

1 SUPERIOR COURT OF NEW JERSEY  
2 MORRIS COUNTY  
3 LAW DIVISION - CIVIL PART  
4 DOCKET NO. MRS-L-3575-08  
5 A.D.# \_\_\_\_\_

6 - - - - - :  
7 ESTATE OF SUSAN MORRIS KLINE,  
8 :  
9 Plaintiff, : TRANSCRIPT OF PROCEEDINGS  
10 :  
11 vs. :

12 CHRYSLER, et al., :  
13 : MOTION  
14 Defendant. :  
15 - - - - - :

16 Place: Morris County Courthouse  
17 Washington and Court Street  
18 Morristown, NJ 07963-0910

19 Date: May 7, 2010

20 B E F O R E:

21 HON. DAVID B. RAND, J.S.C.

22 TRANSCRIPT ORDERED BY:

23 ANGEL M. DeFILIPPO, ESQ.  
24 (Grieco, Oates & DeFillippo, LLC)

25

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1 A P P E A R A N C E S :

2 ANGEL M. DE FILIPPO, ESQ.  
 (Grieco, Oates & DeFilippo)  
 3 Attorney for the Plaintiff.  
 4 ROBERT F. GOLD, ESQ.  
 (Gold, Albanese & Barletti)  
 5 Attorney for Defendant Butler Chrysler.  
 6 MINDY JAMES, ESQ.  
 (Bonner, Kiernan, Trebach & Crociata)  
 7 Attorney for Defendant Lohman.  
 8 JAMES T. GILL, ESQ.  
 (Leary, Bride, Tinker & Moran)  
 9 Attorney for Defendant Morgan.  
 10 MICHAEL J. ROSSIGNOL, ESQ.  
 (Terkowitz, Rossignol & Hermesmann)  
 11 Attorney for Defendant Rawls.  
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I N D E X

1

2 OPENING STATEMENT

3 BY: Miss DeFilippo Page 6

4

5 WITNESSES DIRECT CROSS REDIRECT RECROSS

6 For the Plaintiff:

7 Paul Sheridan 10 75

8 by Mr. Gold 61 77

9

10 EXHIBITS: Ident.

11 P-1 Copy of check 11

12 P-2 Chrysler T.S.B. 18

13 P-3 Copy of Fed Ex airbill 22

14 P-4 Affidavit of P. Sheridan 23

15 P-5 Dealer connect statement 45

16 D-1 Email 61

17 D-4 Email from P. Sheridan to attorney 61

18 D-2 Letter re 2002 Jeeps 71

19 D-3 Email 72

20

21 THE COURT:

22 Decision Page 79

23

24

25

## Colloquy

4

1 THE COURT: I apologize for the delay this  
2 morning. We got hung up on a Motion that was longer  
3 than we had scheduled.

4 I have the hearing scheduled this afternoon,  
5 Kline, Thomas Kline as Administrator ad Prosequendum,  
6 the Heirs of Susan Morris Kline, Deceased, and  
7 Administrator of the Estate of Susan Morris Line and  
8 Thomas Kline, Individually versus a number of  
9 defendants, Victoria Morgan Alcalla (phonetic), Thomas  
10 Alcalla, Natalie Rawls, Daimler Chrysler Corporation,  
11 now known as Chrysler Corporation, Lohmann Auto Group,  
12 Butler Chrysler Jeep, Inc.

13 I understand that the Chrysler Corporation is  
14 no longer a party to the case. The matter bears docket  
15 number L-3575-08. It is a products liability action  
16 involving an automobile collision, at least the  
17 component of the case that's before me is the products  
18 aspect of it, in which the decedent, Susan Kline, sadly  
19 lost her life.

20 May we have the appearances, please.

21 MS. DE FILIPPO: Angel DeFilippo from Grieco,  
22 Oates and DeFilippo for the plaintiff.

23 MR. GILL: James Gill -- Leary, Bride,  
24 Tinker, Moran, on behalf of Victoria and Carlos  
25 Alcalla.

## Colloquy

5

1 MR. GOLD: Good afternoon, Your Honor, Robert  
2 Gold from the law offices of Gold, Albanese and  
3 Barletti, appearing on behalf of Butler Chrysler Jeep.

4 MS. JAMES: Mindy James from Bonner, Kiernan,  
5 Trebach and Crociata, on behalf of defendant Lohmann  
6 Auto Group.

7 MR. ROSSIGNOL: Michael Rossignol --  
8 Terkowitz, Rossignol and Hermesmann, for Natalie Rawls.

9 THE COURT: Okay. There's some I think  
10 fairly straight-forward aspects of this matter that we  
11 should agree to before we begin. But by way of further  
12 background, a Motion for Summary Judgment was filed in  
13 this matter some time back, actually --

14 MS. DE FILIPPO: January 8th of 2010.

15 THE COURT: Yeah, I have the original  
16 certification was December 8th, '09. December 10, was  
17 a Motion to dismiss by Butler Chrysler Jeep.

18 The basis of the Motion is the statute of  
19 limitations. The complaint here was filed on November  
20 26, 2008. As set forth in the complaint, the accident  
21 as the predicate of the complaint, occurred on February  
22 24, 2007. Somewhere 21 months, 22 months before --  
23 after the -- or before the complaint. So the complaint  
24 was filed a few months before the two year statute had  
25 expired.

Colloquy

6

1 On May 12, 2009, about a year ago -- time  
 2 flies when you're having fun -- the plaintiff filed a  
 3 notice of Motion for leave to file an amended complaint  
 4 for the purpose of adding Butler Chrysler Jeep Inc. as  
 5 a direct defendant.

6 On June 12, 2009, almost a month to the day,  
 7 the order was entered granting the application and two  
 8 days later the plaintiff's filed their amended  
 9 complaint.

10 For purposes of this action, I'm going to  
 11 deem May 12th, 2009 as the date when the plaintiff  
 12 filed its Motion and a derivative date.

13 On September 30th, 2009, Butler filed its  
 14 answer to the amended complaint, made the defenses,  
 15 cross claims for indemnification, et cetera. And the  
 16 rest is history.

17 It then moved to dismiss asserting that the  
 18 complaint, the amended complaint in which it was named,  
 19 was filed of course well beyond the statute of  
 20 limitations. Statute of limitations would have expired  
 21 on February 24, 2009 and of course Motion to amend was  
 22 not done until May 12, 2009, approximately three months  
 23 thereafter.

24 The issue before the Court is whether the  
 25 plaintiff should be allowed at this time to assert a

Colloquy

7

1 Cause of Action against Butler utilizing the equitable  
 2 theory of the discovery rule.

3 The, on the Motion for Summary Judgment, the  
 4 Court determined that it would be necessary to conduct  
 5 a hearing on the subject. The protocol of that hearing  
 6 is such that the plaintiff bears the burden of proof to  
 7 show that the equitable considerations of the discovery  
 8 rule apply and that there should be an order allowing  
 9 the complaint to continue as the plaintiff must show  
 10 equitable considerations. I won't go into all the  
 11 details of the rule or principle of law involved to  
 12 allow the relaxation of the statute of limitations.

13 Is that pretty much it, counsel?

14 MR. GOLD: It summarizes it fine, Judge.

15 THE COURT: Okay. Miss DeFilippo, I  
 16 understand you have a witness, is that right? You want  
 17 to make a short statement, if you wish?

18 MS. DE FILIPPO: I -- I can either make a  
 19 short statement now or reserve it until you hear the  
 20 witness and we can get the witness --

21 THE COURT: That's up to you. If you want to  
 22 focus my attention, it's perfectly appropriate.

23 MS. DE FILIPPO: I will just make some very  
 24 brief statement. I'll reserve my complete statement  
 25 till the end. It should be very short either way.

Colloquy

8

1 OPENING STATEMENT BY MS. DE FILIPPO:

2 MS. DE FILLIPPO: With respect to the  
3 discovery rule, I think my paperwork which I submitted  
4 under cover of December 16th, 2009 and I know the Court  
5 has looked at --

6 THE COURT: Yeah.

7 MS. DE FILIPPO: -- and had previously looked  
8 at pretty much --

9 THE COURT: Right, and I received it on  
10 December 18th.

11 MS. DE FILIPPO: Right, pretty much  
12 summarizes the position and also the facts of what  
13 happened here.

14 But basically what happened here is a case  
15 involving drivers and a vehicle which burst into flames  
16 immediately upon impact was received in our office and  
17 we immediately began to investigate the matter. And  
18 our investigation revealed that there was a three car  
19 collision. Our plaintiff had done nothing except do  
20 everything properly, was struck in the rear and pushed  
21 into a car in front of her who had somehow slowed down  
22 for whatever reason not important to this Motion.

23 The -- the -- the Jeep that she was driving  
24 immediately becomes a ball of flames as described by a  
25 witness.

Colloquy

9

1 At the time that the complaint was filed, and  
2 at the time that the case, that the accident happened  
3 and at the time the case came into the office, Chrysler  
4 Corporation was a viable entity. As we know now, they  
5 are defunct having gone through bankruptcy.

6 And a case was filed as the Court correctly  
7 stated on November 26, 2008 against the drivers who  
8 were at fault, and Chrysler who was at fault. And also  
9 named as a direct defendant, Lohmann's, a dealer who  
10 was in the chain of sale. The vehicle driven by Susan  
11 Morris Kline was sold by Chrysler to Lohmann's and from  
12 Lohmann's directly to the plaintiffs, Mr. and Mrs.  
13 Kline. I believe maybe Mr. Kline.

