [2] recollection of it.

[3] **Q:** Now, how about Mr. Morgan, who is [4] Mr. Sheridan's counsel? Can you tell me when [5] you first would have spoken with Mr. Morgan?

[6] **A:** In regard to?

[7] **Q:** Well, my understanding is that [8] Mr. Morgan may have represented you at one [9] point in time; is that correct?

[10] **A:** No, I don't recollect that.

[11] **Q:** Then we don't need to worry about [12] privileged communications. Have you spoken [13] with Mr. Morgan prior to our introductions [14] today?

[15] **A:** Yes.

[16] **Q:** And can you tell me the instances [17] when that might have occurred? Is this a [18] number of times, or are we talking about one [19] or two or three occasions?

[20] **A:** I first recall talking to [21] Mr. Morgan — I talked to Mr. Morgan a

number [22] of times in regard to GM pickup cases before

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[1] the investigation before the Department of [2] Transportation.

[3] **Q:** And have you talked with Mr. Morgan [4] at all concerning the litigation involving [5] Chrysler Corporation and Mr. Sheridan?

[6] **A:** Other than a passing, you know, [7] some conversations about setting this [8] deposition date, I don't recall talking to [9] Mr. Morgan about the litigation.

[10] **Q:** And concerning that deposition [11] date, you would have spoken with Mr. Morgan [12] directly?

[13] **A:** Just as I spoke to Mr. Brown [14] directly.

[15] **Q:** Certainly. Nothing inappropriate. [16] I just want to inquire. Have you met with [17] Mr. Morgan other than prior to today? You [18] met him today, of course. Have you met him [19] prior to today?

[20] **A:** In regard to this litigation?

[21] **Q:** With regard to anything.

[22] **A:** I had lunch with Mr. Morgan one

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[1] time in Washington.

[2] **Q:** And when was that?

[3] **A:** It was probably in 19 — the fall [4] of 1993.

[5] **Q:** And is that the only time you've [6] met with Mr. Morgan other than meeting him [7] today?

[8] **A:** One time that I recall meeting with [9] Mr. Morgan. I don't know whether he may have [10] been at a Department of Transportation [11] proceeding, GM pickups or something like [12] that, or a mass meeting of people, but I do [13] recall the lunch.

[14] **Q:** Let me ask you about conversations [15] with Mr. Sheridan that you may have had and [16] let me ask you what you recall to have been [17] the first time that you and Mr. Sheridan may [18] have spoken, and I'm obviously focusing on a [19] date here. Do you recall a time frame to [20] begin with when you first spoke with [21] Mr. Sheridan?

[22] **A:** It would have been sometime, my

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[1] recollection would be, in early fall, maybe [2] late summer, of 1994.

[3] **Q:** And let me ask you, Mr. Ditlow, do [4] you keep any kind of log that might aid us [5] and might aid you in the identification of [6] precise dates of conversations such as these?

[7] **A:** No, I do not.

[8] **Q:** You may well have checked, but is [9] there any chance that you have some

notes [10] that might reflect conversations with [11] Mr. Sheridan?

[12] **A:** No, I have no notes.

[13] **Q:** Can we put a more precise date on [14] this? Are you able to put a more precise [15] date on this first conversation with [16] Mr. Sheridan than early fall, late summer, of [17] 1994?

[18] **A:** I really — if you're asking me to [19] guess, I could guess, but that's the best I [20] could do.

[21] **MS. MATZZIE:** Don't guess.

[22] **BY MR. KIENBAUM:**

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[1] **Q:** Why don't you tell us about that [2] first conversation? First of all, how did it [3] occur that Mr. Sheridan spoke to you? In [4] other words, did he call you or your [5] organization, or did you call him?

[6] **A:** Mr. Sheridan called our [7] organization. I wouldn't know whether he [8] asked to speak to me directly or called the [9] organization and got me on the phone because [10] I frequently answer the phone — small [11] organization — or whether someone in the [12] office, the receptionist, would have given [13] Mr. Sheridan to me. It was just a call out [14] of the blue.

[15] **Q:** And can you tell me, as you sit [16] here recalling this event, roughly how long [17] this conversation would have lasted?

[18] **A:** Well, my recollection is that it [19] was a short conversation.

[20] **Q:** Can you put any estimation in terms [21] of time frame on that description?

[22] **A:** I mean, certainly under a half an

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[1] hour. You know, my estimate would be a few [2] minutes.

[3] **Q:** And can you tell us what [4] Mr. Sheridan said to you when the [5] conversation started? In other words, I [6] don't know how much recall you may have of [7] the detail of this conversation, but maybe we [8] can start by having your recall on the record [9] as to what was involved in that conversation?

[10] **A:** Well, you know, I have a good [11] memory but not a perfect memory, and my [12] recollection is sort of that Mr. Sheridan [13] made a few short phone calls to me over a [14] period of time, and I can't distinguish one [15] conversation from another. My general [16] recollection is that Mr. Sheridan indicated [17] he had some concerns about the Chrysler [18] minivan's safety and that he wanted to convey [19] that information and get the safety of [20] minivans improved.

[21] **Q:** When you first spoke with [22] Mr.

Sheridan, did you introduce yourself,

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[1] describe yourself?

[2] **A:** I suppose that I said this is [3] Clarence Ditlow, can I help you. That's one [4] of my standard greetings, but, other than [5] that, I don't know.

[6] **Q:** Was there any discussion about your [7] organization, the Center for Auto Safety, [8] during any of these discussions?

[9] **A:** Well, certainly in some of the [10] initial discussions we talked about what the [11] Center was. I don't know that it was in the [12] first conversation.

[13] **Q:** How many conversations do you [14] recall occurring in this 1994 time frame that [15] we're talking about, that is, late summer, [16] early fall, until the end of that year?

[17] **A:** Once again, I'm not clear on how [18] many there were. My best estimate is three [19] or four conversations.

[20] **Q:** And do you have any recollection as [21] to when in this series of three or four [22] conversations you would have started to

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[1] discuss the Center for Auto Safety and what [2] it does?

[3] **A:** Probably near the end versus the [4] beginning.

[5] **Q:** How did that discussion start, if [6] you recall? In other words, how did that [7] come about?

[8] **A:** Well, like I say, I can't, you [9] know, give you a transcript of the [10] conversation. I wish I could. We might not [11] have to be here today. My recollection is [12] that we — that there was nothing, you know, [13] specifically said about the Center other than [14] that we were — you know, that he was calling [15] me because of safety. It became clear at [16] some point in the series of short [17] conversations that what Mr. Sheridan wanted [18] to do was to get information to the [19] government about the safety of the minivans, [20] and the one conversation that I can really [21] help you with stands out above all others is [22] one that was probably about the second week

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[1] in December of 1994 because I can recall [2] Mr. Sheridan asking me, well, wouldn't [3] Mr. Pe a, Secretary of Transportation Pe a, [4] want to know about this minivan issue and [5] wouldn't he take action on it, and I recall [6] that so well because on I believe it was [7] December 2, 1994? Mr. Pe a had just caved in [8] to General Motors on the GM side saddle [9] pickups and agreed not to

do a recall and my [10] thought was, well, Mr. Pe a is not likely to [11] want to get involved in another defect [12] investigation.

[13] **Q:** Is it your recollection that this [14] conversation you've just recalled for us was [15] the one where there was an identification of [16] your organization such that it became clear [17] to the speaker on the other side of the phone [18] that you were not part of the federal [19] government?

[20] **A:** Well, I would have to say that [21] probably either that conversation or the [22] conversation before that — you know, he was

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[1] asking me about, well, how do you get the [2] government involved, you know, how do you get [3] — you know, what can be done, and it was — [4] at some point a light kind of went on in my [5] mind, oh, he thinks we're part of the [6] government.

[7] I said what you do is you go to [8] NHTSA and I probably in one of those [9] conversations explained the National Highway [10] Traffic Safety Administration to [11] Mr. Sheridan, but it was not in the first [12] conversation.

[13] **Q:** What did Mr. Sheridan say when you [14] made the point that he maybe would want to [15] talk to NHTSA?

[16] **A:** What did he say?

[17] **Q:** Yes.

[18] **A:** Well, you know, we never — he was [19] talking about the safety of the minivans and [20] it's a family vehicle and that he had [21] information. He didn't think that Chrysler [22] was addressing the safety. Huh?

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[1] **Q:** I'm sorry. Was addressing safety?

[2] **A:** Chrysler wasn't addressing the [3] safety and he thought that, if Chrysler [4] wasn't going to address safety, then [5] government should.

[6] **Q:** My question to you really is do you [7] recall what Mr. Sheridan said when it became [8] clear, apparently, that you were not part of [9] the government because you mentioned NHTSA as [10] another organization?

[11] **MR. MORGAN:** Let me object to the [12] form of the question because you're implying, [13] Mr. Kienbaum, that by mentioning NHTSA that [14] would necessarily mean that the Center for [15] Auto Safety is not the government. We all [16] know the government has many offices, and [17] just because there is a NHTSA and that's a [18] part of the government doesn't a priori mean [19] that the Center for Auto Safety is not a part [20] of the government, so perhaps if you want to

[21] rephrase your question?

[22] BY MR. KIENBAUM:

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[1] Q: Well, let me do that. Did you [2] understand, at this point when you mentioned [3] NHTSA, that Mr. Sheridan appeared to be [4] surprised that you weren't part of NHTSA?

[5] A: Well, he was — my recollection is [6] that he was a little surprised that we [7] weren't a government agency. If you look at [8] — when you deal with Washington safety [9] agencies, there's the National Transportation [10] Safety Board, National Highway Traffic Safety [11] Administration, Department of Transportation, [12] and the Center for Auto Safety sounds like a [13] government agency to some people in the [14] outside world, including other government [15] agencies.

[16] Q: I believe you just said that he [17] appeared surprised that the Center for Auto [18] Safety was not part of the government, and my [19] question to you is was that the conversation [20] you've been telling us about where Mr. Pe a [21] was mentioned the early December [22] conversation?

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[1] A: It was probably that conversation [2] or the one before it.

[3] Q: And, to the best of your [4] recollection, what did Mr. Sheridan say to [5] express his surprise about the fact that you [6] weren't part of the government?

[7] A: Sort of oh, like, you know, oh, I [8] thought you were part of the government. I [9] mean, I can't give you word for word what [10] Mr. Sheridan said. It wasn't, you know, like [11] I say, to me — I mean, I talk to people who [12] have information about vehicles a lot and [13] they want to — and sometimes they want to [14] give the information to you as a consumer [15] group. Sometimes they want to go to the [16] government. And it's not a — I mean, it's [17] sort of a generic conversation I've had over [18] the years with different people from within [19] the automotive industry.

[20] Q: Did your conversation with [21] Mr. Sheridan continue on this occasion about [22] whatever subject he wanted to talk about

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[1] after this disclosure that you were not part [2] of the government and he says something to [3] the effect, oh?

[4] A: What I recall telling him is, you [5] know, you don't go directly to Secretary [6] Pe a, that you would go to the Office of [7] Defects Investigation or Dr. Martinez, who's [8] the NHTSA administrator. You

know, I would [9] have, you know, given him some suggestions as [10] to who to contact in that sense.

[11] Q: Now, you're aware of publications [12] NHTSA puts out, are you not?

[13] A: Some of them.

[14] Q: Do you know whether Mr. Sheridan [15] has been a recipient of any such publications [16] from NHTSA in the past prior to talking to [17] you?

[18] A: I wouldn't know.

[19] Q: Did he say anything about whether [20] he had been a recipient of such publications [21] prior to the time that he first spoke with [22] you?

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[1] A: I don't recall speaking about that [2] with him.

[3] Q: What was the conversation with [4] Mr. Sheridan about after this point that you [5] apparently made clear to him that you weren't [6] part of the government? What was the subject [7] of the conversation after this point?

[8] A: The subject of —

[9] MS. MATZZIE: I would object [10] because there seems to be two conversations [11] at issue. Mr. Ditlow has said there was one [12] in December and one preceding it, and I can't [13] tell which one you're referring to as being [14] after.

[15] BY MR. KIENBAUM:

[16] Q: As I understand it, Mr. Ditlow, you [17] and Mr. Sheridan continued to talk after, [18] however that happened, it became clear to [19] him, at least, at that point that you weren't [20] part of the government. You continued to [21] speak with him?

[22] A: If you're talking — are you asking

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[1] me about the December conversation or the [2] next conversation after December?

[3] Q: Whenever it happened. As I [4] understand your testimony, in early December [5] there is a conversation during which it [6] appears to you that Mr. Sheridan may have [7] thought you were part of the government. You [8] make the point I'm not part of the [9] government. You talk about NHTSA being part [10] of the government and how you can get in [11] touch with NHTSA, and my understanding is [12] after this point was addressed in a [13] conversation, whenever that was, there [14] continued to be a conversation or [15] conversations between you and Mr. Sheridan.

[16] A: Well, in the conversation where [17] Secretary Pe a's name arose and I suggested [18] not to go to him but to go to somebody else, [19] it was a procedural

conversation. I said, [20] this is who you go to. And I think [21] Mr. Sheridan — my impression was [22] Mr. Sheridan was going to digest that

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[1] information that I had just given him about [2] procedural, you know, where to go and how to [3] do it.

[4] I didn't have — my next [5] conversation with Mr. Sheridan, Mr. Sheridan [6] was no longer at Chrysler, so it would have [7] been in, you know, sometime in January, you [8] know, so that by then I believe that [9] Mr. Sheridan had been fired by Chrysler, so I [10] don't recall having another conversation with [11] Mr. Sheridan after December about going to [12] NHTSA.

[13] Q: How many conversations do you [14] recall having with Mr. Sheridan in December?

[15] A: In December?

[16] Q: Yes, sir.

[17] A: One.

[18] Q: One conversation?

[19] A: That's how many I recall.

[20] Q: And I know we've talked about your [21] recollection of the total number of [22] conversations, but can you tell me how many

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[1] conversations you might have had with him in [2] November?

[3] A: Well, I would — probably one. I [4] mean, if I had to guess, I would have to say [5] that I probably had, you know, space it out, [6] maybe three or four conversations, you know, [7] a month or so apart. I just don't recall.

[8] Q: And how long do you recall that [9] conversation in December being, that one [10] conversation you recall?

[11] A: I mean, once again I don't, you [12] know, have a good grip on that. You know, it [13] could have been anywhere from five to ten [14] minutes. You know, that would be my estimate [15] of it. I'm not very long-winded.

[16] Q: And after the point that it was [17] made clear by you to Mr. Sheridan that you [18] weren't part of the government and after you [19] got done talking about how one gets ahold of [20] NHTSA, how long did you continue to talk [21] there-after, if at all?

[22] MS. MATZZIE: Can you clarify

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[1] whether you're talking about during that [2] conversation or —

[3] BY MR. KIENBAUM:

[4] Q: I understand this to be one [5] December conversation between Mr.

Ditlow and [6] Mr. Sheridan lasting about five to ten [7] minutes, and as I understand Mr. Ditlow's [8] testimony, it is either that or a prior [9] conversation during which you made clear to [10] him that you weren't part of the Federal [11] Government. Have I got that correct? [12] Because I remember you earlier saying [13] something to the effect that you don't recall [14] whether it was this or a conversation before [15] when the subject came up.

[16] A: Yeah. Well, that's — you know, I [17] tried to make, you know, clear to [18] Mr. Sheridan that we weren't part of the [19] government either in that conversation or the [20] one before. I don't know what Mr. Sheridan's [21] mental impressions were, in other words, what [22] his understanding of what I was saying. But

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[1] it would be clear to me that as of the [2] discussion about Pe a and going to Secretary [3] of Transportation Pe a that Mr. Sheridan was [4] — knew that we weren't part of the [5] government and it was clear that, if he [6] wanted to convey the information to the [7] government, that that's the avenue that he [8] should take. Now, how clear I made that in [9] earlier conversation about the Center, I am [10] not sure.

[11] Q: And, anyway, just so we're clear on [12] that, your testimony is you don't recall [13] whether this discussion that involved [14] Mr. Pe a was the last or the one before the [15] last conversation?

[16] A: Oh, no, it was definitely the last [17] conversation, the one in December, the second [18] week in December, because it occurred after [19] Secretary Pe a's decision on the GM pickups [20] on December 2.

[21] I mean, there is no doubt in my [22] mind that Mr. Sheridan asked me after

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[1] December 2, 1994, about going to [2] Transportation Secretary Pe a. Pe a had been [3] standing up for the American consumer prior [4] to December 2, 1994, on the GM pickups that [5] had resulted in burn deaths of 800 people, [6] and he had a lot of good publicity in papers.

[7] And so Mr. Sheridan, when I spoke [8] to him after that decision, asked me about [9] going to Pe a, and, you know, I was kind of [10] — you know, I hated to disappoint him, but I [11] didn't think that Secretary Pe a was going to [12] be that receptive towards defects [13] information.

[14] Q: Just so I'm clear, your testimony [15] is that was during the last conversation in [16] '94 that you had with Mr. Sheridan?

[17] A: That is my recollection. I don't [18] recall talking to Mr. Sheridan after the Pe a [19] conversation.

[20] Q: Now, do you recall placing a call [21] to Mr. Sheridan in this time frame in 1994?

[22] A: I do not.