14 And there were John Does in the complaint,  
15 should we find out that someone else was either  
16 negligent in the happening of this accident because the  
17 complaint has counts for both strict liability and  
18 negligence, so there are counts in the complaint and  
19 John Does which are, were available because at the time  
20 that the case came in, the only information that we had  
21 about fault was the fault of the drivers and the fault  
22 of Chrysler and the fault of the dealer, Lohmann's, as  
23 a -- as a participant in the stream of commerce or  
24 chain of sale.

25 We knew at the time and it's never been an

## Colloquy

10

1 issue, so we can agree on one more fact, and that is  
 2 that we knew that at some point prior to the statute  
 3 running that the vehicle had been serviced at another  
 4 dealership, a Chrysler dealership called Butler. And  
 5 Butler is the moving party in the within action.

6 THE COURT: Right.

7 MS. DE FILIPPO: When we were before the  
 8 Court which I believe was January 29th of 2010, the  
 9 Court was concerned that the discovery rule in fact did  
 10 or did not apply, and before making any ruling, I  
 11 believe it was the Court's belief that we should  
 12 consider a LOPEZ hearing so that the Court could be  
 13 satisfied as to what was known or should have been  
 14 known about the injury and the fault.

15 We all agree that we knew there was an  
 16 injury. There was a death in this case.

17 And the way that the information regarding  
 18 the fault of Butler came to light to the plaintiffs had  
 19 to do with an expert that we ultimately hired, Mr. Paul  
 20 Sheridan. He is from Michigan and he's the witness,  
 21 and I'll produce him now, reserve on my comments till  
 22 after his testimony, with the permission of the Court  
 23 and counsel.

24 THE COURT: All right.

25 MS. DE FILIPPO: Okay, I'd like to call Mr.

## Sheridan - Direct

11

1 Sheridan to the stand.

2 THE COURT: The defendants, do they waive any  
 3 opening comments?

4 MR. GILL: I do, Your Honor.

5 MR. GOLD: I'll waive opening.

6 THE COURT: All right, fine. Mr. Sheridan,  
 7 would you please come up.

8 Please remain standing and simply raise your  
 9 right hand.

10 P A U L S H E R I D A N, PLAINTIFF'S WITNESS, SWORN

11 THE CLERK: Can you state your name and spell  
 12 your last name?

13 THE WITNESS: Yes, Paul B. Sheridan,  
 14 S-H-E-R-I-D-A-N.

15 THE CLERK: Thank you; you may be seated.

16 THE WITNESS: Good afternoon, Your Honor.

17 THE COURT: Good afternoon, Mr. Sheridan.  
 18 Proceed.

19 DIRECT EXAMINATION BY MS. DE FILIPPO:

20 Q. Mr. Sheridan, can you please state your  
 21 current address?

22 A. 22357 Columbia Street, Dearborn, Michigan.

23 Q. And are you currently serving as an expert in  
 24 the matter of Kline versus Chrysler, et al.?

25 A. Yes.

Sheridan - Direct . 12

1 Q. And in what areas of expertise are you  
2 serving as an expert? x-pert

3 A. My area of expertise is general automotive safety  
4 management.

5 Q. Who retained you to serve as an expert in the  
6 case of Kline versus Chrysler, et al.?

7 A. Who retained me?

8 Q. Yes.

9 A. Plaintiff's counsel, yourself. retained

10 Q. And when were you retained?

11 A. The date I was -- the check that retained me was  
12 issued on March 12th, 2009.

13 MS. DE FILIPPO: Can we mark this document?  
14 I believe counsel have seen a copy of the check.  
15 BY MS. DE FILIPPO:  
16 Q. I'm going to show you a document which has  
17 been marked P-1. Is that the document that you  
18 referred to?  
19 A. Yes.  
20 Q. And that document came with a cover letter I  
21 believe you indicated March 12. What's the date of the  
22 check?  
23 A. The date of the check is March 11th, 2009.  
24 Q. And is that the date you were retained?  
25 A. In my mind, yes.

Sheridan - Direct 13

1 Q. And prior to being retained as an expert in  
2 this case, did you have any contact with the  
3 plaintiff's attorney, myself?

4 A. Yes.

5 Q. And can you tell me just in general what the  
6 nature of your contact with plaintiff's attorney was?

7 A. I received a voice phone mail at my home office in  
8 Dearborn. This would have been in the August 2008  
9 timeframe. You identified yourself as a plaintiff's  
10 attorney in a very brief voice mail message and would I  
11 return your telephone call.  
12 A short time thereafter, I did return the phone  
13 call. It would have been late August or perhaps early  
14 September of 2008. And we had a brief conversation  
15 when I did connect with you at that time and returned  
16 your call.

17 Q. Prior to being retained, what if -- what --  
18 what type of contact did you have with me if you had  
19 any?

20 A. There were some periodic emails and periodic  
21 telephone calls regarding the generalities of the  
22 Kline versus Chrysler, et al. case. conversations  
of

23 So there were conversations about my availability.  
24 At one point later on there were conversations about  
25 documents that existed inside Chrysler that I may or retained

Sheridan - Direct

14

1 may not be aware or had possession of or had access to.  
2 Things of a general nature regarding how I could  
3 participate or contribute to the plaintiff's case.

4 Q. Were you ever asked by the plaintiff's  
5 attorney about internal Chrysler documents that you may  
6 have had in files of your own personal files?

7 A. Either my professional files at Chrysler or  
8 subsequent files, yes, I was asked that, I was asked  
9 questions about my safety files.

10 Q. And were you asked any questions about  
11 experts?

12 A. Yes.

13 Q. Before you were retained, what was your basic  
14 knowledge of the Kline versus Chrysler case?

15 A. Before I was retained, my understanding was that  
16 it was a rear end collision on a New Jersey highway,  
17 that the vehicle had burst into flames, that the fuel  
18 tank had ruptured and failed and fuel had entered the  
19 passenger compartment. And the driver of the vehicle,  
20 Mrs. Susan -- Mrs. Susan Kline, burned to death inside  
21 the vehicle.

22 Those were the -- that was the general information  
23 I knew about the case sometime prior to being retained.

24 Q. Did you have information as to whether or not  
25 this was a design defect case?

Sheridan - Direct

15

1 A. Yes.

2 Q. And what was your information?

3 A. My information is that the rear mounted unshielded  
4 plastic fuel tank on the ZJ and WJ Chrysler vehicles,  
5 that would be the Grand Cherokee Chrysler vehicles,  
6 represented in my opinion a fundamental design defect  
7 from a safety point of view.

8 Q. And in this design defect case, were there  
9 any facts at that point in time to support a direct  
10 allegation of wrongdoing on the part of any Chrysler  
11 dealer?

12 A. Chrysler dealer?

13 Q. Yes.

14 A. No, I had no information about that.

15 Q. Did you have any information at that point in  
16 time that there was any wrong --

17 THE COURT: What point in time are you  
18 talking about?

19 MS. DE FILIPPO: Prior to retention on, in  
20 March --

21 THE WITNESS: Eleventh.

22 MS. DE FILIPPO: -- 11th of 2008.

23 THE WITNESS: Nine.

24 BY MS. DE FILIPPO:

25 Q. I'm sorry, nine. I'm sorry, 2009. Did you

*design  
defect*  
  
*no  
design  
involvement*



Sheridan - Direct

16

1 have any -- at that point in time, did you have any  
2 facts to support a direct allegation of wrongdoing on  
3 the part of Lohmann's, the dealer, Lohmann's?

4 A. During the time period from your first contact in  
5 August until March 11th of 2008, So August of 2008 --

6 Q. Right.

7 A. -- through March of 2009, I had no information  
8 that Lohmann's, to answer your question, had any issues  
9 or faults regarding this accident.

10 Q. Before being retained, did you give the  
11 plaintiff's attorney the names of any potential experts  
12 regarding the design defect of fuel systems or  
13 mechanics of fuel systems?

14 A. Yes.

15 Q. And do you remember any of the experts that  
16 you might have mentioned?

17 A. The one I recall mentioning specifically was a  
18 Wayne McCracken (phonetic).

19 Q. Did you conduct an investigation of the  
20 vehicle after you were retained?

21 A. Yes.

22 Q. And did that investigation take place at any  
23 time before your retention or did it take place after  
24 your retention?

25 A. I inspected the vehicle only after being retained.

no  
def  
lia  
inf

Sheridan - Direct

17

1 Q. And what did your investigation reveal?

2 A. The investigation or the inspection?

3 Q. Well let's start with the investigation.  
4 What did your investigation reveal?

5 A. After being retained, standard procedure for me is  
6 to acquire the vehicle's service history to find out if  
7 the vehicle has been properly maintained, properly  
8 serviced, to get a general idea on the condition of the  
9 vehicle in the accident in question, so that I can make  
10 a determination about whether or not the vehicle is in  
11 fact representative of the design level that was  
12 intended by the original manufacturer. In this case,  
13 Chrysler Corporation.

14 So my investigation initially was to get a service  
15 history, get a feel for the vehicle in question.

16 Q. And did you obtain a service history on this  
17 vehicle?

18 A. Yes.

19 Q. And what did you learn from what you  
20 obtained?

21 A. From -- in my professional opinion, the vehicle  
22 service history indicated that the vehicle was well  
23 maintained and was in fact representative of a typical  
24 design level ZJ vehicle from Chrysler Corporation.

25 Q. And do you recall who serviced the vehicle?

Sheridan - Direct 18

1 A. Yes, there were two dealers that were mentioned on  
2 the dealer service record. There was -- there was,  
3 Lohmann's was mentioned and Butler was mentioned.

4 Q. And so initially did you -- did you have any  
5 facts to support a problem with Butler's actions in  
6 performing service on this vehicle?

7 A. No, not initially.

8 Q. Was there any fault of Butler based on your  
9 investigation of the service record that you saw?

10 A. Not on the service records, no.

11 Q. Did the service of this vehicle have anything  
12 to do with the fuel system?

13 A. There was no -- there were no history items  
14 relating to the fuel system as I recall in the service  
15 record that I obtained.

16 Q. So the fuel system was not involved in any  
17 service by any dealer on this particular vehicle, the  
18 Kline vehicle?

19 A. Not according to my initial investigation.

20 Q. So was there any reason at that time in your  
21 initial investigation to believe that Butler had any  
22 fault in this accident?

23 A. None.

24 Q. And was there any reason for you to believe  
25 that Butler did anything wrong vis-a-vis Mr. and Mrs.

no fault  
of  
Butler  
where  
Saw  
rec  
revis

no fault

Sheridan - Direct 19

1 Kline or their vehicle at that point in time?

2 A. Not initially, no, not initial to my  
3 investigation. No.

4 Q. At some point in time you formulated an  
5 opinion that Butler had some degree of fault and should  
6 be added as a defendant in this action?

7 A. That's correct.

8 Q. When?

9 A. It was subsequent to acquiring a letter that was  
10 sent to the customers regarding a technical service  
11 bulletin. And I also acquired a technical service  
12 bulletin. So it would have been on or about early  
13 April sometime that I acquired those two items and --

14 THE COURT: What year?

15 THE WITNESS: This would have been 2009.  
16 April of 2009.

17 THE COURT: A little more than a year ago.

18 THE WITNESS: Yes, sir.

19 BY MS. DE FILIPPO:

20 Q. Do you have a copy of what you acquired with  
21 you today?

22 A. I do, yes.

23 Q. Could you produce it for us?

24 A. May I, Your Honor, it's in my brief --

25 Q. Or, let me see if I have a copy. We can use

not for  
April

Sheridan - Direct 20

1 my copy. I'm referring to exhibit E of the defendant's  
2 documents. If you look at exhibit E, is this the  
3 technical service bulletin or the T.S.B. that you made  
4 reference to?

5 A. Yes, this is the technical service bulletin  
6 portion of my April investigation materials.

7 THE COURT: Bear with me for a moment please.  
8 MS. DE FILIPPO: Well let's mark it while  
9 you're looking, Judge.

10 THE COURT: I've got a number of exhibit E's  
11 here. I got --

12 MS. DE FILIPPO: It's the initial opposition  
13 papers.

14 MR. GOLD: It was the papers that were  
15 submitted to Your Honor yesterday.

16 THE COURT: Oh.  
17 MS. DE FILIPPO: Oh, I'm sorry, it's the  
18 second application.

19 THE COURT: Yesterday? Okay, just hold it.  
20 MR. GOLD: Yes, exhibit E.  
21 THE COURT: Thank you. There's an exhibit E  
22 in the original set of papers.

23 MS. DE FILIPPO: Yes, I'm sorry, Judge, I --  
24 THE COURT: I have it.  
25 MS. DE FILIPPO: Okay.

Sheridan - Direct 21

1 THE COURT: February '02?  
2 MS. DE FILIPPO: That's correct, Judge.  
3 BY MS. DE FILIPPO:  
4 Q. Mr. Sheridan, I know that the document we've  
5 marked as P-2 is more than one page. How many pages is  
6 that document?  
7 A. The document that we've marked as P-2 is six pages  
8 long.  
9 Q. And it doesn't say in the heading anywhere  
10 technical service bulletin. Why did you -- why did you  
11 refer to it as that?  
12 A. Because in my career at Chrysler, I've authored  
13 documents of a similar ilk and this is the form they  
14 take. Not all technical service bulletins say  
15 technical service bulletin, but that is the portent of  
16 this document. And I requested the technical service  
17 bulletin, and this is what I got.  
18 Q. So this in my mind as a person with 11 years  
19 professional experience with Chrysler, this is a  
20 technical service bulletin.  
21 Q. Are some technical service bulletins recall  
22 notices?  
23 A. Some are.  
24 Q. And some technical service bulletins are not  
25 recall notices, correct?

Sheridan - Direct 22

1 A. Yes. Technical service is what it intends, it's a  
 2 technical service bulletin to tell someone how to  
 3 technically fix a vehicle. So there are some recalls  
 4 and some non-recall T.S.B.'s as we call them.

5 Q. Was this document, P-2, telling the servicer  
 6 such as a dealer, how to service the Chrysler vehicle?

7 A. Yes, this is a detailed and graphical instructions  
 8 set to tell the mechanics what procedure they should  
 9 use to service the vehicle in question.

10 Q. Mr. Sheridan, when you received P-2, did you  
 11 contact the plaintiff's attorney?

12 A. Yes.

13 Q. When did you contact the plaintiff's  
 14 attorney?

15 A. It was very shortly after reading this document, I  
 16 got --

17 THE COURT: I've got to know -- I need to  
 18 know some more information here.

19 MS. DE FILIPPO: I'm going to get to that,  
 20 Judge.

21 THE COURT: How he got this, the  
 22 circumstances --

23 MS. DE FILIPPO: I'm going to that --

24 THE COURT: -- all of that.

25 MS. DE FILIPPO: -- I just wanted to clear up

Sheridan - Direct 23

1 a couple of quick things before we get there about it.  
 2 I'm going to go back.

3 BY MS. DE FILIPPO:

4 Q. How do you know you informed the plaintiff's  
 5 attorney when you got this?

6 A. Well I was -- my telephone call would probably be  
 7 on telephone bills, but the other portion of my contact  
 8 with -- with yourself was that I immediately Fed Ex'd  
 9 this, a copy of this document to your office.

10 Q. Do you have any evidence, documentary  
 11 evidence that you sent a Fed Ex to my office?

12 A. Yes, I brought that with me.

13 Q. Can you get it please? Can you step down and  
 14 get it?

15 THE WITNESS: May I, Your Honor?

16 THE COURT: Sure.

17 MS. DE FILIPPO: Okay, let's mark that P-3.

18 MR. GOLD: I have not seen that document.  
 19 (Only one microphone is picking up)

20 BY MS. DE FILIPPO:

21 Q. Mr. Sheridan, this document, P-3, just tell  
 22 us what it is?

23 A. The first page of this two page exhibit, P-3, is a  
 24 Fed Ex US Airbill. It's number 869667283481. It's  
 25 filled out in my handwriting using plaintiff law firm

Sheridan - Direct

24

1 Fed Ex number, and it's addressed to Angel M. DeFilippo  
2 in West Orange, New Jersey, and it's dated 13 April '09  
3 and it's scheduled for overnight delivery.

4 The second page is what's called a Fed Ex SPOD or  
5 Signature Proof of Delivery. It's signed for by what  
6 appears to be a Q. Simmons. It was delivered on April  
7 14th, 2009 and the air bill tracking number matches my  
8 hand filled in air bill.

9 MS. DE FILIPPO: Could you mark this P-4?

10 THE COURT: What is that, Miss DeFilippo?

11 MS. DE FILIPPO: It is the affidavit of Mr.  
12 Sheridan attached to my opposition papers initially.

13 BY MS. DE FILIPPO:

14 Q. Mr. Sheridan, I'd like you to look at the  
15 affidavit which you authored. We've marked it P-4. Do  
16 you recognize that document? Affi

17 A. Yes.

18 Q. And looking at that document, I want to go  
19 over some of the information regarding the T.S.B. and  
20 your knowledge of obtaining it.

21 You indicate in that affidavit who you are in  
22 paragraph one and two, and your service in this case.  
23 In paragraph three, you indicate, "In my ongoing  
24 investigation I learned that in February of 2002  
25 Chrysler advised all of their dealers including Butler

Sheridan - Direct

25

1 Chrysler Jeep Inc. about a fundamental fuel system  
2 safety defect which relates to placement of an  
3 unprotected unshielded plastic fuel tank directly  
4 behind the axle but protruding below and exposed below  
5 the high bumper of the 1993 through 2004 Jeep Grand  
6 Cherokee vehicles which includes the 1996 Jeep Grand  
7 Cherokee in the within litigation."

8 And that's paragraph number three of your  
9 affidavit. Is that an accurate statement?

10 A. Yes.

11 Q. Now when you said that your ongoing  
12 investigation, could you just advise the Court what was  
13 your ongoing, past your initial investigation of  
14 getting the, as you testified to before, getting the  
15 service records to determine the car was kept in proper  
16 repair, what did you do as an ongoing investigation?

17 THE COURT: I'm confused.

18 MS. DE FILIPPO: Okay.

19 THE COURT: I am thoroughly confused. May I  
20 see that please?

21 MS. DE FILIPPO: Sure. Number three.

22 THE COURT: When you talk about ongoing  
23 investigation, what do you mean, sir?

24 THE WITNESS: I mean subsequent to being  
25 retained in March of 2009, I began an initial

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1 investigation about the service records, and then I  
2 began getting into the details of defect information  
3 and/or communications, things of that nature, Your  
4 Honor. I kept going in terms of my investigation of  
5 the defect.