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[1] Q: We've looked at the records with [2] emphasis on phone calls to specified numbers, [3] and there was no disclosure made by [4] Ms. Matzzie, and this is the subject of a [5] follow-up look she's going to make, but, when [6] you say you have no recollection of calling [7] Mr. Sheridan, is it possible that you would [8] have placed a call to him in this time frame [9] of 1994?

[10] A: I don't recall calling him and I [11] don't believe that I did.

[12] Q: Now, let's get a little bit into [13] the subject of what appeared to you to be [14] Mr. Sheridan's concerns during, am I fair by [15] saying, these three to four conversations in [16] the latter part of 1994?

[17] A: (Nodding)

[18] Q: And tell me, please, if you could, [19] what appeared to you to be Mr. Sheridan's [20] concern as he was expressing it to you?

[21] A: That he had some concerns about the [22] safety of Chrysler's minivans. My

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[1] recollection is that the first conversation [2] was probably a fairly short conversation, [3] where he was sort of calling us up and saying [4] I have some, you know, information or I don't [5] think minivans are safe and something should [6] be done about it.

[7] And it wasn't, you know — and that [8] he would — you know, it was sort of a [9] situation where you're never sure who you're [10] talking to, whether it is an industry [11] employee, whether it's a person who has good [12] information, you know, or not. So sometimes [13] — I mean, I will sometimes get a call from [14] potential — I'll never get another call from [15] them after that.

[16] Generally, my experience with [17] whistle blowers is, the first call or two are [18] relatively short, sort of sounding out, [19] calls, and I think my recollection is that [20] Mr. Sheridan's calls to me were along those [21] lines.

[22] Q: What is your definition of a

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[1] "whistle blower," as you've just used that [2] phrase?

[3] A: My definition of a whistle blower [4] is a person who works for industry or indeed [5] government but who has knowledge of a public [6] health or safety

hazard or perhaps an [7] economic fraud who believes that there's a [8] violation of the law and wants to make that [9] violation of law known or hazard known to the [10] public so that corrective action can be [11] taken.

[12] Q: Did Mr. Sheridan at one point in [13] time get specific about his concerns about [14] the safety of minivans?

[15] A: Well, it's —

[16] Q: And we're still talking about this [17] '94 time frame now.

[18] A: My recollection, you know, once [19] again, is, you know, over the time of this is [20] a little bit — you know, it's more process [21] oriented. You have to recognize that the [22] fall of 1994, when Mr. Sheridan was

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[1] contacting me, we were involved in the [2] biggest defect proceeding the Center for Auto [3] Safety had ever been involved in, which is [4] the General Motors pickups with gas tanks [5] outside the frame, which I must point out [6] that Chrysler engineers said was an utterly [7] unsafe position and you should never put a [8] gas tank outside the frame of a pickup, and [9] give Chrysler credit for that.

[10] So my attention to picking up [11] another proceeding or doing something was [12] somewhat limited. Indeed, I'm sure that my [13] own availability to take calls was somewhat [14] limited in that period of time.

[15] Q: But let me get back to the [16] question. You indicated, I believe, a moment [17] ago that during this first conversation he [18] appeared to be very general in his expression [19] about a concern over the safety of Chrysler [20] minivans, and my question to you is during a [21] subsequent conversation did Mr. Sheridan get [22] any more specific with you as to what aspect

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[1] of the minivan, in terms of safety, he [2] appeared to be concerned about?

[3] A: Well, he was concerned about the [4] safety of the passengers in the minivans in [5] crashes, and at some point Mr. Sheridan said [6] that he had concerns about the hatches and [7] the children in the vehicles.

[8] Q: The hatches or latches?

[9] A: Hatches.

[10] Q: The hatch?

[11] A: Hatch popping open, hatch, [12] h-a-t-c-h.

[13] Q: And did you understand that to be a [14] reference to the latch issue?

[15] A: Well, I wasn't sure. I mean, to me [16] the hatch and the latch are syn-

onymous. I [17] mean, I'm not sure what — you know, if [18] someone talked to me about a hatch, I would [19] normally think of the hatch and the latch [20] together.

[21] **Q:** Other than expressing a concern [22] about passengers in crashes involving the

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[1] hatches, maybe latches, did Mr. Sheridan [2] express a concern about any other specific [3] item within the overall ambit of the minivan [4] safety?

[5] **A:** Well, in those, you know, short few [6] conversations, you know, I don't recall that. [7] I mean, I recall Mr. Sheridan's — my [8] impression of Mr. Sheridan's conversations [9] are that on day one I wasn't even sure that [10] he worked for Chrysler, someone who had [11] information, maybe it's a supplier, maybe [12] it's, you know, an assembly line worker, [13] maybe it's an executive. I didn't know in [14] terms of that.

[15] I just knew that this individual [16] had information that he wanted to convey to [17] the government, but I didn't know that on day [18] one. I probably knew that on day — you [19] know, conversation number three. There [20] wasn't a lot of time between that first [21] conversation and the time that Mr. Sheridan [22] was terminated from Chrysler.

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[1] **Q:** Now, we've earlier talked about the [2] fact that the hatch or latch issue had, of [3] course, become an issue and had resulted in [4] the involvement of NHTSA as early as late [5] 1993, early 1994. That's correct, is it not?

[6] **A:** That's correct as to when NHTSA [7] began its investigation. I, of course, was [8] familiar with the earlier 1990 accident. We [9] had actually referred it to NHTSA, but, even [10] at that time, just, you know, shows you how [11] the generic issue is somewhat broader because [12] we weren't referring to that as a latch issue [13] in May of 1990, when we asked NHTSA to look [14] into the Noah George accident.

[15] **Q:** Focusing on the latch issue and the [16] discussions that you may have had with [17] Mr. Sheridan, did Mr. Sheridan say anything [18] to you that you considered to be new beyond [19] the realm of knowledge that you may have had [20] concerning that issue?

[21] **MS. MATZZIE:** Concerning which [22] issue?

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[1] **BY MR. KIENBAUM:**

[2] **Q:** The hatch/latch issue.

[3] **A:** No. I can't recall anything new [4] that he conveyed to me, but I don't recall

[5] getting into the details. The concern was [6] how to get information to the government.

[7] **Q:** You've had, obviously, subsequent [8] discussions with Mr. Sheridan, have you not, [9] after this '94 time frame?

[10] **A:** Yes.

[11] **Q:** And there have been other things [12] sent to you other than what we've identified [13] as Deposition Exhibit 1 from Mr. Sheridan to [14] you?

[15] **A:** Yes.

[16] **Q:** Did you at any time during these [17] communications with Mr. Sheridan learn [18] anything from Mr. Sheridan that was new to [19] you or news to you with respect to this [20] latch/hatch issue?

[21] **MS. MATZZIE:** Can you clarify what [22] you mean by "new to you"?

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[1] **BY MR. KIENBAUM:**

[2] **Q:** Let's set the stage for that. I [3] think that's fair. We've talked generally [4] about an issue and maybe a dispute between [5] Chrysler and NHTSA, and I gather there was [6] some writing about the fact that this issue [7] existed concerning the latches, is that [8] correct, in the '94 time frame?

[9] **A:** Yes.

[10] **Q:** And as I understand the issue, and [11] I don't do any regulatory work, but, as I [12] understood the issue, there was a position [13] taken by NHTSA with respect to the AS van and [14] its latch, at least at one point in time, [15] that there was a problem with that latch; is [16] that correct?

[17] **A:** That is correct.

[18] **Q:** And Chrysler was taking the [19] position that there was no problem with that [20] latch; is that correct?

[21] **A:** That's probably Chrysler's [22] position.

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[1] **Q:** And that appeared to be a public [2] fact, was it not, that these two parties were [3] taking these positions?

[4] **A:** Yes.

[5] **Q:** And I gather NHTSA, to your [6] understanding, and maybe you yourself as [7] well, must have had a pretty good idea at [8] this point in time what they thought the [9] problem with the latch was?

[10] **MS. MATZZIE:** Who is "they"?

[11] **MR. KIENBAUM:** NHTSA.

[12] **MR. MORGAN:** I have to object to [13] the form and foundation. How is Mr. Ditlow [14] to read the minds of whoever it is at NHTSA [15] you are referring to, Mr. Kienbaum, and you [16] haven't even

given us a name? Mr. Ditlow is [17] very talented, but mind reading, I don't [18] think, is one of his talents.

[19] **MS. MATZZIE:** I don't understand [20] the question.

[21] **BY MR. KIENBAUM:**

[22] **Q:** Let me try to rephrase it. Was it

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[1] your understanding that at any time in 1994 [2] NHTSA or any other governmental agency was [3] still trying to find something out about this [4] latch situation as opposed to doing what it [5] considered to be an appropriate remedy?

[6] **A:** Yes.

[7] **MR. MORGAN:** Same objection.

[8] **BY MR. KIENBAUM:**

[9] **Q:** And what is your understanding they [10] were trying to find out?

[11] **A:** Well, I believe in 1994 NHTSA, when [12] it opened the engineering analysis, sent an [13] information request to Chrysler that would [14] ask for — specify the types of information [15] that it wanted. I know that from subsequent [16] events that NHTSA did a series of its own [17] crash tests involving Chrysler minivans and [18] competitor minivans to see what would happen [19] in moderate-to low-speed crashes when a [20] Chrysler minivan versus a Ford Aerostar was [21] hit from the side, whether the hatch would [22] pop open or not. So, obviously, one might,

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[1] if you're asking my impression, NHTSA was [2] seeking information on what was happening in [3] the real world.

[4] **Q:** And did Mr. Sheridan at any time [5] during your conversations, and I'm not [6] limiting it now to 1994, provide you any [7] information whatsoever concerning what was [8] happening in the real world, as you have just [9] described? In other words, anything that [10] might have been news or added to the debate [11] or the issue?

[12] **A:** In 1994, no.

[13] **Q:** Any time?

[14] **A:** After 1994?

[15] **Q:** Yes, sir.

[16] **A:** I don't know whether — I really [17] can't recall anything specifically that [18] Mr. Sheridan would have talked to me about [19] regarding the latches in '95 or '96 that [20] wouldn't have otherwise been available to me [21] through reading the investigatory files or [22] anything like that. So my, you know,

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[1] communications with Mr. Sheridan

post-1994 [2] were, you know, just — were — I can't [3] recall anything new. I mean, I provided [4] whatever records we have, you know, that [5] Mr. Sheridan sent to me since that point in [6] time, and whether it's new or not, I mean, I [7] haven't examined my files or my knowledge [8] versus what he sent me to see if there's [9] something in there that's new. [10] **Q:** Have you had occasion to review the [11] NHTSA trip report concerning the conversation [12] between Mr. Sheridan and NHTSA [13] representatives in early 1995?

[14] **MR. MORGAN:** Objection. [15] Foundation. Which version of the trip [16] report, the redacted or the unredacted one?

[17] **MR. KIENBAUM:** Well, let's find out [18] what the witness has seen.

[19] **BY MR. KIENBAUM:**

[20] **Q:** Have you had occasion to review [21] such a report?

[22] **A:** Yeah, I have seen a report that

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[1] NHTSA placed in the public file of an [2] interview that was done of Mr. Sheridan. I [3] wasn't really aware whether it was done here [4] in Washington or in Detroit, but it was an [5] interview that — I believe by Julie Abrams [6] and a couple of other people from NHTSA of [7] Mr. Sheridan, but it's the public version of [8] that.

[9] **Q:** Well, focusing on latches and [10] taking your definition of a whistle blower, [11] what was your understanding as a result of [12] your discussions in 1994 as to what [13] Mr. Sheridan was trying to blow the whistle [14] about?

[15] **A:** Well, Mr. Sheridan was being, you [16] know, somewhat cautious, in my mind, about [17] providing — you know, about making sure that [18] he had the right entity to go to before he [19] sent the information on to that entity. So [20] he wanted to know where he could be most [21] effective in getting something done about his [22] safety concerns of the minivans, but

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[1] certainly the impression I have is that [2] minivans and hatches was one of [3] Mr. Sheridan's concerns, and I don't to this [4] day know what other concerns that [5] Mr. Sheridan has about Chrysler minivans. I [6] mean, we have some concerns about the gas [7] tanks of Chrysler minivans that I've never [8] talked to Mr. Sheridan about.

[9] **Q:** Other than learning that [10] Mr. Sheridan appeared to have a concern about [11] minivans, and now I'm focusing on 1994, did [12] you ever learn about anything specific that [13] Mr.

Sheridan appeared to be wanting to blow [14] the whistle about?

[15] **A:** Did I ever learn?

[16] **Q:** Yes, sir.

[17] **A:** You mean post-1994?

[18] **Q:** Any time.

[19] **A:** Yes, it's clear that Mr. Sheridan [20] certainly wanted to get NHTSA to do a safety [21] recall of the minivans because the latches [22] were bad.

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[1] **Q:** Well, so did some other entities, [2] did they not?

[3] **A:** Yes.

[4] **Q:** So that wasn't news?

[5] **A:** No, it wasn't news, but you're [6] asking about Mr. Sheridan's concerns, and [7] that certainly was, you know, one of his [8] concerns. But I can't — Mr. Morgan has said [9] I'm not a mind reader and my mind reading [10] hasn't improved today.

[11] **Q:** If your answer is that you do not [12] know as a result of your conversations with [13] Mr. Sheridan and whatever he may have sent [14] you what specific item of interest he might [15] have been wanting to add to the debate about [16] whether there should be a recall, I'll take [17] that answer. But, on the other hand, if you [18] know anything at all about a specific item of [19] concern that Mr. Sheridan wanted to add to [20] the debate whether there should be a recall, [21] I would ask you to place it on the record.

[22] **A:** It's a broad question, and let me

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[1] try and divide my answer into two parts, and, [2] if my lawyers want to shoot me, they can. [3] It's my understanding — I mean, if you're [4] asking me did Mr. Sheridan give me a document [5] on Chrysler minivan latches which he thought [6] should go to the federal government, the [7] answer to that is no. My impression, though, [8] was Mr. Sheridan had information on Chrysler [9] minivan hatches including the latches which [10] would be valuable to the government in their [11] pending investigations and that he could [12] provide that information to the government, [13] whatever it may be.

[14] You know, the dilemma with the [15] question is that until Mr. Sheridan, you [16] know, provides the detailed information, you [17] don't know exactly what he has or what's on [18] his mind, but my impression of Mr. Sheridan [19] is that through these four conversations [20] before he was fired that he was a classic [21] whistle blower who had access to information, [22] and he wanted to give that information to the

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[1] government to act on, whatever that [2] information may be, but I do know that [3] minivan safety, passenger safety, and hatches [4] was one of the concerns was uppermost on [5] Mr. Sheridan's mind.

[6] **Q:** If I understand your question [7] correctly —

[8] **A:** Sorry to be long-winded.

[9] **Q:** I appreciate it. Please let me [10] know if I incorrectly paraphrase it. What [11] you're able to tell me is that it appeared [12] that Mr. Sheridan thought he had valuable [13] information concerning this debate as to [14] whether there should be a recall, but you at [15] no time found out any detail about what this [16] valuable information might be?

[17] **A:** That's probably a good summary.

[18] **Q:** And now let's maybe take a look at [19] some of the other documentation. This is —

[20] **MS. MATZZIE:** Do you want a break?

[21] **THE WITNESS:** Sure.

[22] **THE VIDEOGRAPHER:** We're going off

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[1] video record at 10:47.

[2] (Recess)

[3] (Ditlow Deposition Exhibits [4] Nos. 2 through 4 were marked for [5] identification.)

[6] **THE VIDEOGRAPHER:** We're back on [7] video record at 10:54.

[8] **BY MR. KIENBAUM:**

[9] **Q:** Mr. Ditlow, before I forget, let me [10] ask you one question. Did you at any time, [11] prior to the end of year 1994 tell anyone at [12] Chrysler Corporation about the fact that you [13] were having these conversations with [14] Mr. Sheridan?

[15] **A:** I don't believe so.

[16] **Q:** I gather, if you got the impression [17] there was a whistle blower, the last thing [18] you would do is call somebody in Chrysler and [19] tell them you thought there was a whistle [20] blower from Chrysler calling you; is that [21] fair?

[22] **MS. MATZZIE:** It calls for him to

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[1] speculate.

[2] **MR. MORGAN:** Objection to the form [3] of the question.

[4] **THE WITNESS:** I don't know. I [5] mean, I have to think about that one. No, I [6] would — my first thought would not be to [7] call Chrysler, but, I mean, we have had a [8] history of going directly to corporations on [9] some defects where the government has been [10] involved,

but, if it's a safety concern, [11] probably not.

[12] **BY MR. KIENBAUM:**

[13] **Q:** And you don't have any recollection [14] of calling anyone such as Mr. Goldfarb during [15] any time in 1994 to tell him about your [16] conversations with Mr. Sheridan?

[17] **A:** Not in 1994.

[18] **Q:** Let me ask you whether during these [19] '94 conversations with Mr. Sheridan you [20] recall any other issues that he might have [21] raised with you beyond the lift gate and [22] latch issue?

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[1] **A:** No, I don't.

[2] **Q:** And let me, just in an effort to [3] see if this refreshes your recollection, do [4] you remember him saying anything about crash [5] tests, frontal crash tests?

[6] **A:** I don't recall.

[7] **Q:** Do you remember him saying anything [8] about seat back strength?

[9] **A:** No.

[10] **Q:** Do you remember him saying anything [11] about air bags?

[12] **A:** No.

[13] **Q:** You mentioned earlier the fact that [14] at one point in time the latches on lift [15] gates such as the Chrysler minivan lift gates [16] were not covered by a door safety standard?

[17] **A:** Yes.

[18] **Q:** And that would be Standard 206; is [19] that correct?

[20] **A:** That is correct.

[21] **Q:** Have those lift gates ever become [22] covered by 206 or another regulation?

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[1] **A:** The government did in fact, I think [2] in large part influenced by the Chrysler lift [3] gate defect, extend the standard to tailgates [4] of vans and hatchbacks and station wagons. I [5] think it was effective September 1, 1997.

[6] **Q:** In any event, just so we're clear, [7] during no time in 1994 would 206 or any other [8] regulation have covered the lift gate and/or [9] the latch; is that correct?

[10] **A:** That's correct.

[11] **Q:** Let me ask you to take a quick look [12] at Deposition Exhibit 1 and I believe counsel [13] has a copy, and I'm going to ask you to turn [14] to Bates 123. If you could take a look at [15] that document, Mr. Ditlow, is that a memo [16] dated November 7?

[17] **A:** Yes, November 7, 1994.

[18] **Q:** And if you could take a look at [19] Bates 126, please. That may be part of the

[20] stapled batch you have there.

[21] **A:** Yes.

[22] **MR. KIENBAUM:** Let me just have a

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[1] moment. I'm sorry, I meant to identify [2] Bates 123.

[3] **MR. MORGAN:** You did.

[4] **BY MR. KIENBAUM:**

[5] **Q:** And then Bates 125, and those are [6] two separate documents, are they not?

[7] **A:** Bates 125 is stapled to 123, but [8] it's dated October 26, 1994.

[9] **Q:** And Bates 123 appears to be a memo [10] from one T. R. Cunningham to P. V. Sheridan [11] dated November 7, 1994; is that correct?

[12] **A:** That is correct.

[13] **Q:** And the other document, Bates 125, [14] appears to be a memorandum from Paul V. [15] Sheridan to Theodore R. Cunningham dated [16] October 26, 1994; is that correct?

[17] **A:** That is correct.

[18] **Q:** And do you recall when you would [19] have received these documents?

[20] **MR. MORGAN:** I have to object at [21] this point in time, Mr. Kienbaum, because [22] you're picking and choosing records there.

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[1] In the copy you provided to me paper clipped [2] to those Bates number that you are referring [3] to is Bates number 121, which appears to be [4] an order of a court dated July 22, 1996.

[5] **MR. KIENBAUM:** I don't know what [6] your objection is.

[7] **MR. MORGAN:** It appears that the [8] documents that you're referring to, 123 and [9] 125, may be related to this order, and this [10] order is in fact the basis upon which those [11] documents were released.

[12] **MR. KIENBAUM:** Mr. Morgan, all I [13] asked the witness is whether he recalls when [14] he received these documents that I've just [15] identified.

[16] **MR. MORGAN:** You're asking him [17] questions without being fair, in my view, to [18] the witness, in letting him know that in fact [19] this order was appended to the documents that [20] you're referring to. Then you asked a [21] question about when did you get those.

[22] **MR. KIENBAUM:** Mr. Morgan, I don't

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[1] know whether it was appended, but why don't [2] we go ahead and have the witness answer?

[3] **MR. MORGAN:** Well, for the record, [4]

you can look at mine. It's appended in mine.

[5] **MR. KIENBAUM:** Thank you. Let's [6] just ask the witness.

[7] **BY MR. KIENBAUM:**

[8] **Q:** Mr. Ditlow, can you tell us when [9] you might have received these two documents [10] that I've just asked you to identify?

[11] **A:** My recollection on this would be [12] sometime in 1996.

[13] **Q:** And do you recall from whom you [14] would have received these documents?

[15] **A:** I believe that they — well, I [16] don't specifically know.

[17] **Q:** Let me show you what has been [18] marked Deposition Exhibit No. 2, Mr. Ditlow, [19] and this is a book that we received from your [20] office last night. At least it was waiting [21] for us at the hotel where we were staying, [22] and we had an opportunity to look at it last

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[1] night, and I would ask you if you can [2] identify Deposition Exhibit 2. Now, I have [3] to apologize. We don't have a copy because [4] we haven't been able to copy it yet, and we [5] propose to make a copy of it with counsel's [6] permission. I understand this to be an [7] original, and we'll ask the Dickinson Wright [8] folks to make a copy here and provide one to [9] Mr. Morgan and one with the record and then [10] return to your office the original. But in [11] the meantime, if you could please identify [12] Deposition Exhibit 2, I would appreciate it.

[13] **MR. MORGAN:** I would object to any [14] further questions beyond a mere [15] identification by the witness. It's clear [16] that I have not had an opportunity to see the [17] document while you have had it since last [18] night.

[19] **THE WITNESS:** Yes, I recognize it. [20] This is a 3-ring binder that Mr. Sheridan [21] sent to me presumably on August 14, 1997, [22] which is the date of the cover letter which

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[1] is appended to it.

[2] **MR. VLADECK:** Are you going to ask [3] him any questions about this?

[4] **MR. KIENBAUM:** No.

[5] **BY MR. KIENBAUM:**

[6] **Q:** Let me show you what's been marked [7] Deposition Exhibit No. 4, Mr. Ditlow, and let [8] me say that that is a part of Deposition [9] Exhibit No. 2 that we had copied and ask you [10] to identify that.

[11] **A:** Deposition Exhibit No. 4 is the [12] cover letter to the 3-ring binder that [13]

Mr. Sheridan sent to me on August 14, 1997.

[14] Q: That's the cover letter but part of [15] that would be a 13-page memorandum that we [16] intend to also make part of that letter [17] because it is referred to in that letter and [18] is also part of Deposition Exhibit 2. Can [19] you identify that document, which is [20] captioned Chrysler v. Sheridan, the crux of [21] the matter?

[22] A: As I look at it, I believe that

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[1] this is part of the 3-ring binder.

[2] Q: Let me start with Deposition [3] Exhibit 4. Did you read Deposition Exhibit [4] 4? And again that's the 2-page cover letter [5] as well as the 13-page enclosure.

[6] A: I read the cover letter to it at [7] the time that the 3-ring binder came into the [8] office. I have to be a little bit uncertain [9] about the date that I would have read it [10] because I might have been on vacation or on [11] travel the day that it would have arrived at [12] the office but sometime within two or three [13] weeks after receiving it.

[14] I recall reading the cover letter [15] and then looking at the — sort of skimming [16] the contents of the — flipping through the [17] contents of the 3-ring binder.

[18] Q: And let me show you what's been [19] marked Deposition Exhibit No. 3, and let me [20] say that this is the other binder that we [21] received from your office yesterday evening. [22] At least, that's when we picked it up at the

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[1] hotel. And can you identify that for us?

[2] A: Yes. This is another 3-ring binder [3] that was sent to me by Mr. Sheridan.

[4] Q: If you recall, did that 3-ring [5] binder which is Deposition Exhibit 3 come at [6] the same time as Deposition Exhibit 2 or at [7] separate times or partially?

[8] MR. MORGAN: Let me object to the [9] further questioning of the witness regarding [10] Exhibit 3 inasmuch as I have not been [11] provided a copy of it nor have I seen it this [12] morning while you have had access to it since [13] last evening.

[14] THE WITNESS: My recollection — [15] well, it came separately. They came [16] separately.

[17] BY MR. KIENBAUM:

[18] Q: And is Deposition Exhibit 3 [19] something that is being supplemented because [20] additional things are being received, or do [21] you recall Deposition Exhibit 3 as such all [22] being received in

one submission?

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[1] A: Is this No. 3?

[2] Q: Yes, sir.

[3] A: This came as one binder as-is. As [4] you see it today is the way that I received [5] it.

[6] Q: And did you read through Deposition [7] Exhibit 3?

[8] A: It's rather lengthy. No, I did [9] not. I mean, I looked at the individual tabs [10] just to see what the cover pages were. I [11] paid particular attention to the outside of [12] it, which was a representation that it's [13] public dox only, court filings and background [14] material, because I wanted to make sure that [15] this was a public document in that sense.

[16] But I was relying on that [17] representation, and then I just, you know, [18] glanced through it to look to see that it was [19] pleadings that were, you know, whatever [20] they're presumed to be.

[21] Q: I was going to ask you about that [22] public dox designation on the front of

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[1] Exhibit 3. Let me ask you, what is your [2] understanding as to the meaning of that [3] designation?

[4] A: Well, I probably would have used [5] D-o-c-s, but dox is docs. My impression of [6] looking at this is that it was public [7] documents in — apparently there's two [8] different cases which — but at any rate the [9] Sheridan v. Chrysler legal dispute.

[10] Q: Let me ask you are there any [11] documents that your organization considers [12] private documents or non-public documents that [13] would have been withheld despite the [14] subpoena? In other words, what I'm asking [15] for really is I understand your definition of [16] public documents. Now, is that something [17] that you use at Center for Auto Safety in [18] terms of classifying your own documents at [19] all such as those that you consider [20] privileged and those that you don't consider [21] privileged?

[22] A: No.

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[1] MR. KIENBAUM: And I understand [2] from counsel there haven't been any documents [3] withheld under the privilege objection; is [4] that correct? I'll address that to counsel.

[5] MS. MATZZIE: There's been one [6] objection interposed as to production of [7] mailing lists. Other than that, there have [8] been no others that I've interposed. Now, I [9] don't know going back to this '96 — no other [10] ob-

jections.

[11] BY MR. KIENBAUM:

[12] Q: And let me just generally talk [13] about the mailing lists, and I understand [14] your counsel's position that there may be a [15] privilege or confidentiality aspect to this. [16] If you know, just roughly how large is your [17] organization's mailing list?

[18] MS. MATZZIE: We object to any line [19] of questioning. Don't answer.

[20] THE WITNESS: May I ask my counsel [21] if I'm supposed to answer or not?

[22] MS. MATZZIE: Don't answer.

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[1] MR. KIENBAUM: You've been [2] instructed not to answer and I gather, [3] Counsel, simply the size of the mailing list [4] itself would be confidential?

[5] MS. MATZZIE: Yes.

[6] BY MR. KIENBAUM:

[7] Q: If you know, has Mr. Sheridan been [8] on your organization's mailing list at any [9] time?

[10] MS. MATZZIE: Objection. Go ahead. [11] You can answer that.

[12] THE WITNESS: Okay. As far as I [13] know, he's not on the mailing list, but I [14] don't know — you know, I don't know.

[15] BY MR. KIENBAUM:

[16] Q: Let me ask you whether, other than [17] speaking to Mr. Sheridan as you've testified, [18] you have ever taken any action of any sort [19] with respect to Chrysler Corporation as a [20] result of something you heard from [21] Mr. Sheridan, were told by Mr. Sheridan, [22] learned from Mr. Sheridan? In other words,

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[1] did you ever take a particular course of [2] action?

[3] A: No.

[4] Q: And if you can just give me a [5] ballpark after '94, and we've covered those [6] discussions, how many times would you say [7] you've spoken with Mr. Sheridan starting with [8] January 1, 1995, to the present time?

[9] A: Let's see. We're looking at a [10] little over a 3-year period of time. [11] Certainly less than I speak to Mr. Goldfarb. [12] I think probably a good estimate would be a [13] dozen times over that period of time.

[14] Q: Would it be fair to say, [15] Mr. Ditlow, that if something came to your [16] attention that you thought was not yet known [17] to entities that address safety and that you [18] felt was in any way significant, that you [19] would take some action about that by either [20] disclosing or passing on or yourself taking [21] some

action?
[22] MR. MORGAN: Objection to the form

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[1] and foundation. Go ahead.
[2] THE WITNESS: I'm not — you're [3] going to have to clarify what you mean by [4] that one.

[5] BY MR. KIENBAUM:

[6] Q: You've testified that you have not [7] taken any course of action as a result of [8] anything you've learned from Mr. Sheridan as [9] a result of discussions in '94 and the [10] roughly dozen or so discussions with him [11] since that time, and my question to you is, [12] sir, would it not be fair to say that, if you [13] had learned something from Mr. Sheridan that [14] you believed was not already in play, if you [15] will, it wasn't already known and being dealt [16] with and you felt was significant to the [17] issue of safety of anything, is it not fair [18] to say that you would have then done [19] something with that information?

[20] MR. MORGAN: Same objection.

[21] THE WITNESS: If I had — it's sort [22] of a theoretical question.

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[1] BY MR. KIENBAUM:

[2] Q: Sure.

[3] A: If I had learned something from [4] Mr. Sheridan about safety, I'm not sure how I [5] — that raises an interesting issue because [6] I'm aware of the litigation that's ongoing, [7] so I presume the first instance I wouldn't [8] learn anything new from Mr. Sheridan, but I [9] would be cautious about utilizing — I [10] probably would suggest to Mr. Sheridan that [11] he convey the information to the government [12] directly versus giving information to me.

[13] Q: Are you aware of any such [14] information that Mr. Sheridan may have [15] conveyed to the government?

[16] MR. MORGAN: Let me object to the [17] form and foundation. Your question presumes [18] that Mr. Ditlow should necessarily be in a [19] position to know that.

[20] MR. KIENBAUM: Not at all.

[21] MR. MORGAN: Particularly where [22] Chrysler maintains that information provided

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[1] to the government even by Mr. Sheridan should [2] be completely kept secret from everybody.

[3] MR. KIENBAUM: Not at all.

[4] BY MR. KIENBAUM:

[5] Q: My question is very simple. Are [6] you aware of any information, Mr. Dit-

low?

[7] A: No.

[8] MR. KIENBAUM: May I have just a [9] moment?

[10] MR. VLADECK: You want us to give [11] you a few minutes?

[12] MR. KIENBAUM: No.

[13] (Ditlow Deposition Exhibit No. 5 [14] was marked for identification.)

[15] BY MR. KIENBAUM:

[16] Q: Mr. Ditlow, let me show you what's [17] been marked Deposition Exhibit No. 5, I [18] believe, and ask you if you can identify that [19] document.

[20] MR. MORGAN: May I see the [21] document?

[22] MR. KIENBAUM: Sure.

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[1] MR. VLADECK: Why don't we go off [2] the record for a couple minutes? He has not [3] seen it before.

[4] MR. KIENBAUM: Certainly.

[5] THE VIDEOGRAPHER: We're going off [6] video record at 11:17.

[7] (Recess)

[8] THE VIDEOGRAPHER: We're back on [9] video record at 11:25.

[10] BY MR. KIENBAUM:

[11] Q: Mr. Ditlow, I believe you've had a [12] moment to take a look at what's been marked [13] as Deposition Exhibit No. 5, have you not?

[14] A: I've glanced at it quickly, yes.

[15] Q: Have you seen that document before?

[16] A: I don't recall seeing the [17] particular document.

[18] Q: Can you nevertheless identify it?

[19] A: It looks like a write-up of an [20] interview that I believe Paul Lienert did of [21] me, either that or his wife, Anita Lienert. [22] I recall doing an interview sometime with one

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[1] of the Lienerts arts, and this looks like a [2] write-up of the interview.

[3] Q: And are you familiar with a [4] publication Intelligentsia, the automotive [5] intelligence reports?

[6] A: No, I am not familiar with that [7] publication.

[8] Q: Having had a chance to take a look [9] at that and, if you would like, please take [10] some additional time if you need it, but do [11] you believe that there is any instance where [12] you are inaccurately quoted in Deposition [13] Exhibit 5?

[14] A: Oh, I have yet to see an interview [15] of me that's 100 percent on point. I mean, [16] the media is not necessarily known for [17] getting things right. If we

have one thing [18] in common with the auto companies, we both [19] complain about how the media writes up our [20] views.

[21] I would rather not do a [22] page-by-page analysis of it if you have

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[1] something you want me to look at.

[2] Q: Why don't you take a look at page [3] 5, the paragraph, "How would you grade the [4] Big 3 on safety issues and why," and, just [5] reading that paragraph under that caption, [6] would you tell me if you believe you were [7] correctly quoted there?

[8] A: Well, it's hard — I wouldn't quite [9] write it up the way that they write it. I [10] mean, I think I know what I was trying to [11] convey, but the wording here, I think, is [12] susceptible to two points. I mean, overall, [13] I mean, yes, it's accurate that I said that [14] of the big three I would give Chrysler a B or [15] a B plus, that's right.

[16] Q: Let me ask you if there's anything [17] factual there set forth that you would [18] correct as being incorrect presently?

[19] A: Well, the trouble that I have with [20] it is, if I look at the sentence at the [21] bottom of the first column on page 5 that [22] reads, "Yet they haven't done things that

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[1] they could do, such as go to a [2] five-miles-an-hour, no-damage bumper on all [3] vehicles" — the old five-mile-per-hour [4] bumper standard — "such as voluntarily [5] moving forward on head impact, doing things [6] about some of the problems that you see on [7] latches on doors on their vans, which are a [8] problem," those would be things that we would [9] downgrading Chrysler on. And as long as the [10] record reflects that, I think it's pretty [11] accurate.

[12] In other words, I'm not saying that [13] they've done good things on head impact, and [14] I'm not saying that they've done good things [15] on latches. I'm saying they did bad things.