6 THE COURT: Let me ask you a question.  
7 Please feel free to object, because I want to get to  
8 the heart of it.

9 MS. DE FILIPPO: Okay.

10 THE COURT: Your background, sir, you were an  
11 employee of Chrysler Corporation?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And over what period of time were  
14 you employed by them?

15 THE WITNESS: From 1984 to the beginning of  
16 1995.

17 THE COURT: All right, and then you left  
18 their employment?

19 THE WITNESS: Yes, sir.

20 THE COURT: Were you familiar with the,  
21 either ZJ or EJ body types?

22 THE WITNESS: The ZJ was being constructed  
23 while I was employed there, yes, sir. But I was not  
24 there during the WJ design and development, but the  
25 vehicles are very similar and I have done some analysis

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1 of those vehicles.

2 THE COURT: Right. Both of them have the  
3 similar gas tank placement?

4 THE WITNESS: Yes, sir.

5 THE COURT: Now, did there come a time in  
6 your service as an -- I guess subsequent to your  
7 employment that you got involved with assessing Jeep  
8 Grand Cherokee vehicles for product defects?

9 THE WITNESS: No, I hadn't done any product  
10 litigation on a Jeep vehicle from 1995 until contact by  
11 plaintiff's attorney in this case.

12 THE COURT: So that wasn't until March of  
13 last year? Well, actually earlier than that.

14 THE WITNESS: Yes, in other words I was  
15 contacted by telephone in August of 2008.

16 THE COURT: Right.

17 THE WITNESS: So that was the first time --

18 THE COURT: But you didn't -- did -- did that  
19 telephone conference in August of '08 generate any  
20 action on your part to look into any further Chrysler  
21 action vis-a-vis this type of vehicle, this ZJ body  
22 type?

23 THE WITNESS: No, at that point in time I'm  
24 speaking in generalities, I've not been retained, I  
25 have not done a focus study --

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1 THE COURT: I didn't ask -- I didn't ask  
2 whether you were retained or not. I'm just asking  
3 whether did that tweak an interest on your part,  
4 despite the fact that you weren't retained? I mean it  
5 just may be an academic interest, or personal interest.  
6 THE WITNESS: Well I'm interested in safety  
7 in general and this was a safety issue --  
8 THE COURT: Correct.  
9 THE WITNESS: -- so the answer is yes, I -- I  
10 -- at that point I am interested in the design  
11 features.  
12 THE COURT: You knew, you knew as of what was  
13 it, August of '08, that a person, Miss Kline, had died  
14 in a '96 Grand Cherokee? Body style ZJ.  
15 THE WITNESS: Yes, sir.  
16 THE COURT: And I assume you were aware of  
17 that it was a rear end accident that she was burned  
18 alive in the car?  
19 THE WITNESS: Sometime subsequent to August  
20 of that year, 2008, yes, sir.  
21 THE COURT: You knew that almost from the  
22 beginning I assume.  
23 THE WITNESS: Well --  
24 THE COURT: That was probably the first thing  
25 that was told to you on the telephone?

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1 THE WITNESS: No --  
2 THE COURT: No?  
3 THE WITNESS: -- the first thing was very  
4 general regarding my availability.  
5 THE COURT: You weren't told that I represent  
6 a woman who was killed or burned up in a car?  
7 THE WITNESS: Not the first telephone call,  
8 but subsequent to that, yes. So sometime during the  
9 August, September, October timeframe --  
10 THE COURT: Right.  
11 THE WITNESS: -- more details are coming to  
12 me about --  
13 THE COURT: Right, you knew --  
14 THE WITNESS: -- the actual accident.  
15 THE COURT: -- you knew, I mean very quickly  
16 about the broad nature of the aspect.  
17 THE WITNESS: Yes, sir.  
18 THE COURT: All right.  
19 Now I -- I asked you whether you had done  
20 any, even before you were formally engaged, but did you  
21 do any or take any inquiry, make any inquiry into  
22 Chrysler's call it product history vis-a-vis this  
23 vehicle prior to March of 2009?  
24 THE WITNESS: I didn't. Inquiry was made to  
25 me about it but I did not make any -- any pointed or

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1 focused inquiries about the vehicle prior to that time  
2 other than my knowledge from inside the company during  
3 the time I worked at Jeep Truck Engineering.

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knowledge  
he already  
had

4 THE COURT: And what do you mean other than  
5 your knowledge. I don't understand that.

6 THE WITNESS: Knowledge --

7 THE COURT: That's knowledge.

8 THE WITNESS: Well knowledge that I acquired  
9 about the vehicle during the time that I worked at  
10 Chrysler, I think that's what I'm referring to.

11 THE COURT: Okay.

12 THE WITNESS: So in other words, I was aware  
13 of the design of the vehicle --

14 THE COURT: Uh-huh.

15 THE WITNESS: -- long before Mrs. DeFilippo  
16 telephoned me. But I had never done --

17 THE COURT: And I take it long before Mrs. De  
18 -- Miss DeFilippo called you, you were of a mind that  
19 this design was defective vis-a-vis the tank?

20 THE WITNESS: That was my opinion, yes.

21 THE COURT: Yeah. You had that opinion long  
22 before this accident.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right, go ahead.

25 BY MS. DE FILIPPO:

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1 Q. So we are on paragraph three and I'll try to  
2 move forward. Did you --

3 THE COURT: Yeah, I have it here. Let me --  
4 yeah.

5 MS. DE FILIPPO: Okay.

6 BY MS. DE FILIPPO:

7 Q. So -- so in this ongoing investigation, I  
8 want -- I wanted to ask you about that. You did more  
9 investigation after the initial learning about repairs,  
10 correct?

11 A. Yes.

12 Q. And that's what you mean by ongoing  
13 investigation?

14 A. Yes.

15 Q. I think you just told the Judge that. What  
16 did you -- what -- what did you do in terms of ongoing  
17 investigation?

18 A. By the March/April timeframe of 2009 I am focusing  
19 my efforts on the fuel system design and failure modes  
20 of that design, and any information that Chrysler may  
21 have had or communicated to anyone regarding fuel  
22 system design failures in this particular type of  
23 vehicle.

24 So it was then that very broad aspect that I'm  
25 looking for detailed documentation on Chrysler's



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1 knowledge of this design defect.

2 Q. Had you ever done an investigation on any  
3 Jeep vehicle prior to this?

4 A. No.

5 Q. And --

6 A. In terms -- counsel, if I may qualify, in terms of  
7 a plaintiff's action?

8 Q. Yes.

9 A. No.

10 Q. And had you ever looked for communications  
11 within Chrysler for litigation regarding fuel systems  
12 design in the Jeeps?

13 A. No.

14 Q. And so what -- what method or where, where  
15 did you do your investigation?

16 A. Part of my investigation involved the center for  
17 auto safety in Washington. I did contact experts in  
18 Washington. But I also did my own investigations  
19 regarding the servicing of these vehicles in general. I  
20 was looking for technical service bulletins that  
21 related in any way to the fuel system of these types of  
22 vehicles.

23 Q. And is that how you found the technical  
24 service bulletin that we've marked as P-2 I believe?  
25 Yes.

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1 A. Yes, that's how I found it.

2 Q. And why is that document P -- why was that  
3 document P-2 when you obtained it significant to you?

4 A. Having prior knowledge of what -- having prior  
5 knowledge of the design of the vehicle and having prior  
6 opinion about the design defect in this vehicle, this  
7 was the first time that I had seen any documentation  
8 from Chrysler that admitted that there was a repair  
9 service sequence that could fix the fundamental design  
10 flaw in this vehicle. It's the first time I saw it.

11 And the other thing that was significant about it  
12 was the fact that it was communicated as a result of it  
13 being a technical service bulletin, it was broadcast to  
14 all Chrysler dealers. It's the first --

15 THE COURT: Okay, just a question. So I  
16 understand the nature of your knowledge, in March of  
17 '09, you are formally retained.

18 THE WITNESS: Yes, sir.

19 THE COURT: Up to that point, you have not  
20 personally undertaken an investigation of any Jeep fuel  
21 system defect?

22 THE WITNESS: That is correct. In terms of  
23 plaintiff actions. Inside the company back in the  
24 80's, 90's, you know, we know about it, we're designing  
25 it, I was involved in the fuel systems design of the

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1 Chrysler mini-van. So I do have general knowledge of  
2 fuel systems design and safety issues. But at no time  
3 since '95 up through contact in August of 2008 did I  
4 conduct any investigations for plaintiffs.

5 THE COURT: Well, I didn't limit it for  
6 plaintiffs. Any investigations at all.

7 THE WITNESS: None at all, sir. None of any  
8 substance.

9 THE COURT: I'm not asking whether they're  
10 substance or not. I mean did you do any on the -- on  
11 the Jeep Grand Cherokee WJ body type?

12 THE WITNESS: No, or ZJ.

13 THE COURT: Or ZJ, yes.

14 THE WITNESS: No. I did not, Your Honor.

15 THE COURT: ZJ, that's the other one.

16 So you get this undertaking and then you --  
17 you go to what source?

18 THE WITNESS: In this particular instance, I  
19 went to a dealership in the Detroit metro area.

20 THE COURT: And the purpose of going there  
21 was to do what?

22 THE WITNESS: I was looking for any  
23 documentation that would have been broadcast by  
24 Chrysler regarding fuel system servicing of the ZJ or  
25 WJ vehicles on the fuel system in particular. I was

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1 focused on the fuel system.