[16] Q: I understand. I read the story [17] that way, with the way you are "correcting" [18] it.

[19] A: Then on this point, you're my kind [20] of lawyer.

[21] Q: Mr. Brown reminds me that I should [22] ask you whether any of the submissions you

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[1] have received from Mr. Sheridan other than [2] the one that had a forwarding letter, which [3] is Deposition Exhibit 2, I believe; whether [4] any of the other submissions had any [5] forwarding letters?

[6] I'm assuming not, because we would [7] have received them from you. But I just want [8] to be sure the record's complete.

[9] **A:** No, I mean there were no forwarding [10] letters on the other documents or records I [11] produced. Whatever we produced is what I [12] got.

[13] **Q:** So it appears that on occasion, [14] Mr. Sheridan has just sent you something [15] without any kind of introductory letter?

[16] **A:** That's right.

[17] **Q:** Would he, if you recall, have [18] called you at or about the time of that [19] submission to talk about it?

[20] **A:** He might have called me after it to [21] see whether I got it. But that would be, you [22] know, just — it would be the " by the way, I

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[1] sent you something" type of phone call.

[2] **Q:** Did Mr. Sheridan ever explain to [3] you why he was sending you all the materials [4] that we find in Deposition Exhibits 2 and 3; [5] what the purpose of that was?

[6] **A:** I don't recall him specifically [7] saying, you know, why he was sending it to [8] me.

[9] **Q:** Have you ever reached a conclusion [10] as to why you felt he was sending this to [11] you?

[12] **A:** My impression was that he was [13] sending it to keep me up to date on what was [14] going on in the litigation.

[15] **Q:** And do you have any understanding [16] as to why he wanted to do that?

[17] **A:** You'd have to ask Mr. Sheridan.

[18] **Q:** So your answer is, you don't know?

[19] **A:** I don't know.

[20] **Q:** Mr. Ditlow, just quickly focusing [21] again on Deposition Exhibit 4, which is the [22] August 14, 1997, letter from Mr. Sheridan to

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[1] you, there are three individuals identified [2] as receiving CC carbon copies of that letter: [3] J. Massey, K. Mitchell, and J. White.

[4] Can you identify any of those [5] individuals for me?

[6] **A:** I can't identify any of them.

[7] **Q:** Thank you.

[8] **MR. KIENBAUM:** Well, I think what [9] we've talked about is making a full copy of [10] Deposition Exhibit 2 and Deposition [11] Exhibit 3, and I think that will reflect with [12] the tabs. But there are

tabs, are there not, [13] to Deposition Exhibit 2, a number of them?

[14] **MS. MATZZIE:** Yes.

[15] **THE WITNESS:** Are you asking me [16] that?

[17] **BY MR. KIENBAUM:**

[18] **Q:** I think it will be clear. [19] Have you, and I don't believe I've [20] asked this question, but have you ever placed [21] a call to Mr. Sheridan, you yourself?

[22] **A:** Yes, I have placed a call to him.

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[1] **Q:** And other than for the purpose of [2] returning one of his phone calls that you may [3] have missed, do you recall any purpose why [4] you might have ever wanted to speak to [5] Mr. Sheridan?

[6] **A:** My recollection is that my calls to [7] Mr. Sheridan were in response to his calls to [8] me, returning a call.

[9] **Q:** Let me ask you to take a look at a [10] public record that I had printed out, and [11] again, I apologize for not having a copy. [12] But this is a copy of a case cited at 72 Fed [13] Third, page 1236. The caption is Grace v. [14] Center for Automotive Safety and Clarence [15] Ditlow, and that, of course, is some [16] litigation you were involved in, and where [17] the Sixth Circuit, I believe, set aside some [18] ruling of the lower court; is that correct?

[19] **A:** That's correct.

[20] **Q:** And I believe you've had occasion [21] to read that opinion?

[22] **A:** More so than the District Court

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[1] decision.

[2] **Q:** Let me ask you to take a look at a [3] description given to your organization by the [4] court at page 1237, which starts, "Defendant [5] Ditlow is the executive director," and let me [6] ask you to read that paragraph into the [7] record. And then I'm going to ask you [8] whether there's any part of that finding of [9] the court of the Sixth Circuit that you [10] disagree with.

[11] **MR. MORGAN:** Let me object to the [12] form of the question. I don't know that what [13] the court says there is a finding or a [14] legally binding precedent with respect to [15] their description of the Center for Auto [16] Safety, Mr. Kienbaum.

[17] And without you having provided me [18] a copy of the decision to even look at to [19] raise an objection before you have the [20] gentleman read it into the record, all of [21] which is, of course, improper under the [22] rules.

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[1] **MR. KIENBAUM:** I disagree with you, [2] Mr. Morgan, but if you'd like to take a [3]

moment to look at it, I'm sure we could have [4] you do that, so that you too can read the [5] Sixth Circuit's opinion, if you'd like.

[6] **MS. MATZZIE:** Should we take a [7] moment, a break? Should we go off?

[8] **MR. VLADECK:** Do you need to look [9] at this any further, Clarence?

[10] **MR. KIENBAUM:** Would I like me to [11] make a copy of this?

[12] **MR. VLADECK:** Let me Mr. Morgan [13] take a look at it. That may be quicker than [14] going to get a copy.

[15] **MR. KIENBAUM:** I agree.

[16] **MR. VLADECK:** You've had an [17] opportunity to read it?

[18] **MR. MORGAN:** Yes, I have.

[19] **MR. VLADECK:** Are we still on the [20] record?

[21] **MR. KIENBAUM:** I believe we are, [22] yes.

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[1] **BY MR. KIENBAUM:**

[2] **Q:** Could I ask you to read that one [3] paragraph, Mr. Ditlow, where the Sixth [4] Circuit, whether finding or not, describes [5] your organization?

[6] **MR. MORGAN:** Furthermore, I have to [7] object on foundational grounds, because there [8] is no indication in the document as to what [9] the source is. Is it the Sixth Circuit?

[10] **MR. VLADECK:** Yes.

[11] **MR. MORGAN:** what the Sixth [12] Circuit's observations are with respect to [13] auto safety. It's quite possible that the [14] General Motors Corporation, with which you, [15] Mr. Kienbaum, have at least a passing [16] familiarity, as I recently learned, may have, [17] for their own purposes of advocacy, so [18] characterized the Center for Auto Safety.

[19] **MS. MATZZIE:** We also object on the [20] grounds that it does not appear to be a [21] description, as you've characterized it.

[22] **MR. MORGAN:** Moreover, a court does

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[1] not make factual findings, which is [2] apparently the portent of your questions, as [3] you well know as a lawyer.

[4] **MS. MATZZIE:** The Court of Appeals.

[5] **MR. KIENBAUM:** Anybody else who [6] would like to say something else about this [7] before we have Mr. Ditlow read that [8] paragraph?

[9] **MR. MORGAN:** No.

[10] **MS. MATZZIE:** We object to having [11] to read the paragraph. It's not —

[12] **MR. KIENBAUM:** Well, then I'll do [13] it. All right?

[14] BY MR. KIENBAUM:

[15] Q: Mr. Ditlow, I'm reading from 72 Fed [16] Third, page 1237, at a point where the Court, [17] the Sixth Circuit Court of Appeals, purports [18] to describe you and the organization, Center [19] for Auto Safety. And let me just read to [20] you, and I'll take it sentence by sentence [21] and see whether you agree or disagree with [22] the description.

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[1] "Defendant Ditlow is the executive [2] director of the Center for Auto Safety, a [3] consumer advocacy organization based in [4] Washington, D.C."

[5] Is that a correct statement?

[6] A: That's a correct statement.

[7] Q: "The Center, which was founded by [8] Ralph Nader and the Consumers Union, assists [9] plaintiffs personal injury lawyers in [10] lawsuits related to auto safety."

[11] Is that a correct or incorrect [12] statement?

[13] MR. MORGAN: Let me object to [14] further questioning on this subject matter, [15] because I fear, Mr. Kienbaum, that the [16] purpose of these questions is not to [17] establish something for use in this case or [18] in this record, but that you or elements that [19] you represent are perhaps interested in [20] drawing an admission from Mr. Ditlow that [21] they can use in other forums, and perhaps [22] even in advertising or something like that,

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[1] or some other campaign that they have [2] planned.

[3] I think it's unfair that you [4] subject Mr. Ditlow to that kind of abuse.

[5] MR. KIENBAUM: Wow, abuse.

[6] MS. MATZZIE: Well, I object on the [7] same grounds. Mr. Morgan is actually more [8] familiar with this litigation than we are, [9] and so from what he has said, we have serious [10] concerns about the relevance of having [11] Mr. Ditlow answer these questions to this [12] litigation.

[13] MR. KIENBAUM: Well, with all due [14] respect, I think if we have a fact witness on [15] issues involving a purported whistleblower, I [16] think it is only fair to determine whether [17] this description by the Sixth Circuit is [18] correct or incorrect, and the witness can [19] certainly disagree with it.

[20] MS. MATZZIE: We object, because [21] the Sixth Circuit's statement can stand for [22] itself. And Mr. Ditlow has answered and will

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[1] answer any questions about what the Center [2] for Auto Safety is indepe-

ndently.

[3] MR. MORGAN: Unless I misread it, [4] does the Sixth Circuit mention me or my law [5] firm?

[6] MR. KIENBAUM: I don't know.

[7] MR. MORGAN: It says "plaintiff's [8] attorneys."

[9] I don't see any relevance here, [10] Mr. Kienbaum. It seems to me, perhaps, you [11] think it's humorous or something. I don't [12] know. But it doesn't have anything to do [13] with this lawsuit. And I suspect that you [14] are going to take this deposition and [15] distribute it to your friends at General [16] Motors, as well as at Chrysler, in an attempt [17] to — whatever program they have in place [18] with respect to Mr. Ditlow, and perhaps some [19] ill feelings they have towards him.

[20] MR. KIENBAUM: Mr. Morgan, I [21] understand you're objecting. I don't know [22] why the pejorative note in your objection,

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[1] why that's necessary. But in any event, is [2] there instruction from the only counsel for [3] Mr. Ditlow not to answer, or are we going to [4] get an answer?

[5] MS. MATZZIE: If we can have a [6] stipulation on the record that this [7] deposition will be only used for the purpose [8] of this litigation, we will answer a question [9] concerning the mission of the Center for Auto [10] Safety.

[11] MR. MORGAN: You know what? I [12] would object to that. I think that this [13] question and answer and this line of [14] questioning used for purposes only of this [15] deposition, I don't have any objection. But [16] the other items, I would.

[17] MR. VLADECK: That's what we're [18] talking about.

[19] MS. MATZZIE: We're just talking [20] about this pertaining to the Sixth Circuit.

[21] MR. KIENBAUM: Well, come on, guys. [22] Give me a break. We're going to use the

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[1] deposition for other purposes, but my [2] question to Mr. Ditlow whether the statement [3] by the Sixth Circuit is correct or incorrect [4] is not to be used elsewhere? I can't do [5] that.

[6] As far as I'm concerned, I don't [7] have any purposes to create a record for the [8] case I represent somebody in. I'm not in a [9] position to effect a protective order. [10] Obviously, somebody can subpoena me. I'm [11] going to pass this on to my client. I don't [12] have any control about what my client chooses [13] to do with this stuff. I have not been [14] instructed in any particular way what to do [15] with this transcript. All I'm trying to do [16] is

ask a question whether this statement in [17] an opinion by the Sixth Circuit is true or [18] not, and then maybe ask a follow-up question [19] if not.

[20] But I understand. If you wish to [21] instruct your client not to answer, I'm not [22] going to argue with you about it. I've

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[1] learned to live with those instructions.

[2] MR. VLADECK: Fine. Instruct him [3] not to answer.

[4] MS. MATZZIE: You don't need to [5] answer the question.

[6] MR. KIENBAUM: Just so we're clear, [7] there's an instruction not to answer, and for [8] the record, what's the basis?

[9] MS. MATZZIE: Because the concern [10] that we have based, upon our offer to [11] stipulate to use of this line of questioning [12] only in this litigation. And as far as I can [13] tell, you've rejected that offer.

[14] So now we have serious concerns [15] that you're trying to go beyond the scope of [16] this litigation in using this line of [17] questioning to get my client to say something [18] on the record that you'll use for other [19] purposes.

[20] MR. KIENBAUM: I've stated to you [21] that I have no such intent. But I'm also not [22] in a position to commit my client, Chrysler

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[1] Corporation, to any kind of limitation.

[2] MS. MATZZIE: Precisely. And [3] Mr. Ditlow appeared here today to answer [4] questions relevant to this litigation, and [5] not to provide Chrysler with additional [6] information or commentary on a Sixth Circuit [7] opinion.

[8] MR. MORGAN: I don't know what the [9] exact nature of the Center's business may be, [10] but it is possible that both attorney-client [11] and work product objections would apply to [12] the statement. You're asking the witness to [13] affirm something that was advocated by [14] General Motors.

[15] MR. KIENBAUM: Mr. Morgan, how do [16] you know? A moment ago it was a maybe, and [17] now it's a certainty.

[18] MR. MORGAN: I'd be willing to bet [19] a large sum of money, Mr. Kienbaum, a large [20] sum of money —

[21] MR. VLADECK: Having been counsel [22] of record in that case, I will represent to

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[1] you that that is where this description of [2] the Center comes from, not from the Center's [3] brief. Briefs in this case are public [4] record. We'd be glad, if

you'd like, to [5] supply them to you. Therefore, you could [6] have both the Center's description of what it [7] did on public record and GM's. If that would [8] be assistance to you, we'd be glad to make [9] those briefs available.

[10] **MR. MORGAN:** I'll bet you the \$82 [11] million your client's seeking from mine, [12] counsel, that Mr. Vladeck is correct.

[13] **BY MR. KIENBAUM:**

[14] **Q:** Let me go to the next sentence, [15] since I understand there's been a hard [16] instruction not to answer.

[17] The next sentence, Mr. Ditlow, is, [18] "Mr. Ditlow and the Center apparently [19] maintain a relationship with a litigation [20] group of Public Citizen, Inc., an [21] organization that has been described as [22] Nader's longtime flagship lobbying litigation

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[1] group."

[2] Is that a correct or incorrect [3] statement?

[4] **MS. MATZZIE:** Mr. Ditlow will [5] answer.

[6] **THE WITNESS:** May I see the [7] sentence again?

[8] **BY MR. KIENBAUM:**

[9] **Q:** Oh, sure.

[10] **A:** I would agree that we have a [11] relationship with the Litigation Group, and I [12] can't go to the description of Nader's [13] longtime flagship lobbying litigation group. [14] I mean, I don't know whether that's true or [15] not. But we do — certainly, as indicated by [16] my counsel today, we have a relationship with [17] Public Citizen Litigation.

[18] **Q:** I understand. Thank you. [19] Does Center for Auto Safety engage [20] in lobbying activity?

[21] **A:** Could you define "lobbying"?

[22] **Q:** Lobbying activity is —

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[1] **MS. MATZZIE:** Objection on [2] relevance grounds. You can answer.

[3] **THE WITNESS:** Excuse me?

[4] **BY MR. KIENBAUM:**

[5] **Q:** I don't recall where we are.

[6] **MR. VLADECK:** Have the reporter [7] read back the question.

[8] **BY MR. KIENBAUM:**

[9] **Q:** Your question to me is, what do you [10] define as lobbying? That is seeking to [11] impact legislation or regulations issued [12] pursuant thereto.

[13] **A:** As in the definition of the IRS [14] regulations governing lobbying, we don't [15] lobby Congress. We do — we are a watchdog [16] group that tries to pressure regulatory [17] agencies to do

the right thing. And as the [18] Chrysler liftgate case indicates, we are [19] sometimes unsuccessful.

[20] **Q:** Now, do you at times work with [21] attorneys in products liability cases; that [22] is, provide support?

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[1] **A:** We don't work with attorneys in [2] product liability cases.

[3] **Q:** Are there times when you provide [4] briefing or amicus support in connection with [5] products liability cases?

[6] **A:** Well, we may file an amicus brief, [7] but an amicus brief is based on our judgment [8] as to whether or not an amicus brief should [9] be filed in a case.

[10] **Q:** I understand. Has your [11] organization ever filed an amicus brief in [12] support of the position of one of the [13] automakers?

[14] **A:** I'm not sure. I'd have to check [15] the record on that. We are sometimes in bed [16] with insurance companies. You know, we [17] have — you know, I don't know the answer to [18] that.

[19] **Q:** But you can't name any case for me [20] at the moment that would involve such [21] efforts?

[22] **A:** We have taken common positions with

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[1] the auto companies on certain issues. I am [2] not aware of whether or not — I'd have to [3] check our amicus briefs to see what we've [4] filed.

[5] (Witness conferred with counsel)

[6] **MR. KIENBAUM:** Just for the record, [7] Ms. Matzzie, and this doesn't need to involve [8] Mr. Ditlow, but among the other items we were [9] provided by you last night, and we appreciate [10] that submission, is the deposition of Robert [11] Eaton, dated August 28, 1997 in the Jimenez [12] v. Chrysler case; is that correct?

[13] **MS. MATZZIE:** That is correct. We [14] have a concern that these were not shared [15] with Mr. Morgan. I mean, it's our [16] understanding.

[17] **MR. KIENBAUM:** Well, I frankly [18] didn't know where to find Mr. Morgan last [19] night.