2 THE COURT: And how could a dealership in the  
3 Detroit area help you in this regard?

4 THE WITNESS: I've had a, you know, I've had  
5 a 30 year relationship with them, I've been there for  
6 30 years and they helped me do the search in the data  
7 base for this kind of information.

8 THE COURT: Explain to me what the data base  
9 is .

10 THE WITNESS: It's a -- it's a data base of  
11 technical service bulletins that you can access through  
12 the dealer direct connect I believe it's called, and  
13 you can access the data base of T.S.B.'s.

14 THE COURT: What do you mean, you? Who can  
15 access it?

16 THE WITNESS: It would be in this case the  
17 service manager. So I -- I can't go to the terminal  
18 and actually do the actual inputs to the search, but I  
19 have contacts through my expertise and contacts with my  
20 reputation in Detroit, and I was able to have them  
21 search.

22 THE COURT: So you -- you were able to get  
23 permission from a service manager to access the data  
24 base which would otherwise not be available to members  
25 of the general public, is that it?

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1 THE WITNESS: That's correct, sir.

2 THE COURT: Would there be any alternate  
3 availability for this type of information? For  
4 example, would there be any United States Department of  
5 Transportation or other, I guess what is it, safe --  
6 product safety --

7 THE WITNESS: N.H.T.S.A.

8 THE COURT: N.H.T.S.A., is that what it is?

9 THE WITNESS: National Highway Traffic Safety  
10 Administration.

11 THE COURT: Right, would they maintain  
12 alternate sources of such information? Are you aware  
13 of that?

14 THE WITNESS: I'm aware that they do or they  
15 attempt to but their data base is typically flawed.  
16 It's not up to date. I don't rely on it.

17 THE COURT: Have you checked, have you  
18 checked and see, to see whether this information was  
19 otherwise available?

20 THE WITNESS: The person I had do that to  
21 make sure it was very thorough was --

22 THE COURT: I asked you.

23 THE WITNESS: Well this is what I did in  
24 regard to that particular point, which was I had  
25 Clarence Ditlow (phonetic) do it for me.

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1 THE COURT: Who is Clarence Ditlow?

2 THE WITNESS: Clarence Ditlow is the director  
3 at the Center for Auto Safety in Washington, D.C. I've  
4 had a relationship with him for, since 1994. He and I,  
5 we know each other very well, and he did the search for  
6 me of the N.H.T.S.A. data base and this document was  
7 not in the N.H.T.S.A. data base.

8 THE COURT: All right.

9 BY MS. DE FILIPPO:

10 Q. Is that typically what you do as an expert in  
11 investigating cases such as this?

12 A. Yes, because much of my work involves regulatory  
13 compliance and the adequacy or inadequacy of regulatory  
14 compliance. So it is not infrequent that I will  
15 contact people in Washington that have connections with  
16 the National Highway Traffic Safety Administration  
17 because their connections and their reputation is  
18 superior to mine in that regard.

19 So I make use of their expertise. So in general,  
20 dealerships, Chrysler documentation, government files  
21 and government records, this is the broad general  
22 management safety expertise that I bring to bear in  
23 these cases.

24 Q. Now, you write in paragraph number five of  
25 that same affidavit which was marked I believe P-4,

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1 the T.S.B. clearly underscores a problem to be fixed by  
2 a device called a fuel tank blocker bracket. The  
3 T.S.B. also states that Jeeps with a fuel tank skid  
4 plate do not need to be, quote, "repaired."

5 Can you des -- can you elaborate and explain  
6 what you mean by that?

7 A. The rear mounted, when I say rear mounted I mean  
8 fuel tank that's mounted behind the axle and below the  
9 bumper constructed of plastic that also is unshielded  
10 represents a fundamental design defect.

11 THE COURT: Let's go back to the -- let's go  
12 back to the document itself.

13 MS. DE FILIPPO: The T.S.B.?

14 THE COURT: Yeah, that's exhibit E?

15 THE WITNESS: Yes.

16 THE COURT: All right, this is the document  
17 you procured, right, sir?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: And you got this through a dealer  
20 in the Detroit area?

21 THE WITNESS: Yes, sir.

22 THE COURT: Because of your connections with  
23 the service manager, you were able to access his  
24 computer?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Or its, the dealer's computer.  
2 And it maintains on the hard drive historical record of  
3 all these technical service bulletins, or this is a  
4 dealer service instruction, right?

5 THE WITNESS: Either on the hard drive, or  
6 they access through the network the central hard drive  
7 of the, you know, the network.

8 THE COURT: All right. So they either go  
9 through, they have a direct link to a Chrysler  
10 computer, is that what it is?

11 THE WITNESS: It's an intra-net, yes, sir.

12 THE COURT: Right, it's not a -- it's not a  
13 what basis situation.

14 THE WITNESS: No, sir, it's a secure  
15 situation.

16 THE COURT: Right, it's in -- intra-net.

17 THE WITNESS: Yes, sir.

18 THE COURT: Right, I understand. So it's  
19 either on their local hard drive or it's on through  
20 this intra-net access.

21 THE WITNESS: Yes, sir.

22 THE COURT: And you find this bulletin. Does  
23 it have a number, this bulletin?

24 THE WITNESS: Well A-10, service recall A-10.

25 THE COURT: All right, service safety recall

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1 A-10.  
 2 THE WITNESS: I'm sorry, sorry.  
 3 THE COURT: Fuel tank blocker bracket.  
 4 THE WITNESS: Yes, sir.  
 5 THE COURT: And it says effective  
 6 immediately, all repairs on involved vehicles are to be  
 7 performed according to this recall notification. Does  
 8 that have significance, the fact that it's a safety  
 9 recall?  
 10 THE WITNESS: Yes, it does. Safety recalls  
 11 that, in other words a technical service bulletin that  
 12 involves a safety recall has very high priority with  
 13 the dealership community. This is, this one gets --  
 14 THE COURT: Why wouldn't it be in the  
 15 National Transportation Safety Board files?  
 16 THE WITNESS: National Highway Traffic Safety  
 17 Administration.  
 18 THE COURT: Yeah, whatever it is.  
 19 THE WITNESS: I -- I have the same question,  
 20 Your Honor.  
 21 THE COURT: But it wasn't?  
 22 THE WITNESS: It was not.  
 23 THE COURT: And then it says the labor  
 24 operations for the interim service procedure that was  
 25 published in the 8-10 electronic mail D mail message of

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1 January 4 will be canceled on March 15, 2002. Those  
 2 vehicles have already been repaired by having a skid  
 3 plate (sic) installed, do not require any -- and do not  
 4 -- those vehicles that have already been repaired by  
 5 having a skid plate installed, do not require any  
 6 additional service.  
 7 THE WITNESS: Yes, sir.  
 8 THE COURT: Is that why you're implying that  
 9 if there's a skid plate you don't need this and just  
 10 ignore it?  
 11 THE WITNESS: In fact, the vehicles that have  
 12 skid plates do not get, they don't have a compliance  
 13 problem. They don't need to be repaired any further.  
 14 The vehicles are implicitly repaired with the  
 15 installation of a skid plate, either in service or as a  
 16 result of the option that a lucky customer managed to  
 17 opt for when they originally bought the vehicle.  
 18 THE COURT: Well, you have skid plates for --  
 19 I wouldn't necessarily interpret it that way. People  
 20 may want to use these vehicles, not lucky, maybe a  
 21 person who understands how he's going to use -- or she,  
 22 is going to use it and wants a skid plate. Skid plate  
 23 is designed to protect the underbody of the vehicle  
 24 from obstructions and contact with --  
 25 THE WITNESS: Intrusion or impact.

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1 THE COURT: -- intrusion or --  
2 THE WITNESS: Impacts of any kind.  
3 THE COURT: Yeah.  
4 THE WITNESS: Backing over a rock.  
5 THE COURT: Trees, rocks, et cetera.  
6 THE WITNESS: That's right, Your Honor.  
7 THE COURT: That's what it's designed to do.  
8 THE WITNESS: Yes, sir.  
9 THE COURT: Skid plates could be under the  
10 engine, they could be under the -- throughout the whole  
11 underbody of the vehicle, right?  
12 THE WITNESS: Typically we have a skid plate  
13 under the transfer case to protect it, the four wheel  
14 drive transfer case.  
15 THE COURT: Right. Correct.  
16 THE WITNESS: We have those.  
17 THE COURT: Right.  
18 THE WITNESS: And matter of fact, they're  
19 standard. But the fuel tank in the ZJ and WJ has no  
20 standard fuel tank, so when I said lucky --  
21 THE COURT: You mean skid plate.  
22 THE WITNESS: I'm sorry, what did I say?  
23 THE COURT: Fuel tank.  
24 THE WITNESS: I'm sorry, sir. The skid plate  
25 is not standard in the ZJ and WJ.