[20] **MS. MATZZIE:** But, yes, that is [21] true. It is the deposition of Robert Eaton.

[22] **BY MR. KIENBAUM:**

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[1] **Q:** Mr. Ditlow, if you could tell us, [2] is that something you received from [3] Mr. Sheridan as well?

[4] **A:** Yes.

[5] **Q:** And then I believe, and I'll return [6] these to you unless you don't need them,

[7] there were some examples of Impact and Lemon [8] Times and —

[9] **MR. MORGAN:** Mark that as an [10] exhibit.

[11] **MR. KIENBAUM:** I don't need to, [12] unless you'd like me to.

[13] **MR. MORGAN:** Yes.

[14] **THE WITNESS:** I would like to get [15] that back.

[16] **MS. MATZZIE:** Well, we'll get them [17] all back, don't worry.

[18] **THE WITNESS:** Thank you.

[19] (Ditlow Deposition Exhibit No. 6 [20] was marked for identification.)

[21] **BY MR. KIENBAUM:**

[22] **Q:** Let me now ask you to confirm that

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[1] what's been marked Deposition Exhibit 6 is a [2] copy of the tape we just mentioned?

[3] **A:** Yes, it is.

[4] **Q:** And then I received from your [5] counsel a few sample copies, I believe, of [6] publications of the Center for Auto Safety; [7] that is, Impact and Lemon Times. I don't [8] know whether these are extras that we may [9] keep or whether you have produced them —

[10] **MS. MATZZIE:** Yes, they are extras, [11] but we'd ask that copies be given to [12] Mr. Morgan.

[13] **THE WITNESS:** I would like to [14] clarify that they are every copy of Impact [15] and Lemon Times for the time period that you [16] asked for.

[17] **BY MR. KIENBAUM:**

[18] **Q:** Thank you. I didn't realize that.

[19] **MR. MORGAN:** Feel free to pass them [20] out to your friends, Tom.

[21] **MR. VLADECK:** Tell them to fill out [22] that membership thing in the back.

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[1] **MR. KIENBAUM:** Thank you. I will [2] do that.

[3] And let's do an exhibit for these [4] two documents.

[5] (Ditlow Deposition Exhibits [6] Nos. 7 and 8 were marked for [7] identification.)

[8] **BY MR. KIENBAUM:**

[9] **Q:** And identified as Exhibits 7 and 8, [10] I believe, are two copies of phone logs that [11] we were also given last night, and I'll have [12] copies made before we leave here today.

[13] And if you could identify those for [14] us, as well as coming from your organization?

[15] **A:** Yes.

[16] **MR. KIENBAUM:** Fine. With that, [17] thank you very much, Mr. Ditlow. I have

no [18] further questions.

[19] MR. MORGAN: We'd like to take a [20] few minutes' break before we begin our [21] cross-examination.

[22] MR. KIENBAUM: Sure.

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[1] THE VIDEOGRAPHER: We're going off [2] video record at 11:50.

[3] (Recess)

[4] THE VIDEOGRAPHER: We're back on [5] video record at 11:59.

[6] EXAMINATION BY COUNSEL FOR PLAINTIFF/

[7] DEFENDANT SHERIDAN

[8] BY MR. MORGAN:

[9] Q: Mr. Ditlow, I have maybe a half [10] hour or 45 minutes of questions for you. [11] That's my guesstimate. The first thing I'd [12] like to do is get you to, if you can, tell [13] the ladies and gentlemen of the jury in this [14] case why you do what you do at the Center for [15] Auto Safety.

[16] A: The Center was founded to give [17] consumers a voice in Washington to advocate [18] for better safety standards for recalls of [19] defective vehicles. And in large part, we do [20] what we do because there's no one else out [21] there to do the job that we do, which is to [22] protect the American public from vehicle

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[1] hazards.

[2] MR. MORGAN: The gentleman informs [3] me that he didn't change the tape, and we're [4] going to run out of tape pretty quick here.

[5] THE VIDEOGRAPHER: We're going off [6] video record at 12:01.

[7] (Recess)

[8] THE VIDEOGRAPHER: We're back on [9] video record at 12:01.

[10] BY MR. MORGAN:

[11] Q: I appreciate, Mr. Ditlow, that you [12] may not wish to discuss this, but within your [13] job there at the Center for Auto Safety, [14] you've indicated why you do what it is that [15] you do.

[16] Are you getting rich doing this, [17] sir?

[18] A: No.

[19] Q: You mentioned, in the course of [20] Mr. Kienbaum's examination, something called [21] the Insurance Institute for Highway Safety. [22] What is that?

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[1] A: It's an organization that's funded [2] by insurance companies to reduce the loss [3] that insurance companies face in terms of [4] accidents, property damage, casualty claims. [5] And they do that by trying to do the same [6] things that we

do, which is to get stronger [7] vehicle safety standards, and they [8] occasionally will work for recall of the [9] vehicle.

[10] Q: And you had indicated that it was [11] your understanding that it was the Insurance [12] Institute for Highway Safety that was more in [13] the forefront, shall we say, of the minivan [14] liftgate issue than was the Center for Auto [15] Safety. Would that be a fair [16] characterization?

[17] A: They were more in the forefront [18] than what we were, yes.

[19] Q: Were they coordinating some effort [20] with you in regard to the minivan liftgate or [21] not?

[22] A: No. The Insurance Institute always

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[1] tends to do its own thing. And so they will [2] do crash tests, and they will advocate for [3] stronger standards.

[4] Q: Now, I'd like to refer you to [5] Ditlow Exhibit No. 5. I'm not sure if you [6] have a copy of it there. It's this [7] Automotive Intelligence Report document that [8] Mr. Kienbaum was so kind to show you and ask [9] you about. In there, in your discussion with [10] the interviewer, you raised some issues with [11] respect to Chrysler, and you say that there [12] are certain things they're not doing, one of [13] which is some of the problems you see on [14] latches on doors on their vans, which are a [15] problem, particularly for the rear door and [16] the sliding side door. You have some [17] occupant ejections.

[18] So if you would, please, tell the [19] jury what your understanding was in May of [20] 1994 as to the problems that were posed to [21] the driving public by the latches on [22] Chrysler's doors on their vans, particularly

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[1] the rear and side sliding door.

[2] MR. KIENBAUM: Well, I would object [3] to that as having insufficient, and, I [4] submit, based on the record already, no basis [5] of foundation.

[6] The witness has testified that he [7] has not been involved in the design, testing, [8] or otherwise with latches. And so I don't [9] believe his opinion is going to be material [10] or helpful.

[11] MR. MORGAN: I see. So the [12] witness's opinion that he would give Chrysler [13] a B or a B+ on safety, that would be relevant [14] because you got to ask him about that. But [15] when I follow up on other things, now, here's [16] a witness who don't know nothing?

[17] MR. KIENBAUM: That's correct, [18] because he gave Chrysler a B+ with the [19] qualifications he, in fact, mentions. And [20] beyond the fact that he has general [21] qualifications, and he has

already testified [22] that he has no information concerning the

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[1] basis of this issue as it may have existed at [2] the time, I don't think it's appropriate to [3] ask him his opinion.

[4] MR. MORGAN: Well, I think it is, [5] since you have opened the door, Mr. Kienbaum. [6] Had you not done so, I wouldn't have asked [7] him. But you did, so I'm going to follow up.

[8] THE WITNESS: Could we have the [9] question read back after that interchange?

[10] (The reporter read the record as [11] requested.)

[12] THE WITNESS: At that time —

[13] MR. KIENBAUM: And my objection [14] stands. Please go ahead.

[15] THE WITNESS: By May of 1994, the [16] Department of Transportation had already [17] upgraded their investigation into the rear [18] latches on Chrysler minivans, and the agency [19] had before it dozens of reports, if not [20] hundreds of reports, of latches popping open [21] at that time. And they had, I think, some [22] number of fatalities, 10 to 20.

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[1] But my concern was, as has been [2] reported to us at the Center, that we had a [3] Chrysler minivan case in May of 1990 where a [4] little two-year-old boy had gone out through [5] the hatch, and we were pointing out that [6] while Chrysler had done a good job in being [7] one of the first manufacturers to protect the [8] front-seat occupants with full front-seat [9] airbags, they had not done as much to protect [10] children in the rear of their minivans, which [11] is advertised as a safe family vehicle, from [12] being subject to ejection, because the latch [13] on the Chrysler minivan was weaker than the [14] latches that we saw on the competitive [15] vehicles such as the Aerostar.

[16] BY MR. MORGAN:

[17] Q: Now, we talked a little bit about [18] the Insurance Institute. Is it your [19] understanding that it was the Insurance [20] Institute that brought this latch issue to [21] the attention of the National Highway Traffic [22] and Safety Administration?

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[1] A: Well, the Insurance Institute had [2] petitioned the government to upgrade [3] Standard 206 to cover the rear hatch of [4] minivans.

[5] The investigation itself into the [6] Chrysler minivans was started because a [7] police officer from Arlington, Virginia, [8] which is also where the Insurance Institute [9] is, had reported 2 deaths

within a period of, [10] I believe, 30 days of children who were [11] killed in crashes where the rear hatch in [12] Chrysler minivan opened up.

[13] Q: Now, you also mentioned that you [14] have on occasions had conversations with [15] Mr. Lewis Goldfarb?

[16] A: Yes.

[17] Q: And he is a lawyer that is on the [18] legal staff at the Chrysler Corporation?

[19] A: Yes, he is.

[20] Q: To your knowledge?

[21] A: Yes.

[22] Q: And is it within that capacity that

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[1] you've had conversations with him? In other [2] words, he's a lawyer for Chrysler, and you [3] have had conversation with him about issues [4] that are of public interest that you may be [5] advocating?

[6] A: That is correct.

[7] Q: And you indicated, in fact, that in [8] connection with the minivan liftgate latch, [9] that you had suggested to Mr. Goldfarb that a [10] recall take place?

[11] A: Yes.

[12] Q: When did you do that, sir?

[13] A: I had suggested that to him in [14] late — I would say probably early 1995. [15] January of 1995 would have been the time that [16] I suggested to him that they do the recall.

[17] Q: And what benefits to the public did [18] you see, if any, in Chrysler engaging in such [19] a recall?

[20] MR. KIENBAUM: Well, I think that [21] inevitably calls for an opinion of the same [22] kind that I objected to. So I'm going to

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[1] place an objection on the record as to the [2] foundation or lack thereof of an opinion that [3] suggests that the witness is qualified to [4] state whether or not, in fact, there is a [5] safety issue with respect to that latch.

[6] THE WITNESS: I recommended to [7] Mr. Goldfarb that Chrysler do a recall for [8] two reasons. Number one, because it was my [9] belief that the vehicles were defective and [10] that a recall should be carried out to [11] replace the latch, and so that it would [12] benefit the public. And I also told [13] Mr. Goldfarb that it would benefit Chrysler, [14] because it would get rid of lawsuits and the [15] possibility of punitive damages in the [16] future, by eliminating accidents and the need [17] to punish the corporation for not doing the [18] right thing: A recall.

[19] BY MR. MORGAN:

[20] Q: What did Mr. Goldfarb say to you?

[21] A: Mr. Goldfarb, I believe, said that [22] Chrysler would do the right thing.

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[1] Q: I want to stick with Mr. Goldfarb [2] for a minute. You have mentioned that you [3] had several conversations with him over the [4] years?

[5] A: Yes.

[6] Q: Have you had occasion to work with [7] him on issues that were important to [8] Chrysler?

[9] A: Yes.

[10] Q: Can you describe that for the [11] record?

[12] A: When Chrysler first came out with [13] the brand-new LH vehicles, which was the [14] cab-forward design, I suggested to [15] Mr. Goldfarb that the Center for Auto Safety [16] and Chrysler engage in a cooperative [17] crash-test program of the new LH, so that the [18] public would have the information on the [19] crashworthiness of that vehicle before — at [20] the very earlier point in time.

[21] And I pointed out to Mr. Goldfarb [22] that the Department of Transportation was not

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[1] likely to do its crash test and release its [2] information until well into the model year, [3] and that if the car was, in fact, as [4] crashworthy as what Chrysler said it was, [5] then it would be a big boost to sales.

[6] Q: And when did you do this, sir?

[7] A: I did that — we'd have to go back [8] and look at when the LH came out. I think it [9] was a new vehicle for the 1993 model year, [10] but it was in advance of the new model year [11] coming out.

[12] And my proposal to Mr. Goldfarb is, [13] we would go ahead and do it as soon as the [14] cars hit the dealership, and that we would [15] obtain a car from a Chrysler dealership so [16] that it couldn't be — that there would be no [17] question that it was a — you know, not a car [18] that had been engineered by Chrysler with an [19] engineer in the trunk to make sure it did [20] well, but one that was picked blind off a [21] lot, and then we would release the results, [22] either good or bad.

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[1] So he took the risk that they were [2] going to be bad results, but he also had the [3] benefit of if the crash test was good, it was [4] going to be good.

[5] Q: And is that what, in fact, [6] occurred?

[7] A: Yes. We crash tested the LH. I [8] believe it was the Dodge Intrepid at Calspan [9] Corporation. The results were very good. [10] And as Mr. Goldfarb

told me, they had a home [11] run in terms of publicity on it.

[12] Q: Did they in fact utilize, "they" [13] being Chrysler, the fact that the Center for [14] Auto Safety had been involved in doing this [15] crash test as a selling point to its [16] customers?

[17] A: I don't know what Chrysler did.

[18] Q: And this crash test was done [19] shortly after the introduction of the vehicle [20] to the public?

[21] A: It was done within two months of [22] that vehicle being out there. One of our

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[1] concerns was that there weren't enough of [2] them at the dealerships on the day that we [3] picked it out. We told Chrysler that we were [4] going to go to one of three geographic areas, [5] and we wanted a field rep there, meeting us [6] at the local airport, so we could go out and [7] pick a dealership in that area, and they [8] didn't know what dealership we would go to. [9] But it was done, in fact, within the first 60 [10] days of sale.

[11] Q: And do you recall what the result [12] of the crash test was?

[13] A: It did very good on the [14] crashworthiness scores. I mean, the head [15] injury criteria, the G levels, the femur [16] levels were well under the threshold that the [17] government set of 1,000 for head injury, 60 [18] Gs for chests, and I think it's 2250 pounds [19] for the femur.

[20] Q: So in its execution of the Chrysler [21] LH, Chrysler had demonstrated that it had the [22] engineering expertise to do a good job with

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[1] respect to customer safety; is that fair?

[2] A: Yes.

[3] Q: And they had in fact done so on the [4] LH; is that also fair?

[5] A: Yes.

[6] Q: Does that in any way excuse their [7] failure to do so with respect to the minivan [8] latches?

[9] MR. KIENBAUM: I object. There is [10] no foundation for the premise of the first [11] part of the question, that they failed to do [12] something, and on that basis, I object.

[13] BY MR. MORGAN:

[14] Q: You may answer.

[15] A: No. You evaluate each model, you [16] know, on its own. And a company can do well [17] in one area and poorly in another.

[18] Q: Any other dealings with Chrysler of [19] the same type that you've just identified you [20] did with respect to the LH?

[21] A: I can't — the only other dealings [22] were, we suggested the following model year

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[1] that we — or maybe two model years later — [2] that we do a Dodge Neon, and they didn't want [3] to do a Neon.

[4] Q: Did Mr. Goldfarb tell you why they [5] didn't want you crash-testing a Neon?

[6] A: Just that they weren't ready.

[7] Q: You were asked some questions about [8] filing amicus briefs, and I'm not sure that [9] the members of the jury, who are probably not [10] lawyers, would understand what an amicus [11] brief is.

[12] Would you tell us what that is, [13] sir?

[14] A: Well, an amicus brief is something [15] that an organization will file in the appeal [16] of a particular trial decision, and an amicus [17] brief is done to support a particular point [18] of law.

[19] And, for example, in individual [20] cases, we've been — there's an issue of [21] whether or not there should be preemption of [22] product liability actions, because a vehicle

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[1] may meet a federal safety standard. And so [2] we have taken the policy position that there [3] should be no preemption, because the [4] government safety standards are minimum [5] standards, and all too often, they don't [6] protect the American public, leaving the [7] private right of action the only grounds to [8] sue on.

[9] Q: Did the Center for Auto Safety file [10] or assist in the filing of an amicus brief in [11] a case called Baker versus General Motors?

[12] A: Yes, we did.

[13] Q: And what were the points advocated [14] by the Center in connection with that amicus [15] brief?

[16] MR. KIENBAUM: I object on the [17] basis of relevance, but go ahead.

[18] THE WITNESS: The principal point [19] that we raised the amicus brief on is that a [20] corporation should not be able to get an [21] injunction entered against an employee as a [22] form of court order prohibiting them from

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[1] testifying in future product liability cases, [2] because it would be a way for corporations to [3] silence employees.

[4] And we felt that members of the [5] American public should be able to subpoena [6] employees of a corporation, whether it's a [7] drug manufacturer, whether it's an auto [8] company or a computer manufacturer, and that [9] a court order entered in one state in [10]

settlement of an employment case should not [11] be used in another state to block the [12] testimony of that employee.

[13] BY MR. MORGAN:

[14] Q: And was that, in fact, the issue [15] that was involved in the Baker case?