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1 THE COURT: But it was an option.  
2 THE WITNESS: It is an option, yes. And as a  
3 matter of fact, the skid plate part number for the ZJ  
4 and the WJ is the same.  
5 THE COURT: Did you get the 8-10 electronic  
6 mail?  
7 THE WITNESS: No, I did not.  
8 THE COURT: Why not?  
9 THE WITNESS: After I read this, I was so --  
10 I was quite frankly I was flabbergasted with this. And  
11 I didn't need to get the D mails. I didn't feel I  
12 needed to get them. The answer to your question is I  
13 did not get them.  
14 THE COURT: Was this vehicle equipped with a  
15 fuel tank brush guard?  
16 MS. DE FILIPPO: Which vehicle, the Kline  
17 vehicle?  
18 THE COURT: The subject vehicle. The W --  
19 MS. DE FILIPPO: The ZJ of the Klines --  
20 THE COURT: Yes, the Z -- excuse me, the ZJ,  
21 I get that confused. WJ and ZJ. The ZJ model here,  
22 did it have a tank brush guard?  
23 THE WITNESS: No, the ZJ line of vehicles  
24 from 1993 to 1998 did not have a brush guard available.  
25 They didn't come from the factory that way.

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1 THE COURT: What is a fuel tank brush guard?

2 THE WITNESS: It -- it, as the name implies,  
3 it's a very, very thin, it's like sheet metal. It's  
4 like this thick, Your Honor. It's nothing, it's for  
5 backing over hedges or brush. It gives you a minimal  
6 amount of abrasion resistance against a plastic tank.  
7 You put a brush guard on a plastic tank for abrasion.

8 Steel is much better at abrasion. You could  
9 have abrasion on a steel tank and not puncture it. But  
10 plastic is not good at abrasion.

11 THE COURT: What does the note mean -- what  
12 does the note mean under 2002 ZJ Jeep Grand Cherokee.  
13 What does this mean?

14 THE WITNESS: It's this recall applies only  
15 to those vehicles that are equipped with a fuel tank  
16 brush guard without sales code XEE, and then it has a  
17 build date through December 13, 2001. What they're  
18 saying here is that the sales code, and I used the term  
19 earlier lucky, let me rephrase and say fortunate. XEE  
20 is the off-road package, so those customers that bought  
21 the XEE off-road package got the skid plate.

22 So if someone was fortunate enough in terms of an  
23 accident sequence to get the off-road package which is  
24 sales code XEE, they got the skid plate. And so the XJ  
25 -- excuse me, the ZJ and the WJ vehicles that got the

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1 XEE were not subject to the compliance problem.

2 THE COURT: I thought you just said ZJ's  
3 didn't have it.

4 THE WITNESS: They don't have the brush  
5 guard.

6 THE COURT: Correct, so --

7 THE WITNESS: So --

8 THE COURT: -- it wasn't available --

9 THE WITNESS: No, no --

10 MS. DE FILIPPO: Your Honor --

11 THE COURT: It was?

12 THE WITNESS: I'm sorry, I didn't mean to cut  
13 you off Your Honor, but --

14 THE COURT: I thought you just said that.

15 THE WITNESS: No, in other words this recall  
16 applies to those vehicles with a fuel tank brush guard  
17 set without sales code XEE. In other words, those  
18 vehicles --

19 THE COURT: No, this recall applies only to  
20 the above vehicles that are equipped with a fuel tank  
21 brush guard.

22 THE WITNESS: Right, without --

23 THE COURT: Isn't that affirmative?

24 THE WITNESS: Without sales code XEE.

25 THE COURT: So this would be sales code XEE

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1 is the off-road package?

2 THE WITNESS: Which includes the skid plate,  
3 yes, sir. So in other words, those vehicles that have  
4 -- in other words, it applies to those vehicles that  
5 have a fuel tank brush guard, but if they have the skid  
6 plate which is referred to above, as the repair  
7 sequence, if they have the skid plate, in other words  
8 they don't have XEE, this bulletin applies to those.

9 THE COURT: Do they have a fuel tank brush  
10 guard?

11 THE WITNESS: Yes, these vehicles, the  
12 vehicles in question have a fuel tank brush guard.

13 THE COURT: Of course. In other words, it  
14 would be if they had the XEE they already have the skid  
15 plate, you don't have to do it.

16 THE WITNESS: That's correct.

17 THE COURT: So this applies to vehicles that  
18 don't have the skid plate under the tank --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- but do have a fuel tank brush  
21 guard.

22 THE WITNESS: Which is confirmation of the  
23 fact that the brush guard cannot protect you. But the  
24 skid plate does.

25 THE COURT: Well where does it say that?

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1 THE WITNESS: Well above it says those  
2 vehicles that have already been repaired by having a  
3 skid plate installed. So in other words, the vehicles  
4 that have a brush guard they still have to get a  
5 repair.

6 THE COURT: Okay. Okay. Go ahead, continue.

7 MS. DE FILIPPO: I don't know what the next  
8 marking is.

9 THE WITNESS: Did that answer your questions,  
10 Your Honor?

11 THE COURT: No, you didn't.

12 THE WITNESS: I didn't?

13 THE COURT: No.

14 MS. DE FILIPPO: Didn't what?

15 THE WITNESS: I asked His Honor if I had  
16 answered his questions but I'm not sure I did.

17 THE COURT: You tried to answer it.

18 MS. DE FILIPPO: What's the next marking?

19 THE CLERK: P-5.

20 THE WITNESS: Well if there's anything --

21 THE COURT: Hold on, listen to the questions.

22 THE WITNESS: Okay.

23 BY MS. DE FILIPPO:

24 Q. Well let me ask the next --

25 A. Okay.



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- 1 Q. P-5, what is this document?  
 2 A. P-5 is the, it's a dealer connect sheet. It's the  
 3 -- it's the window I'll call it that you can access  
 4 through the dealer networks and it talks about a fuel  
 5 tank skid plate shield. It talks about the fact that  
 6 it's sales code XEE and all of the vehicles that the  
 7 XEE skid plate option are applicable to.  
 8 Q. Okay.  
 9 A. And it includes --  
 10 Q. So -- so the XEE that's referred to in P-2,  
 11 is the same XEE that's referred to in P-5?  
 12 A. Yes.  
 13 Q. Okay. And XEE is a code that says in P-5,  
 14 description, fuel tank skid plate shield, correct?  
 15 A. Yes.  
 16 Q. And underneath that on P-5 it says applies to  
 17 vehicle family and included in this vehicle family are  
 18 WJ's and ZJ's?  
 19 A. Yes.  
 20 Q. So the XEE skid plate -- skid plate shield  
 21 that's talked about in the T.S.B. applies to both the  
 22 WZ -- WJ and the ZJ?  
 23 A. Applies to both, yes.  
 24 Q. Okay. And is this information that the  
 25 dealers knew about?

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- 1 A. Yes.  
 2 Q. And is that based on what you found the --  
 3 these documents that you found which we have marked,  
 4 the T.S.B.?  
 5 A. This document confirms that the dealers knew that  
 6 the skid plate repairs certain compliance and safety  
 7 issues.  
 8 Q. Now let's talk about really what this is.  
 9 This document, this -- this T.S.B. is --  
 10 THE COURT: Is that part of the -- do I have  
 11 it here?  
 12 MS. DE FILIPPO: Yes, it's in the -- it's in  
 13 the exhibits. That's it. Oh, that document?  
 14 THE COURT: Is that part of yours, Mr. Gold?  
 15 Is that part of yours?  
 16 MR. GOLD: I'm not sure what document Miss  
 17 DeFilippo is using.  
 18 MS. DE FILIPPO: Oh, the one that --  
 19 THE WITNESS: I've got it here. Would you  
 20 like to take a look at it?  
 21 THE COURT: Just hold on for a second. Let  
 22 me just see what you've got? Yeah, that's part of  
 23 the --  
 24 MR. GOLD: That was never provided.  
 25 THE COURT: What exhibit is that, sir?

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1 MR. GOLD: That wasn't provided.  
2 THE WITNESS: It says exhibit E.  
3 MS. DE FILIPPO: Yes, that's in his stuff  
4 that you got when we sent you his --  
5 THE WITNESS: Here it is, that's it.  
6 THE COURT: Well that's the actual bulletin  
7 itself.  
8 MS. DE FILIPPO: That's the T.S.B.  
9 THE COURT: Yeah, we're talking about another  
10 document, right?  
11 MS. DE FILIPPO: This document, Judge.  
12 THE COURT: And where is that?  
13 MS. DE FILIPPO: That might have been part of  
14 the documentation that was submitted to the defendant  
15 from the files. In other words, that was part of the  
16 file.  
17 THE COURT: Where -- where -- did I -- have I  
18 seen this before?  
19 MS. DE FILIPPO: You might have, Judge, I  
20 have to go through these to look and see where they  
21 might have been attached.  
22 THE COURT: I like to follow along with the  
23 documents. I've been able to do it to date. Mr. Gold  
24 was kind enough to give me a nice set here with tabs.  
25 MS. DE FILIPPO: Where's this document so

Sheridan - Direct 51

1 that --  
2 BY MS. DE FILIPPO:  
3 Q. I want to talk to you about the T.S.B. now.  
4 That T.S.B. that we are talking about that you  
5 indicated you found and marked P-2 says it's a safety  
6 recall number 8-10, fuel tank blocker bracket. That  
7 specific T.S.B. is directing the service people to do,  
8 to apply a fuel tank blocker bracket, correct?  
9 A. Yes.  
10 Q. And that fuel tank blocker bracket is not the  
11 skid plate, it's not the brush guard, it's a separate  
12 item, correct?  
13 A. It's a separate design -- designed piece of steel  
14 to deal with the narrow issue of non-compliance with a  
15 government regulation. It's a different item  
16 altogether.  
17 Q. And if -- and correct me if I'm wrong --  
18 THE COURT: Tell me -- yeah -- I'm interested  
19 in that.  
20 MS. DE FILIPPO: Okay.  
21 THE COURT: What is the function of this  
22 bracket?  
23 THE WITNESS: The bracket is to minimize fuel  
24 tank deformation during a compliance test, and during  
25 the deformation there was a fuel tank leakage issue.