[16] A: The issue there was a General [17] Motors engineer who had information on fuel [18] systems and door latches on vehicles. And [19] General Motors had brought a claim — [20] obtained a court order prohibiting him from [21] testifying in cases involving General Motors. [22] And that was in a Michigan court and they

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[1] wanted to use it in every court in every [2] state in the country to prohibit Mr. Elwell [3] from testifying.

[4] Q: Mr. Elwell was the General Motors [5] engineer?

[6] A: Mr. Elwell was the General Motors [7] engineer.

[8] Q: Why did the Center consider that to [9] be bad public policy, what General Motors was [10] trying to do?

[11] MR. KIENBAUM: I object on the [12] basis of relevance.

[13] THE WITNESS: Well, what we were [14] concerned about is that a corporation could [15] look at all of its engineers or all of its [16] employees and figure out who has information [17] on hazardous products or policies, and sue [18] them for some sort of employment violation, [19] get a court order, and then prohibit that [20] person from ever testifying in any court [21] case.

[22] I mean, our concern was that if the

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[1] Baker v. GM lower court decision was upheld, [2] it would be a road map to any corporation in [3] any area to obtain a court order and then [4] utilize it in other future cases to prohibit [5] the testimony of that person on the facts [6] that he knew about the corporation, or she.

[7] BY MR. MORGAN:

[8] Q: Are product liability lawsuits a [9] vehicle through which important safety [10] information can become known to members of [11] the public?

[12] MR. KIENBAUM: I object to the [13] opinion testimony as not based on foundation. [14] Go ahead.

[15] THE WITNESS: Yes.

[16] BY MR. MORGAN:

[17] Q: Are there other methods by which [18] important safety information can be brought [19] to the attention of the public?

[20] A: Well, the government agencies

can [21] do investigations, and bring information to [22] the attention of the American public, and

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[1] sometimes do recalls. But our experience [2] with the National Highway Traffic Safety [3] Administration is that often, they don't get [4] the information from the corporations which [5] then is uncovered in later product liability [6] lawsuits.

[7] Today, we are asking the National [8] Highway Traffic Safety Administration to look [9] into a case of stalling in Fords where we [10] have petitioned the agency to do a Ford [11] recall in the mid-1980s. Ford said there's [12] no common problem. And yet we found out [13] about information in a product liability [14] lawsuit that indicated the ignition module in [15] those vehicles had a failure rate as high as [16] 40 to 90 percent, depending upon the time [17] frame you looked at.

[18] Q: Are there other methods other than [19] product liability lawsuits and government [20] investigations by which the public can become [21] aware of important safety information that [22] affects their safety?

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[1] A: Yes. A whistleblower could come [2] forward and reveal that information to a [3] government agency or to the American public.

[4] Q: By way of the press?

[5] A: The spotlight of public attention [6] on hazards is a well-known way of exposing [7] something that may in fact make a corporation [8] do the right thing.

[9] Q: And is the public's right to know [10] therefore important in that regard?

[11] MR. KIENBAUM: Well, I object. [12] It's just argument. It is eliciting opinion [13] testimony that the witness clearly has an [14] opinion about, but is not being offered as an [15] expert, so I don't think there's foundation.

[16] It's irrelevant, but if you insist [17] on going ahead, I can't stop it. So go [18] ahead.

[19] MR. MORGAN: This is your [20] deposition, Mr. Kienbaum. It was your idea [21] to do this, not mine.

[22] MR. KIENBAUM: Mr. Morgan, all I

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[1] can do is place objections, sensible [2] objections on the record, and that's what I'm [3] doing.

[4] THE WITNESS: Investigative [5] journalism is a time-honored tradition since [6] Sinclair Lewis in his muckraking days exposed [7] defective products and hazardous working [8] conditions. And I

think that one only need [9] look at the efforts by corporations to strike [10] back and suppress the media through lawsuits [11] and through withholding of advertisements to [12] show how important this means of going to the [13] media to expose hazards is.

[14] **BY MR. MORGAN:**

[15] **Q:** Are you aware of Chrysler ever [16] having struck back at a media organization in [17] terms of withholding advertisements or [18] withholding information?

[19] **MR. KIENBAUM:** Objection. Lack of [20] relevance.

[21] **THE WITNESS:** I'm personally not [22] familiar with one.

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[1] **BY MR. MORGAN:**

[2] **Q:** Are you not familiar with Chrysler [3] having informed The Detroit News that they [4] would no longer invite them to their press [5] briefings, and The Detroit News was being [6] frozen out of press briefings by Chrysler [7] Corporation? You're not aware of that?

[8] **MR. KIENBAUM:** Objection. Lack of [9] foundation.

[10] **THE WITNESS:** No, I am not aware of [11] that, but I would find it shocking if it did [12] happen.

[13] **BY MR. MORGAN:**

[14] **Q:** Would you agree with me, then, that [15] product liability lawsuits, government [16] investigations, and press reports are all [17] important means by which the public gains the [18] important safety information regarding their [19] own well-being?

[20] **MR. KIENBAUM:** Objection. Lack of [21] foundation.

[22] **BY MR. MORGAN:**

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[1] **Q:** And the well-beings of their [2] families?

[3] **A:** Yes, I do.

[4] **Q:** Now, with respect to your contacts [5] with Mr. Sheridan, you indicated to [6] Mr. Kienbaum that your best recollection of [7] the first contact would have been late [8] summer, early fall of 1994; is that correct?

[9] **A:** That is correct.

[10] **Q:** If you had to give us your best [11] estimate of a month, would it have been [12] September?

[13] **A:** That would be my best estimate of [14] it. Sometimes it's hard to tell, Mr. Morgan, [15] whether September is summer or fall, [16] particularly —

[17] **Q:** As a matter of fact, summer changes [18] to fall in September, according to

the [19] calendar, at least?

[20] **A:** Yeah.

[21] **Q:** And your last contact would have [22] been with Mr. Sheridan before he was fired in

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[1] the second week of December 1994?

[2] **A:** Yes.

[3] **Q:** Sometime between, then, the 8th and [4] the 14th of December?

[5] **A:** That would be sometime in that [6] second week. I don't have a calendar in [7] front of me.

[8] **Q:** And you're sure of that because of [9] some important events that were ongoing with [10] respect to other business of the Center for [11] Auto Safety at that time; is that correct?

[12] **A:** Yes.

[13] **Q:** And what was that, sir?

[14] **A:** The Center for Auto Safety had [15] petitioned the National Highway Traffic [16] Safety Administration in August of 1992 to [17] recall roughly 5 million General Motors [18] pickups with side-saddle gas tanks that had [19] resulted in 800 fire deaths, more than 20 [20] times as many fire deaths as the infamous [21] Ford Pinto at the time the government [22] recalled the Ford Pinto.

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[1] And the whole proceeding came down [2] to a point at which Secretary of [3] Transportation Pe a made an initial defect [4] determination in October of 1994 and [5] announced that there would be a public [6] hearing the first week of December 1994 on [7] that issue. And we were hard at work from [8] that initial determination in October through [9] to the date on December 2, when Secretary of [10] Transportation Pe a announced that he had [11] reached a settlement with General Motors in [12] which the trucks would not be recalled, but [13] GM would pay \$51 million in public education [14] moneys and research.

[15] I think it's one of the worst [16] decisions that was ever made by the [17] Department of Transportation.

[18] **Q:** Mr. Ditlow, we have had marked as [19] an exhibit the deposition of Mr. Eaton. It [20] is Ditlow Deposition Exhibit No. 6, the [21] deposition taken on August 28, 1997 of [22] Mr. Eaton.

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[1] Have you had an opportunity to view [2] this deposition?

[3] **A:** I have seen excerpts of the [4] deposition.

[5] **Q:** Can you share with us, to your [6] knowledge, what excerpts have you been [7] exposed to of this deposition of

Mr. Eaton?

[8] **A:** I looked at the portions of the [9] deposition that relate to Chrysler's lobbying [10] activities to try to get this — to prevent a [11] safety recall from happening on the minivan [12] hatches. And I particularly recall Mr. Eaton [13] being asked about Hill staff, and I thought [14] it was one of the most, you know, incredibly [15] unbelievable answers I've ever heard in my [16] life, where he said, "Well it's someone by [17] the name of Hill, or worked for Hill."

[18] You know, Hill staff are Hill [19] staff.

[20] **Q:** What is Hill staff?

[21] **A:** Hill staff are the professional [22] people who work for individual members of

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[1] Congress, who actually do the heavy lifting [2] in terms of preparing letters for members, of [3] listening to corporations when corporations [4] want legislation or regulations changed.

[5] Sometimes they listen to members of [6] the public too, but not often enough.

[7] **Q:** And what was your understanding, at [8] least from the Eaton deposition, as to what [9] Chrysler was engaging in with respect to Hill [10] staff as it may relate to this minivan defect [11] investigation being conducted by NHTSA?

[12] **MR. KIENBAUM:** We're getting a [13] witness to characterize another witness's [14] testimony, and what is the value of that?

[15] **THE WITNESS:** Well, my [16] understanding of that is that the National [17] Highway Traffic Safety Administration was [18] about to send a recall letter to Chrysler, [19] saying, "Recall the minivans for defective [20] latches." And Chrysler's Washington office [21] went into a full-scale alert in which they [22] said that if we're going to launch a

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[1] Congressional initiative, we need to launch [2] it now.

[3] **MR. KIENBAUM:** Let me just ask the [4] witness to be clear that the question is to [5] talk about what Mr. Eaton's transcript [6] supposedly says. And just so I'm clear that [7] the witness is responding —

[8] **BY MR. MORGAN:**

[9] **Q:** Let me amend my question. If you [10] have other information, Mr. Ditlow, that [11] illuminates the subject matter, please share [12] it with us.

[13] **A:** Well, since it wasn't provided by [14] Mr. Sheridan, I didn't provide it today. But [15] there were exhibits to Mr. Eaton's [16] deposition, and there was a subpoena [17] apparently issued in which Chrysler was [18] required to turn over certain

documents [19] related to the Wash-
ington office and [20] Chrysler's lobbying
actions to get the recall [21] killed.

[22] **Q:** If you would please, recount for

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[1] the record your full knowledge of
Chrysler's [2] efforts in that regard, whe-
ther it comes from [3] the Eaton dep-
osition or from some other [4] source of
information to you.

[5] **MR. KIENBAUM:** Mr. Morgan, what [6]
helpful, useful purpose, other than may-
be to [7] create a sound bite in terms of
publicity, [8] would it be for this witness
to sit here and [9] to attempt to char-
acterize what he may have [10] learned
from other witnesses in another [11]
proceeding?

[12] I would ask counsel for Mr. Ditlow [13]
to consider whether this is not an [14]
appropriate time to shorten this record
and [15] to instruct the witness not to
answer this, [16] because it can't be
relevant to what we're [17] talking about
here.

[18] **MR. MORGAN:** We're talking about
[19] the public's right to know, Mr. Kien-
baum. [20] That's what this lawsuit is
about.

[21] **MR. KIENBAUM:** Well, if there's [22]
underlying evidence, so be it, and then
you

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[1] may have an opportunity to find it, to
[2] introduce it, if that's what the judge
says. [3] But here, you're just asking a
witness to [4] recall what he may have
heard or seen in [5] terms of other
evidence.

[6] **MR. MORGAN:** I think it's perfectly [7]
appropriate for Mr. Ditlow to comment
on it [8] as an advocate for the Center for
Auto [9] Safety, as you established early on
in this [10] record.

[11] **MS. MATZIE:** We don't have any [12]
problem with the relevance issue right
now. [13] Our only concern is that Mr.
Morgan has said [14] 45 minutes or so, and
our only concern would [15] be time. But I
don't think we're there yet.

[16] **MR. KIENBAUM:** And I'm going to [17]
object on the basis of lack of foundation
[18] too, because here is a witness talking
about [19] something not part of this
record, and I [20] don't know what it is,
but —

[21] **THE WITNESS:** Can I go back and do
[22] the same thing to you, Mr. Morgan,
that I did

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[1] to Mr. Kienbaum? Could I have the
question [2] repeated that's before me?

[3] **BY MR. MORGAN:**

[4] **Q:** Sure. What I have asked you, [5] Mr.
Ditlow, was, from all sources of [6]
information that you have, would you
describe [7] what you understand Chry-
sler's efforts were [8] with respect to this
NHTSA petition and Hill [9] staff, or what
they were trying to do with [10] the
Congress and NHTSA? -----

[11] **A:** There was a meeting, which is part
[12] of the public record, in — I believe it
was [13] November of 1994, in which
NHTSA staffed [14] briefed Chrysler on
the fact that the staff [15] believed there
was a safety defect in [16] Chrysler
minivans affecting the safety of [17]
children, which was the latches.

[18] And they were asking Chrysler to do
[19] a voluntary recall. And Chrysler came
away [20] from that meeting, according to
documents [21] attached to Mr. Eaton's
deposition, where [22] they believed that
a recall letter was

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[1] imminent.

[2] The next thing we saw was a letter [3]
from Oxley and Dingell, which is in, I [4]
believe, my materials that I provided, [5]
because we had given that to Mr. Sher-
idan. [6] And that letter was inquiring
about the [7] recall process in general at
the agency. But [8] in no uncertain terms
did staff of the agency [9] in the defects
office know that this was [10] pressure
put by Chrysler to block them.

[11] And the next thing that happened, [12]
Chrysler negotiated a service campaign
with [13] the agency, rather than a recall.

[14] **BY MR. MORGAN:**

[15] **Q:** With respect to your contacts
with [16] Mr. Sheridan, leading up to the
time when he [17] was fired by Chrysler,
did he ever indicate [18] to you that he
was doing this for personal [19] financial
gain of any kind?

[20] **A:** No.

[21] **Q:** Did he indicate to you that he had
[22] an axe to grind, to use the term? A

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[1] grievance, an argument with Chry-
sler? That [2] he was mad at Chrysler and
wanted to hurt [3] them?

[4] **A:** No.

[5] **Q:** He did not indicate that to you as [6]
a motivation for his action?

[7] **A:** No.

[8] **Q:** Is it true and correct, Mr. Ditlow, [9]
that Mr. Sheridan's motivation, so far as
you [10] understood at that time period,
was that he [11] was concerned that there
was a safety defect [12] in Chrysler
minivans that affected children?

[13] **A:** That's my understanding, yes.

[14] **Q:** And that defect was having to do
[15] with the latch and hatch, and its

propensity [16] or possibility of popping
open and allowing [17] children and
others to be ejected and receive [18]
serious injury or die?

[19] **MR. KIENBAUM:** Objection. Lack of
[20] foundation.

[21] **THE WITNESS:** I know that that was
[22] his general concern. I don't recall

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[1] Mr. Sheridan's words to me.

[2] **BY MR. MORGAN:**

[3] **Q:** Now, Mr. Ditlow, with respect to [4]
Chrysler and the NHTSA or the National
[5] Highway Traffic and Safety Admin-
istration, [6] are you aware, sir, as to
whether or not an [7] automotive man-
ufacturer such as Chrysler is [8] under
any obligation to report certain things [9]
to the National Highway Traffic and
Safety [10] Administration regarding its
vehicles?

[11] **A:** Yes.

[12] **Q:** What is your knowledge in that [13]
regard, sir?

[14] **A:** When a manufacturer determines
that [15] there's a safety defect in a motor
vehicle, [16] they're required within five
days of making [17] that determination to
notify the Department [18] of Trans-
portation of their determination and [19]
then to do a voluntary safety recall [20]
thereafter.

[21] **Q:** And can you tell us whether or not
[22] the status of the knowledge of an
automotive

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[1] manufacturer such as Chrysler would
therefore [2] be important to a gov-
ernment investigation [3] such as
NHTSA's into this minivan latch, with [4]
respect to Chrysler's knowledge of
what's [5] going on with its latch: Is it
strong [6] enough? Is it defective? Is it
popping open [7] when others don't
think there's a danger?

[8] **MR. KIENBAUM:** Objection. This is [9]
calling for legal opinion, I believe, at this
[10] stage.

[11] **THE WITNESS:** Yes. The knowledge
[12] of corporations is important to the [13]
government, because the government
not only [14] could do a mandatory safety
recall, but the [15] government can and
has imposed civil [16] penalties on man-
ufacturers for failing to act [17] on that
information.

[18] **BY MR. MORGAN:**

[19] **Q:** Would the fact that an employee
of [20] a corporation charged with over-
sight of [21] safety had made presenta-
tions to management, [22] that there was a
defect in the minivan latch

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[1] and that the latches should be recalled, [2] would that fact, in your estimation, be an [3] important fact to a government investigation, [4] such as NHTSA's, into this minivan latch?

[5] **MR. KIENBAUM:** Objection. Lack of [6] foundation.

[7] **THE WITNESS:** The National Highway [8] Traffic Safety Administration would certainly [9] want to know about such presentations.

[10] **BY MR. MORGAN:**

[11] **Q:** Because that might trigger, or [12] perhaps would trigger, Chrysler's obligation [13] to notify the NHTSA within five days of the [14] existence of a defect?

[15] **A:** Yes.

[16] **Q:** When is the purpose or your [17] understanding of the purpose of that five-day [18] requirement?

[19] **A:** The overriding purpose of the [20] statute is to get defective vehicles recalled [21] as quickly as possible to prevent deaths and [22] injuries from that defect. So the

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[1] government — I mean, when one looks at the [2] provision in the regulations saying that you [3] must notify the agency within five days of [4] determining there's defect, that's a very [5] short time frame. But the shortness of that [6] five-day period is because of the overriding [7] need to protect the public from defects that [8] affect motor vehicle safety.

[9] **Q:** If Mr. Sheridan or someone such as [10] Mr. Sheridan were aware of lawsuits against [11] Chrysler alleging a defect in the minivan [12] latch which the government may not have known [13] of, would that have been information that [14] would be important to a government [15] investigation such as the one being conducted [16] by NHTSA regarding Chrysler's minivan latch?

[17] **A:** If there was lawsuits pending [18] during the investigation, yes, that would be [19] important for the government to know.

[20] **Q:** Mr. Ditlow, in that time period in [21] late 1994 when you had contact with [22] Mr. Sheridan, was there any question in your

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[1] mind regarding his sincerity, the sincerity [2] of his concern over the safety of children [3] who were being exposed to a defective latch?

[4] **MR. KIENBAUM:** Objection. Lack of [5] foundation.

[6] **THE WITNESS:** I didn't detect any [7] lack of sincerity.

[8] **BY MR. MORGAN:**

[9] **Q:** Mr. Ditlow, you have described [10] Mr. Sheridan on this record as a classic [11] whistleblower.

[12] Are whistleblowers important to the [13] issue of public safety, particularly as it [14] relates to automotive safety?

[15] **MR. KIENBAUM:** Objection. Number [16] one, that's a leading question. Number two, [17] it is calling for the ultimate argumentative [18] opinion, and I don't think there's any way to [19] lay a foundation for that. So I'm going to [20] object on that basis as well.

[21] **MR. MORGAN:** Mr. Kienbaum, you are [22] familiar with the fact that this is

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[1] cross-examination, are you not?

[2] **MR. KIENBAUM:** Well, only until the [3] judge says it is, because it is indeed [4] appropriate to cross-examine a particular [5] witness because of his position with respect [6] to a particular issue.

[7] But go ahead.

[8] **THE WITNESS:** When a corporation [9] covers up the existence of a defect and fails [10] to provide information to a government [11] agency, often a whistleblower is the last [12] line of defense that the public has to get [13] information about that defect out and to get [14] the hazard corrected.

[15] **BY MR. MORGAN:**

[16] **Q:** Do you have examples in mind, [17] Mr. Ditlow, of whistleblowers who perhaps [18] have come forward that you are aware of that [19] have led to government action?

[20] **A:** Yes. I mean, going all the way [21] back to the mid-1960s, there was an assembly [22] line worker, Mr. Gregory — I forget what his

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[1] first name is — who worked at General Motors [2] who got a huge recall of General Motors [3] station wagons for exhaust fumes leaking in [4] through the trunk into the passenger [5] compartment. And he blew the whistle on [6] that.

[7] **Q:** If corporations are allowed to [8] impose contracts on their employees which [9] prohibit them from speaking out about safety [10] issues, does that whistleblower function get [11] frustrated?

[12] **MR. KIENBAUM:** Objection. Lack of [13] foundation.

[14] **THE WITNESS:** Yes. I mean, it [15] would. To the extent that that contract [16] prohibits people from speaking out, yes, it [17] does.

[18] **MR. MORGAN:** Let's take a break for [19] just a couple minutes. I want to collect [20] things. I think I'm just about

done.

[21] **THE VIDEOGRAPHER:** We're going off [22] video record at 12:43.

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[1] (Recess)

[2] **THE VIDEOGRAPHER:** We're back on [3] video record at 12:46.

[4] (Ditlow Deposition Exhibits [5] Nos. 9 through 11 were marked [6] for identification.)

[7] **BY MR. MORGAN:**

[8] **Q:** Mr. Ditlow, I have three final [9] exhibits. These are my last series of [10] questions of you. The first is, I'm going to [11] show you what I've had marked as Exhibit [12] No. 9. It does come from Exhibit 1, which is [13] the sheaf of papers that you, through your [14] counsel, provided to Chrysler back in '96.

[15] **A:** Yes, I see your Exhibit 9.

[16] **Q:** And appended to that, the front of [17] that exhibit is an order of a court, is it [18] not?

[19] **A:** Yes, there is.

[20] **Q:** Entered in a case called Matthews [21] v. Chrysler?

[22] **A:** Yes.

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[1] **Q:** Do you know who the plaintiff's [2] counsel was in Matthews?

[3] **A:** No, I do not.

[4] **Q:** If I use the name Mikal Watts, are [5] you familiar with who Mikal Watts is?

[6] **A:** Yeah, I recognize his name from the [7] Eaton deposition.

[8] **Q:** Someone that had worked for Perry & [9] Haas and is now apparently on his own?

[10] **A:** I believe at one time he was with [11] Perry & Haas, yes.

[12] **Q:** The reason I ask you is, in looking [13] through the rest of Exhibit 1, I find certain [14] documents, for instance, Bates Nos. 116 and [15] 117, that have a fax bug, I'll call it, on [16] the top of Perry & Haas.

[17] Is it possible, sir, that some of [18] the information that's part of Exhibit 1 [19] comes from Perry & Haas?

[20] **A:** It's possible.

[21] **Q:** Is the first page of Exhibit 9 [22] there an order which declares public certain

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[1] information that Chrysler was advocating [2] should be kept a secret?

[3] **A:** Yes.

[4] **Q:** Let me show you Exhibit No. 10 now.

[5] **A:** Yes, I see Exhibit 10.

[6] Q: What is Exhibit 10?
[7] A: Looks like a transcript of a [8] program called "A Current Affair" on [9] September 20, 1995, and the subject of the [10] story is "Chrysler Minivan Hotline Story."

[11] Q: Are you a person who is quoted in [12] that particular presentation by "A Current [13] Affair"?

[14] A: Yes, I am.

[15] Q: And what is it that you indicated [16] on that program?

[17] A: That the Chrysler rear door latch [18] is one of the most lethal defects that we've [19] seen in auto safety history.

[20] Q: Have you ever been sued by Chrysler [21] for having made that statement, sir?

[22] A: No.

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[1] Q: Let me show you what's been marked [2] as Exhibit No. 11 and ask if you can identify [3] that.

[4] A: Yes. This is a letter from [5] Congressmen Dingell and Oxley to Dr. Richard [6] Martinez. It says Richard Martinez, but it's [7] actually Ricardo Martinez. He's the [8] administrator of the National Highway Traffic [9] Safety Administration.

[10] Q: Is that the letter you were [11] referring to earlier on the record that comes [12] from Exhibit 1 and was part of the effort by [13] Chrysler to use the federal Congress to [14] pressure NHTSA with respect to the recall?

[15] MR. KIENBAUM: Objection. Lack of [16] foundation.

[17] THE WITNESS: Yes. This letter is [18] written to be generic about questioning the [19] tactic of the agency of asking for a [20] voluntary recall request. And it was in no [21] uncertain terms taken to mean that they're [22] referring to the agency about the issue of

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[1] voluntary recall request for the Chrysler [2] minivan latch.

[3] BY MR. MORGAN:

[4] Q: Why do you say that?

[5] A: Because that was the hottest [6] investigation down there. The staff of the [7] agency were about to issue such a voluntary [8] recall request.

[9] Q: Do you have a source of information [10] at NHTSA for that testimony?

[11] A: Yes.

[12] Q: Was your answer yes?

[13] A: Yes.

[14] Q: Can you identify that person?

[15] A: No.

[16] MR. MORGAN: Mr. Ditlow, then I [17] have no further questions.

[18] THE WITNESS: Wait. I want to make [19] sure that I answered your question correctly. [20] You asked me can I or would I?

[21] MR. MORGAN: I did ask you "Can [22] you." The portent of my question is "Would

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[1] you."

[2] THE WITNESS: I can, but I won't.

[3] FURTHER EXAMINATION BY COUNSEL FOR

[4] DEFENDANTS/PLAINTIFF CHRYSLER CORPORATION

[5] BY MR. KIENBAUM:

[6] Q: Going back to that last question [7] and answer, Mr. Ditlow, tells me that what [8] you were talking about just before then was [9] based on something someone else has said to [10] you, but you're not prepared to identify the [11] speaker; is that correct?

[12] A: Yes.

[13] Q: In light of the fact that you have [14] acknowledged that you have never designed, [15] have never tested a latch, and don't consider [16] yourself an expert on latches, what is the [17] basis of the opinion about latches being the [18] most lethal defect, as you've testified, you [19] believe?

[20] MR. MORGAN: Objection to the form [21] and foundation. Go ahead.

[22] THE WITNESS: The National Traffic

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[1] and Motor Vehicle Safety Act of 1966 does not [2] require the agency to identify the failure [3] mode for a safety defect, just that there be [4] a substantial number of failures in use.

[5] The basis for my statement is that [6] the average safety recall, and the [7] government's conducted over 3,000 to date, [8] involves no deaths and no injuries. And for [9] a defect to have 41 deaths, let alone — you [10] know, 1 death, let alone 41, is an incredibly [11] high number.

[12] So that's why I say it's one of the [13] most lethal. If one goes down the history of [14] defects before the Department of [15] Transportation, I can only think of two [16] others that are higher, one of which is the [17] Ford transmissions that jumped from park to [18] reverse, and the other is the side-saddle gas [19] tanks.

[20] BY MR. KIENBAUM:

[21] Q: Well, my question, really, [22] Mr. Ditlow, is that part that got into your

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[1] answer, and that is the word "defect."
[2] What's the basis of your opinion that the [3] latch was defective or is defective?

[4] A: The basis for my opinion is that [5] the latches on the Chrysler minivans were [6] failing. The hatches were popping open, and [7] occupants were popping out. And we had had [8] 41 deaths associated with the hatches coming [9] open in Chrysler minivans.

[10] And it's not important as to what [11] the particular failure mode is, just that [12] they're failing. And when one compared the [13] Chrysler hatches to the other minivan [14] hatches, the other ones weren't popping open [15] like the Chryslers.

[16] Q: Anything else that you base your [17] opinion on, other than what you've just [18] stated?

[19] A: Well, 25 years of experience of [20] working before the National Highway Traffic [21] Safety Administration and members of Congress [22] on this legislation and these recall

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[1] programs.

[2] Q: I don't understand that. What does [3] that add to the opinion concerning whether or [4] not a particular latch is defective or not?

[5] A: Well, you're asking basis for my [6] opinion, and the Center for Auto Safety has [7] filed more petitions and gotten more recalls [8] on safety defects than any other entity, you [9] know, outside of the National Highway Traffic [10] Safety Administration.

[11] Q: And when you file petitions, that [12] means you're advocating a certain cause of [13] action?

[14] A: That's right.

[15] Q: But that just again restates the [16] fact that you or your organization may have [17] an opinion, and I'm still getting back to the [18] basis of the opinion.

[19] A: The basis for the opinion is my [20] experience with the legislation, and looking [21] at — I mean, I personally have looked at the [22] investigatory files and the files of recalls.

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[1] I mean, I can say to you today that I've [2] looked at over 2,000 investigations and [3] recalls, and I know what goes into the [4] determination by the agency.

[5] And the statutory language is that [6] there be a defect affecting motor vehicle [7] safety, which is the possibility of death or [8] injury in a motor vehicle accident. And [9] there have been seven cases litigated [10] involving motor vehicle safety defects, and [11] when you look at these cases before the [12] courts, they have — for example, the [13] Chrysler —

not the Chrysler, but the [14] Cadillac Pittman arm, there was no deaths, no [15] injuries, and Cadillac's whole defense was it [16] was only in low-speed accidents where the [17] Pittman arm fails.

[18] Firestone recalled 21 million tires [19] for a defect out for which they never figured [20] out what the failure mode was; it's just that [21] the steel belt within the steel-belted radial [22] separated.

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[1] Q: Have you given me all information [2] now that you believe you have for the [3] formulation of that opinion you have stated [4] with respect to the quality or lack of [5] quality of the latch that we've been talking [6] about?

[7] A: Well, I also believe that if the [8] other — you know, the paper that would go [9] into that position would be, just look at the [10] investigative report of which they closed the [11] investigation.

[12] And this was a decision that was [13] pressured on the agency by Chrysler [14] Corporation, but that investigative report [15] goes into the comparative strengths of the [16] Chrysler latch versus other latches, what [17] happens in the crash tests. And on the [18] facts, it's right; on the decision, it's [19] wrong.

[20] Q: Your opinion is that NHTSA was [21] wrong in its conclusions?

[22] A: My opinion is that NHTSA's

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[1] evaluation of the facts was correct, but [2] NHTSA's decision to allow a service campaign [3] versus a safety recall was a disservice to [4] the American public and to Chrysler [5] Corporation.

[6] Q: And what is the basis of your [7] opinion that NHTSA was wrong in that regard?

[8] A: Because when you look at the facts [9] of the case, there should have been a safety [10] recall.

[11] Q: Do you know anything about the [12] underlying facts of any given accident: In [13] other words, vehicle speed, the angle of the [14] hit, that kind of thing?

[15] A: When one looks at the individual [16] facts of the individual cases, no.

[17] Q: Do you know anything about the [18] numbers of minivans that may be on the road [19] today compared to other minivans?

[20] A: I mean, I'm not sure what the [21] population of the other minivans is, but [22] certainly, Chrysler's minivans are about 4

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[1] million, the '84 through '95s.

[2] MR. KIENBAUM: Counsel, I gather [3] your earlier instruction with respect to

the [4] question of work between the Center for Auto [5] Safety and plaintiffs' lawyers would still [6] hold, and you would prohibit me from [7] inquiring into that area?

[8] MS. MATZZIE: Right. There's two [9] answers. One, we asked for a stipulation and [10] you refused. And the second is, you went [11] into a line of questioning concerning whether [12] or not the Center for Auto Safety works with [13] plaintiffs' lawyers, and he's already [14] answered that.

[15] MR. KIENBAUM: You mean, amicus [16] briefs, that kind of thing?

[17] MR. VLADECK: No.

[18] MR. KIENBAUM: Does that mean the [19] issue's now open and moot, and I can ask the [20] question whether the statement —

[21] MR. VLADECK: No.

[22] MR. KIENBAUM: — can be answered

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[1] or not? Or is that instruction still —

[2] MS. MATZZIE: It's been answered. [3] We've been over a few grounds several times. [4] There's nothing added from this sentence.

[5] MR. KIENBAUM: All right. Well, [6] let me ask the witness.

[7] BY MR. KIENBAUM:

[8] Q: Does the Center for Auto Safety [9] assist plaintiffs' personal injury lawyers in [10] issues related to safety?

[11] A: No.

[12] MS. MATZZIE: Objection. It's [13] asked and answered.

[14] THE WITNESS: May I answer it?

[15] MS. MATZZIE: Yes, you may answer [16] it.

[17] THE WITNESS: No. We do assist [18] plaintiffs' lawyers in product liability [19] lawsuits.

[20] BY MR. KIENBAUM:

[21] Q: Do you have communications with any [22] plaintiffs' personal injury lawyers as the

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[1] Center for Automotive Safety?

[2] MR. MORGAN: Objection to the [3] foundation.

[4] THE WITNESS: Well, just like the [5] Society of Automotive Engineers, we have [6] publications which attorneys buy, both [7] plaintiffs' and defense attorneys.

[8] BY MR. KIENBAUM:

[9] Q: Have you ever communicated with the [10] organization known as the American Trial [11] Lawyers Association?

[12] MS. MATZZIE: Objection. Relevance

[13] to this case.

[14] THE WITNESS: I have done an [15] interview for one reporter from the American [16] Trial Lawyers Association, just as I did an [17] interview for this intelligentsia which you [18] presented me with.

[19] BY MR. KIENBAUM:

[20] Q: And that's the only communication [21] you've had with them as an organization?

[22] A: Since I have been the director of

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[1] the Center for Auto Safety, I don't — I [2] mean, I occasionally get calls from the [3] American Trial Lawyers Association reporters [4] about proceedings before the National Highway [5] Traffic Safety Administration.

[6] But beyond that, I'm not aware of [7] anything that we do.

[8] Q: The question is, really, are there [9] communications between the Center for Auto [10] Safety and the American Trial Lawyers [11] Association?

[12] A: Are there communications?

[13] Q: Yes, sir.

[14] A: Well, I once went to a Roscoe Pound [15] Forum which I think ATLA sponsored, and I [16] suggested that instead of punitive damages, [17] we have criminal penalties for manufacturers [18] that produced those hazardous products. And [19] neither the manufacturers nor the trial [20] lawyers liked it, but I thought it was a [21] pretty good suggestion.

[22] Q: And that's the only communication

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[1] the Center for Auto Safety has had with [2] American Trial Lawyers Association?

[3] A: Since I have become the director — [4] I mean, you have to put some time limit on [5] this. I'm not knowledgeable of what happened [6] before I became the director for the Center [7] for Auto Safety.

[8] In the case of the GM side-saddle [9] pickups, we asked the Association of Trial [10] Lawyers of America to give us records on any [11] case in which they were aware in which a GM [12] gas tank resulted in a lawsuit. And we got [13] that information from them.

[14] Q: And your statement is that you [15] never receive requests for assistance from [16] plaintiffs' lawyers in connection with [17] litigation that may be pending at the time?

[18] MS. MATZZIE: Objection. [19] Relevance.