Sheridan - Direct

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1 So the fuel tank blocker bracket that's narrowly  
2 described in this 8-10 T.S.B. was for the purposes of  
3 making sure the vehicle would comply with a government  
4 regulation. It's number 301.

5 So this --

6 THE COURT: So if you go to figure two -- go  
7 to figure two, shows the brackets themselves.

8 THE WITNESS: No, those are different  
9 brackets, Your Honor.

10 THE COURT: It says support bracket.

11 THE WITNESS: Yeah, but that -- those  
12 support brackets are for other items, that's not the  
13 fuel tank --

14 THE COURT: Where's the blocker bracket?

15 THE WITNESS: The blocker bracket, which by  
16 the way I bought a blocker bracket and I sent it to the  
17 plaintiff so we have both components.

18 THE COURT: That's figure five.

19 THE WITNESS: It would be figure five, Your  
20 Honor, yes.

21 THE COURT: How many blocker brackets are  
22 there?

23 THE WITNESS: Just the one. One gets  
24 installed and again, it's for the narrow issue of  
25 complying with a government standard.

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1 THE COURT: So this is really, this is  
2 really, I may have my orientation off but this isn't  
3 the -- this is in the front of the tank?

4 THE WITNESS: It's actually on the left side.  
5 You can notice the spring and the shock --

6 THE COURT: Oh, yeah, it's on the left side.

7 THE WITNESS: Okay.

8 THE COURT: But it doesn't protect the rear  
9 at all.

10 THE WITNESS: No, sir. Unlike the skid  
11 plate, this -- this blocker bracket does not -- does  
12 not repair the issue.

13 THE COURT: Right, it has no lower  
14 protection, no rear protection.

15 THE WITNESS: No, sir, that is correct.

16 THE COURT: And no protection on the other  
17 side.

18 THE WITNESS: Correct.

19 THE COURT: As a matter of fact, it's not  
20 designed to protect anything, is it?

21 THE WITNESS: It's designed to protect their  
22 compliance status only. In other words, they could not  
23 sell this vehicle if this vehicle could not comply with  
24 a very narrow government regulation. So they designed  
25 this blocker bracket to get through the compliance

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1 issue. But the skid plate got them through everything.

2 THE COURT: All right. Continue.

3 BY MS. DE FILIPPO:

4 Q. So getting back now to the significance of  
5 this document P-2, and I want to take it away from you,  
6 when you found this document, P-2, that related to the  
7 skid -- that had reference to the fuel systems and the  
8 skid plate, why was that significant in your  
9 investigation in the Kline matter? What did that  
10 document signify to you as an expert?

11 A. As an expert, this document indicated to me for  
12 the first time in my knowledge about Jeep issues, that  
13 in fact the dealers had been put on notice. This is  
14 the first time I found out about it as an expert in  
15 this area, that the dealers had been put on notice  
16 about a repair sequence involving WJ and in this case,  
17 ZJ, kinds of vehicles. Because the reference to XEE  
18 applies to the ZJ. This was the first time I knew that  
19 the dealers had been notified that in fact there was a  
20 repair available on the ZJ vehicles.

21 THE COURT: A repair to do what?

22 THE WITNESS: To protect -- protect the tank.  
23 In other words, the word repair to me indicating they  
24 could get through compliance. It's a repair with the  
25 skid plate.

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1 THE COURT: Where does it suggest that a skid  
2 plate should be installed on these vehicles?

3 THE WITNESS: Well it does it by -- it does  
4 it by reverse. It says you don't need to do anything  
5 if you've got a skid plate on it. A vehicle that comes  
6 in --

7 THE COURT: Well could it easily be  
8 interpreted also to say that you don't need the fuel  
9 tank blocker bracket if you have the skid plate. It  
10 serves the same function.

11 THE WITNESS: It does more than that, but the  
12 portent of your --

13 THE COURT: Does it do that?

14 THE WITNESS: Yes, it does.

15 THE COURT: So that if you have the skid  
16 plate which is obviously probably a thick piece of  
17 metal. I don't know what's -- what is it, a quarter  
18 inch thick?

19 THE WITNESS: It's three sixteenths plate but  
20 it's high strength.

21 THE COURT: Three -- three sixteenths, not a  
22 quarter. Just less than a quarter inch, three  
23 sixteenths inch high strength steel.

24 THE WITNESS: Yes, sir.

25 THE COURT: So if you've got that already,

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1 you don't need the fuel tank blocker bracket because it  
2 complies with that technical regulation that you  
3 previously noted, is that right?

4 THE WITNESS: That is correct. If you have  
5 the skid plate, there is compliance issue and the tank  
6 is protected.

7 THE COURT: But you interpret this to mean  
8 that the dealers should have known that a non-skid  
9 plate vehicle was defective, is that it?

10 THE WITNESS: Yes.

11 THE COURT: Okay, go ahead.

12 BY MS. DE FILIPPO:

13 Q. And why do you interpret it in that fashion?

14 Why did that signify for the first time that you  
15 learned that the dealer should have known that Chrysler  
16 now is telling them that there's a defect that needs to  
17 be repaired?

18 A. This is the first time that I saw a Chrysler  
19 document communicated to the dealers indicating that a  
20 fuel tank skid plate would protect the tank in a rear  
21 end crash. Inside the company, we discussed fuel tank  
22 skid plates all the time, but it was never communicated  
23 to the outside as a potential fix for fuel tank  
24 spillage and/or abrasion issues. This is the first  
25 time it goes out in the context of it being a safety

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1 item for the general public.

2 But it didn't go to the customers, it didn't go to  
3 the general public, it only went to the dealers.

4 Q. Now, Mr. Sheridan, before discovering this  
5 T.S.B., did you ever learn that Chrysler informed their  
6 dealers of their own design problems which should and  
7 could be repaired?

8 A. Prior to this T.S.B.?

9 Q. Right.

10 A. No.

11 Q. And before discovery of the T.S.B., what was  
12 your knowledge of the dealer's position regarding the  
13 location of the fuel tank?

14 A. The Chrysler dealer position was the Chrysler  
15 position and that the vehicle was fine, there was no  
16 defect, there was no problem, the vehicle's fine.

17 THE COURT: Well the dealers don't design  
18 vehicles, right?

19 MS. DE FILIPPO: Right.

20 THE WITNESS: Correct.

21 THE COURT: They don't design vehicles.

22 THE WITNESS: That's correct, Your Honor.

23 THE COURT: Chrysler was in business, what,  
24 80, 90 years? I don't know. How many years?

25 THE WITNESS: Long time.

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1 THE COURT: Long time.  
 2 THE WITNESS: Yes.  
 3 BY MS. DE FILIPPO:  
 4 Q. And Mr. Sheridan, is it fair to say that when  
 5 you were doing this investigation, you were looking for  
 6 information that could prove that Chrysler knew of  
 7 their own defects?  
 8 A. Yes.  
 9 Q. And your opinion and the opinion of some  
 10 other experts that the design of the tank and the fuel  
 11 system was defective, that was your opinion but to your  
 12 knowledge, did Chrysler or any seller of Chrysler Jeeps  
 13 like the plaintiff's Jeep, openly admit to the design  
 14 defect up to and including today?  
 15 A. A Chrysler dealer?  
 16 Q. Or Chrysler.  
 17 A. No, they've never done that.  
 18 Q. And before this T.S.B. discovery of yours,  
 19 was there any way for the plaintiff or the plaintiff's  
 20 attorney to know that Chrysler had made an admission in  
 21 your opinion that a skid plate would, quote, "repair"  
 22 end of quote, the design defect in the fuel system and  
 23 prevent possibly a post-collision fuel fed fire?  
 24 THE COURT: Hold on, hold on.  
 25 MR. GOLD: I'm going to object, Judge.