[20] THE WITNESS: There's a difference

[21] between assisting trial lawyers in lawsuits [22] versus trial lawyers buying publications from

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[1] us.
[2] Trial lawyers, you know, both [3] plaintiffs and defendants, will in fact buy [4] materials from us. I mean, my biggest [5] connection with trial lawyers today is [6] opposing class action settlements that trial [7] lawyers bring. And, you know, I don't think [8] the trial lawyers are too happy to hear from [9] me when we object to one of their [10] settlements.

[11] Q: Why does the Center for Automotive [12] Safety take the position that your mailing [13] list is confidential?

[14] MS. MATZZIE: Objection. I mean, [15] that's a legal question. That gets into [16] areas of attorney-client privilege, and you [17] do not have to answer.

[18] BY MR. KIENBAUM:

[19] Q: You testified that you felt in 1994 [20] that Mr. Sheridan was sincere in what he was [21] telling you he was about, and that you had no [22] reason to believe otherwise.

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[1] Did you learn anything since that [2] time that might impact that view of [3] Mr. Sheridan's motivations?

[4] MS. MATZZIE: Objection. That [5] inaccurately characterizes Mr. Ditlow's [6] testimony.

[7] MR. KIENBAUM: If you could help [8] me, I will accept the help. I didn't mean to [9] mischaracterize.

[10] MS. MATZZIE: He testified that he [11] had no reason to doubt Mr. Sheridan's [12] sincerity, not that he trusted his sincerity.

[13] BY MR. KIENBAUM:

[14] Q: Taking that, that you had no reason [15] to doubt his sincerity, I gather you were [16] saying in effect that you had no reason to [17] doubt his motivation?

[18] A: I'm sorry. I'm trying to [19] understand.

[20] Let me give you a statement, and [21] then you can ask me another question if you [22] don't like it, which you'll probably do

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[1] anyway.

[2] I don't have any reason to doubt [3] Mr. Sheridan's either motivation or sincerity [4] since 1994.

[5] Q: Or today?

[6] A: Or today.

[7] Q: And has anything in this letter and [8] the "Crux of the Matter" publication caused [9] you to doubt his motivation?

[10] A: This document?

[11] Q: Yes, the one attached.

[12] MS. MATZZIE: You have to give the [13] witness a copy of the letter.

[14] THE WITNESS: I read the cover [15] letter when I got it, and I didn't see [16] anything that caused me to doubt, you know, [17] his sincerity or motivation. I don't see [18] anything that —

[19] BY MR. KIENBAUM:

[20] Q: No. I really meant the enclosure, [21] this document here.

[22] A: I mean, I looked at this when it

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[1] first came in, and I don't recall anything in [2] here that causes me to doubt his motivations. [3] But, I mean, if there's something you want to [4] point me to, I'd be happy to take a look at [5] it.

[6] Q: Mr. Ditlow, were you ever advised [7] that Mr. Sheridan was demoted and otherwise [8] disciplined while at Chrysler Corporation in [9] 1989?

[10] MR. MORGAN: Objection to the form [11] and foundation.

[12] THE WITNESS: In what year?

[13] BY MR. KIENBAUM:

[14] Q: 1989?

[15] A: I'm not familiar with his personnel [16] record.

[17] Q: Are you familiar with the motion —

[18] A: I mean, I have the documents that [19] came to me. I never looked at those. I have [20] not looked at those documents to go over them [21] as to his exact personnel record, per se.

[22] But as I speak to you today, I'm

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[1] not aware of any disciplinary action or [2] demotion in 1989.

[3] Q: Are you familiar with the fact that [4] Mr. Sheridan published something that he [5] referred to as "a book" and sent to 90 people [6] within Chrysler in 1990 or thereabouts, [7] complaining about the treatment that he felt [8] he'd gotten from certain individuals?

[9] A: No.

[10] Q: Are you aware of the fact that [11] Mr. Sheridan thereafter hoped that this [12] matter was behind him in Chrysler, and [13] learned in the summer of 1994 that apparently [14] the people he had talked about in that book [15] to him did not seem to have forgotten?

[16] A: No, I have no knowledge of that.

[17] Q: Would disclosure of such [18] information, if it were true, would that [19] cause you to question the motivation of [20] Mr. Sheridan?

[21] A: In terms of coming to the [22] government? No, it would not.

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[1] Q: In terms of his motivation and [2] sincerity?

[3] A: No.

[4] MR. MORGAN: Objection to the form [5] of the question. Asked and answered.

[6] THE WITNESS: I mean, his [7] employment history, you know, at Chrysler, I [8] felt then and I feel now that his primary [9] motivation for contacting me and then going [10] to the National Highway Traffic Safety [11] Administration was safety-related.

[12] BY MR. KIENBAUM:

[13] Q: I thought you testified that you [14] knew of no information concerning any [15] motivation other than to be an [16] honestly-intended whistleblower; that I think [17] in response to Mr. Morgan's question, you [18] confirmed that you knew nothing that would [19] cause him to be motivated to lash out or to [20] get at Chrysler, that kind of thing.

[21] But let me ask you, if the facts I [22] have just represented to you in a

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[1] hypothetical fashion, if they were true, [2] would that not be information that would lead [3] you to question the motivation of [4] Mr. Sheridan?

[5] MR. MORGAN: Objection to the form [6] and foundation.

[7] THE WITNESS: Well, I mean, I would [8] have to know more about the facts of your [9] hypothetical. I would always look at [10] whatever, you know, whatever documents that [11] someone has to present, or whatever the [12] potential information is.

[13] But my filter on whistleblowers is [14] primarily one of how reliable is the factual [15] documentation that they have. Because the [16] way that I look at a whistleblower is, you [17] separate the whistleblower from the [18] underlying facts of the safety hazard, and [19] you evaluate the facts of the safety hazard [20] in terms of documentation of the corporation.

[21] BY MR. KIENBAUM:

[22] Q: And again with respect to that

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[1] "safety hazard," there was nothing that [2] Mr. Sheridan ever brought to your attention [3] that you felt was significant or memorable or [4] something that you thought was news in this [5] latch issue at any time?

[6] A: In terms of his wanting to convey [7] information to the government about a safety [8] hazard, that was — I don't know what the [9] specific information was, because he didn't [10] give it to me, to the extent that it got [11] conveyed to Dep-

artment of Transportation, [12] which was the appropriate forum where they [13] could evaluate it.

[14] My judgment in terms of looking at [15] this case today is that, to the extent that [16] we're focusing on the hatch in the minivan, [17] Mr. Sheridan's information was 100 percent [18] accurate that there was a safety hazard. [19] There should have been a safety recall. And [20] but for the lobbying of Chrysler, you would [21] have had it.

[22] Q: But, Mr. Ditlow, that's a statement

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[1] of a conclusion: There was a safety hazard. [2] I'm talking about information that might [3] prove or tend to prove or support that [4] conclusion.

[5] With respect to such information, [6] is there anything that you recall [7] Mr. Sheridan bringing to your attention or to [8] anyone's attention?

[9] MS. MATZZIE: Objection. [10] Objection. These questions were all asked [11] and answered.

[12] MR. KIENBAUM: I'm just following [13] up the last question and the last answer.

[14] MR. MORGAN: No, you're arguing.

[15] THE WITNESS: One of the things we [16] always do with whistleblowers, or one of the [17] things that we try to do with whistleblowers, [18] is direct them to the appropriate federal [19] agency, because then, they'll get some [20] protection from whatever laws exist in their [21] state or whatever laws that may exist within [22] the federal government regarding

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[1] whistleblowers.

[2] If they blow the whistle to the [3] Center for Auto Safety, their protection may [4] not be as great as if they complained under [5] the Clean Water Act, which, I believe, has a [6] whistleblower provision in it. I wish the [7] Safety Act had the same provision, because [8] then we might get more whistleblowers.

[9] BY MR. KIENBAUM:

[10] Q: But in any event, you don't recall [11] any information that Mr. Sheridan, when he [12] eventually talked to NHTSA, that might fall [13] into that category I've stated as [14] significant, new? Anything of that sort?

[15] MS. MATZZIE: Objection. [16] Mr. Ditlow does not know what Mr. Sheridan [17] talked to NHTSA about.

[18] But go ahead.

[19] BY MR. KIENBAUM:

[20] Q: You're not aware of any such thing?

[21] A: No, I don't know what information [22] Mr. Sheridan conveyed to NHTSA.

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[1] MR. KIENBAUM: Thank you. No [2] further questions.

[3] MR. MORGAN: It's the two-minute [4] warning. We can take a TV time-out or we can [5] finish out the last few questions.

[6] FURTHER EXAMINATION BY COUNSEL FOR

[7] PLAINTIFF/DEFENDANT SHERIDAN

[8] BY MR. MORGAN:

[9] Q: Just following up on a couple [10] things, Mr. Ditlow.

[11] You indicated that the Center for [12] Auto Safety has filed numerous petitions with [13] the NHTSA, and have had many granted. I'd [14] like to get the statistics from you on that [15] point.

[16] A: Well, if you want the actual —

[17] Q: Your best knowledge.

[18] A: I'll have to give you an estimate. [19] The Center has filed at least 100 requests [20] for investigations and recalls with the [21] agency. I mean, actually, the number of [22] requests surely is now in the many hundreds.

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[1] But in terms of petitions alone, we've filed [2] at least a hundred petitions for recalls.

[3] And the last time that I sort of [4] looked at what our batting average was, and [5] I'm not that concerned about batting average, [6] because we go to the government, the [7] government evaluates it and makes their [8] decision. But at least a third of our [9] petitions result in a recall of one sort or [10] another.

[11] Q: You also indicated that you felt [12] that the service campaign that NHTSA agreed [13] to was a disservice both to the American [14] public and to Chrysler. Why did you say [15] that?

[16] MR. KIENBAUM: Objection. Lack of [17] foundation.

[18] THE WITNESS: Because if Chrysler [19] had agreed to a safety recall versus a [20] service campaign, it would have had a higher [21] completion rate of putting the modified [22] latches into the vans, and we would have had

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[1] a better assurance that that modified latch [2] worked.

[3] Plus, by doing a safety recall, [4] Chrysler would have inoculated itself against [5] punitive damage awards and product liability [6] cases, because the juries don't punish [7] corporations that do the right thing, and the [8] right thing was a safety recall and not a [9] service

campaign.

[10] BY MR. MORGAN:

[11] Q: Are you aware of any deaths that [12] have occurred after this service campaign was [13] announced where persons were ejected from the [14] rear of minivans and the latch had come open?

[15] MR. KIENBAUM: Objection. Lack of [16] foundation.

[17] THE WITNESS: I am aware that there [18] have been, you know, ones after the service [19] campaign was announced, yes.

[20] BY MR. MORGAN:

[21] Q: Are you aware of any punitive [22] damages verdicts that have occurred since the

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[1] service campaign was announced?

[2] A: Yes.

[3] Q: Can you elucidate on that, please?

[4] MR. KIENBAUM: Objection. Lack of [5] relevance. Lack of foundation.

[6] THE WITNESS: There was a \$250- [7] million punitive damage award in a South [8] Carolina case. I believe it was Jimenez v. [9] Chrysler where Chrysler's reluctance to do a [10] safety recall or refusing to do a safety [11] recall in its lobbying efforts were high in [12] the minds of the jury.

[13] MR. MORGAN: Thank you, sir. [14] Nothing further.

[15] MR. KIENBAUM: Nothing further. [16] Just before we get off the record, [17] Mr. Morgan, it is now certainly 24 hours [18] after ruling by Judge Andrews and Mr. Brown [19] has called the office. We haven't seen a fax [20] from you. Do you have any dates for [21] Plaintiff's deposition to give us?

[22] MR. MORGAN: I had received

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[1] yesterday from you a fax of an order that you [2] had submitted. Because I was preparing to [3] come here and am here today have given the [4] assignment to someone else to file objections [5] to that order. I believe the order is [6] incomplete, and apropos of those objections, [7] I instructed the gentleman to contact Judge [8] Andrews and see if he wanted us to come out [9] there tomorrow and get the objections [10] hammered out so that an order can be entered [11] and then we can go about the business of [12] compliance.

[13] MR. KIENBAUM: Just to be clear, my [14] understanding is that the judge indicated [15] that he wanted something done within 24 hours [16] of the time he spoke. I gather your position [17] is we're not going to get from you —

[18] MR. MORGAN: Well, there were a [19] number of things that he said. I understand [20] that when a court order is entered by the [21] court signed, that's what the court rules [22] say, when the order is signed, then it

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[1] becomes an order of the court. I'm well [2] aware of the time limitations. That's why I [3] had my assistant contact the court, and we're [4] willing to go out there.

[5] I'd have gone out there today [6] except we were coming here so the exigencies [7] of our schedules being such tomorrow's the [8] earliest I know of we can get back to Judge [9] Andrews and hammer out our objections.

[10] MR. KIENBAUM: I'm not talking [11] about the order or the form. I'm just [12] talking about the instruction of the court [13] from the bench and whether you are prepared [14] to give us deposition dates for Mr. —

[15] MR. MORGAN: And I will state this [16] to you, then. If we determine and the order [17] hasn't been entered yet and the court said [18] things about whether we wish to give up the [19] deposition, but if we determine to go forward [20] with the deposition, it will be Monday, [21] Tuesday, and Wednesday of next week. How's [22] that?

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[1] MR. KIENBAUM: Well, that's not [2] very —

[3] MR. MORGAN: The court hasn't yet [4] entered the order. The order that you [5] submitted to me was incomplete. We need to [6] get this matter worked out in front of the [7] judge so that Mr. Sheridan can decide what [8] course of action it is he wishes to take. He [9] has every right to that.

[10] I am telling you, though, you [11] wanted dates I'm giving them to you. Monday, [12] Tuesday, Wednesday of next week, and we [13] intend to have the matter worked out with the [14] court tomorrow as to the entry of the order [15] if the judge wishes to hear from us.

[16] MR. KIENBAUM: I'm simply asking [17] are you now advising me that in fact [18] Mr. Sheridan will be showing up on Monday, [19] Tuesday, and Wednesday for his deposition?

[20] MR. MORGAN: I'm telling you that's [21] the best information I have. We need the [22] intervention of the court with respect to the

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[1] entry of the order.

[2] MR. KIENBAUM: My question is for [3] the appearance of the deposition. Will

he [4] appear for the deposition?

[5] MR. MORGAN: It depends on what [6] order the court enters, Mr. Kienbaum. The [7] court has not yet signed an order.

[8] MR. KIENBAUM: I've also been [9] advised that yesterday afternoon after we [10] left for Washington we received a fax from [11] you purporting to "cross-notice a deposition [12] in Florida." I would advise you that we are [13] attempting to file a motion for protective [14] order and that we consider that time and the [15] procedure as well to have been inappropriate [16] and short and that we will try to get to [17] Judge Breck tomorrow morning, and I don't [18] know what the status of that is. We have [19] somebody working on that but just to advise [20] you of the fact that we intend to be there [21] tomorrow and it is our present intention —

[22] MR. MORGAN: I am attempting to

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[1] avoid having to go through Mr. Denomme's [2] deposition twice. I will tell you I have no [3] intention of appearing. Somebody else is [4] asking questions in that case and somebody [5] else is representing Chrysler in that case, [6] and my purpose in noticing the deposition was [7] to make it available for use in this case.

[8] MR. KIENBAUM: Well, then, you [9] should know that we're taking the position [10] that that was inadequate notice for Chrysler [11] to be represented there. That's the basis of [12] our motion for protective order which we [13] intend to file and we intend to be before [14] Judge Breck if we can be heard tomorrow [15] morning, and my understanding is you will not [16] appear there? You're not intending to go —

[17] MR. MORGAN: I am not going to [18] Florida for the deposition. I've told you my [19] purpose in cross-noticing the deposition. My [20] understanding is Mr. Ditlow's deposition in [21] this case was cross-noticed in some other [22] cases and those lawyers are not here.

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[1] MR. KIENBAUM: I don't understand [2] the procedure of the cross-notice. As far as [3] I'm concerned, this is a deposition for this [4] case, not for any other purpose, for any [5] other case, and the same goes to [6] Mr. Denomme's deposition, but, obviously, a [7] defendant has the right in different cases to [8] be represented by a counsel familiar with [9] that particular case, and as far as we're [10] concerned the cross-notice of the kind you're [11] describing does not suffice for that purpose.

[12] So some judge is going to have to [13] figure that one out.

[14] MR. MORGAN: I can't do it tomorrow [15] morning, but I'd be happy to do it tomorrow [16] afternoon. I already am scheduled to be in [17] front of Judge Battani in the morning.

[18] MR. KIENBAUM: We'll have to live [19] with what Judge Breck tells us.

[20] MR. MORGAN: I understand Judge [21] Breck generally to be a fair and evenhanded [22] man and I'm sure he'll accommodate my

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[1] schedule.

[2] MR. VLADECK: Are you guys done [3] having fun?

[4] MR. MORGAN: He's aware that I have [5] a scheduling conflict, so in the off chance [6] that someone from your office has a [7] conversation with someone in Judge Breck's [8] office kindly advise him of that fact.

[9] MR. KIENBAUM: We're off the record [10] now.

[11] (Whereupon, at 1:16 p.m., the [12] deposition of CLARENCE DITLOW [13] was adjourned.)

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