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1 THE COURT: Sustained. It's impossible for  
 2 him to answer that question.  
 3 MS. DE FILIPPO: Well I asked him was  
 4 there any way for the plaintiff or the plaintiff's  
 5 attorney --  
 6 THE COURT: You asked him was there any way  
 7 that a --  
 8 MS. DE FILIPPO: -- that a lay person other  
 9 than an expert --  
 10 THE COURT: Yeah, and I'll sustain that  
 11 opinion. That's for me to decide.  
 12 MS. DE FILIPPO: Okay, but I was only --  
 13 THE COURT: You might have --  
 14 MS. DE FILIPPO: -- asking for his opinion.  
 15 THE COURT: -- an obsessive -- you might have  
 16 an obsessive compulsive consumer who happened to have a  
 17 wire into a possible service manager, right?  
 18 THE WITNESS: Yes, sir.  
 19 THE COURT: Somebody who really liked, maybe  
 20 his uncle.  
 21 THE WITNESS: Yes.  
 22 THE COURT: And decided to check into service  
 23 bulletins, right?  
 24 THE WITNESS: That can happen.  
 25 THE COURT: That's right, can happen. I'm

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1 not saying it happened in this case, but --  
 2 MS. DE FILIPPO: Okay, I'll withdraw the  
 3 question.  
 4 THE COURT: Thank you.  
 5 THE WITNESS: But --  
 6 BY MS. DE FILIPPO:  
 7 Q. Did Chrysler design the skid plate or other  
 8 device to address the design defect we're talking about  
 9 in the Kline matter?  
 10 THE COURT: Excuse me, I didn't get that.  
 11 MS. DE FILIPPO: Did Chrysler design a skid  
 12 plate.  
 13 THE WITNESS: They have a skid plate  
 14 available for this, yes.  
 15 BY MS. DE FILIPPO:  
 16 Q. Did Chrysler to your knowledge ever concede  
 17 that their -- that the de -- that there was a defect in  
 18 placing a plastic tank on the outside of the car's axle  
 19 in the rear of the Jeep?  
 20 MR. GOLD: Objection, Judge. Relevance to  
 21 this hearing.  
 22 BY MS. DE FILIPPO:  
 23 Q. To your knowledge.  
 24 THE COURT: Yeah, it's -- it's really not  
 25 relevant, is it? I mean --

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1 MS. DE FILIPPO: Well if they made a  
 2 concession at any time it might be relevant. The  
 3 answer is going to be no, so I don't -- I don't need  
 4 it.  
 5 THE COURT: I don't see the relevance, you  
 6 know. It -- Chrysler never conceded it in any event so  
 7 move on.  
 8 BY MS. DE FILIPPO:  
 9 Q. Was there anything about the facts of this  
 10 case as you knew them before you found the T.S.B. that  
 11 would have alerted a reasonable person that Butler's  
 12 conduct may have contributed to Mrs. Kline's death?  
 13 MR. GOLD: Objection.  
 14 THE COURT: Sustained. That calls for the  
 15 ultimate legal conclusion.  
 16 MS. DE FILIPPO: Well I asked him about the  
 17 facts.  
 18 THE COURT: Sustained.  
 19 MS. DE FILIPPO: Okay.  
 20 BY MS. DE FILIPPO:  
 21 Q. Was there anything about the facts of this  
 22 case as you knew them before you found the T.S.B. which  
 23 would, which alerted you in any way to consider that  
 24 Butler's conduct --  
 25 THE COURT: He's already answered that.

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1 MS. DE FILIPPO: Okay.

2 THE COURT: He -- he was surprised to find  
3 this particular service recall instruction, the dealer  
4 service instruction safety recall number 8-10.

5 MS. DE FILIPPO: Okay, then I don't have any  
6 other questions of this witness.

7 THE COURT: All right, before we get to  
8 cross, one question. Again, reading the first  
9 paragraph that's underlined in service recall eight --  
10 number 8-10 --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- there's a reference to interim  
13 service procedure in 8-10 electronic mail of January 4,  
14 2002. And it will be canceled on March 15, 2002. You  
15 never looked at that?

16 THE WITNESS: No.

17 THE COURT: Why not?

18 THE WITNESS: It's not -- well, in the -- the  
19 reason I did not was I speculated per my expertise that  
20 prior publications get tweaked and changed in minor  
21 ways and so what they do is they cancel them and they  
22 reiterate the refined or final version.

23 THE COURT: Well wouldn't you want to look at  
24 it to make a, you know, to make, to confirm it? You're  
25 on the computer, you could have easily pulled that up

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1 too, right?

2 THE WITNESS: As far as I know, I could have,  
3 yes, but I did not.

4 THE COURT: Okay.

5 THE WITNESS: I at that point, I -- I was  
6 quite frankly enamored with this technical service  
7 bulletin regarding repair and skid plates on ZJ and ZJ  
8 Grand Cherokees. I was -- I -- I immediately Fed Ex'd  
9 this to the plaintiff.

10 THE COURT: I want to take a short break and  
11 then we'll take cross. We going to have cross?

12 MR. GOLD: Yes.

13 THE COURT: We'll take a short break and then  
14 we'll go into cross.

15 (RECESS)

16 MR. GOLD: Thank you, Your Honor. Can we  
17 just have this marked as D-1, please?

18 THE COURT: D-1 for ID. What is that, sir?

19 MR. GOLD: It's a, emails between Miss --  
20 Miss DeFilippo and Mr. Sheridan.

21 THE COURT: Is this part of your package?

22 MR. GOLD: No, Your Honor, it's not, but this  
23 was discovered at a deposition that took place  
24 yesterday.

25 THE COURT: Okay.



1 CROSS EXAMINATION BY MR. GOLD:

2 Q. Mr. Sheridan, let me show you what I've had  
3 marked as D-4 with a blue sticker. Could you just  
4 identify for the Court what -- what this document is?

5 A. Yes, it's an email from me to Angel DeFilippo.  
6 It's dated Wednesday, August 13th, 2008. I printed it  
7 in response to your discovery request --

8 Q. Right.

9 A. -- the other day, May 5th, 2010, and it's to  
10 Wayne, so in other words I'm alerting Miss DeFilippo to  
11 the fact that he, Wayne McCracken, should expect a  
12 telephone call from plaintiff's counsel.

13 Q. Okay. Now there's another email further down  
14 on the bottom and it's from Miss DeFilippo to you,  
15 correct?

16 A. Yes, sir.

17 Q. And what does that email indicate?

18 A. And that's on Wednesday, August 13th, and it says  
19 from Miss DeFilippo, thank you for your time and great  
20 insights. I left a message for Peter Pearlman.

21 Q. Okay. Now, would it be fair to say looking  
22 at this, what's been marked as D-1 for identification,  
23 that you had a conversation with Miss DeFilippo on  
24 August 13, 2008?

25 A. Yes, sometime very close to that. Yes, sir.

1 Q. Now, on August 13, 2008, do you recall the  
2 substance of the conversation?

3 A. It was again the introduction to the fact would I  
4 be available for consultation on the matter.

5 Q. Right, well the response from Miss DeFilippo  
6 was thank you for your great insights. What insights  
7 was she talking about?

8 A. At that point in time I was providing information  
9 regarding discovery issues with respect to Chrysler  
10 Corporation.

11 Q. What discovery issues were you providing to  
12 Miss DeFilippo on August 13th, 2008?

13 A. To the best of my recollection, that telephone  
14 call involved the fact that I could help her with  
15 interrogatories, discovery of documents and things of  
16 that nature with respect to Chrysler management  
17 practices, things of that nature.

18 Q. And did you provide any information to Miss  
19 DeFilippo about any recalls that she should be looking  
20 for or any documents that would substantiate or support  
21 the fact that there may be recalls?

22 A. Not at that time.

23 Q. Did Miss DeFilippo tell you in your initial  
24 conversation of August 13th, 2008 that in fact she had  
25 a potential claim against Chrysler for a Jeep that --

*what  
Sheridan  
doing in  
Aug  
2008*

1 that caught fire as a result of a failure to the fuel  
2 tank?

3 A. It involved Chrysler but I don't know if the  
4 details about the fire were discussed at that point in  
5 time.

6 Q. Did she tell you that it was a defect case  
7 against Chrysler for a fuel tank problem?

8 A. I don't recall if that early conversation was that  
9 specific but it was about Chrysler.

10 Q. Okay. With -- as of August 13, 2008, had you  
11 formed any opinions about there being defects in the  
12 Grand -- Jeep Grand Cherokees or the Jeep Grand  
13 Wagoneers manufactured by Chrysler with regard to the  
14 positioning of the fuel tank in those vehicles?

15 A. At that point time, I had already formulated an  
16 opinion, yes.

17 Q. All right. So would it be fair to say that  
18 as of August 13, 2008, you had the opinion that in fact  
19 the fuel tanks located in the Jeep Grand Cherokees and  
20 the Jeep Grand Wagoneers were defectively designed  
21 because they rested between the rear axle and the rear  
22 bumper?

23 A. And were unshielded. So the answer to your  
24 question --

25 Q. And were unshielded.

1 A. Yes, sir.

2 Q. And so you had that opinion when you first  
3 spoke with Miss DeFilippo?

4 A. I had that unshared opinion, yes.

5 Q. Okay. Now, later in October of 2008, did you  
6 have another telephone conversation with Miss DeFilippo  
7 whereby you expressed your opinion to Miss DeFilippo  
8 that the Jeep Grand Cherokees and the Jeep Grand  
9 Wagoneers were defectively designed by way of the  
10 positioning of the fuel tank behind the rear axle and  
11 in front of the rear bumper?

12 A. Yes, and the fact that they were unshielded.

13 Q. And the fact they were unshielded. So you  
14 explained all of this to Miss DeFilippo as, in October  
15 of 2008, correct?

16 A. Yes, sir.

17 Q. All right. And did you explain to her why  
18 you were of the opinion that these Jeep Grand Cherokees  
19 and the Jeep Grand Wagoneers were defective?

20 A. I don't know if it was in that October timeframe,  
21 but sometime during 2008 I -- I recall doing that.

22 Q. All right. You recall telling her the basis  
23 for your opinion and what your ultimate opinion was  
24 with regard to whether this vehicle was defective or  
25 not?

Sheridan - Cross

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1 A. At the design level, yes.  
 2 Q. At the design level. Okay.  
 3 Now, I want to show you if I may the safety  
 4 recall 8-10. You have that, and for the record it's  
 5 marked as P-2 for identification. And you will see  
 6 that the safety recall number 8-10 specifically  
 7 provides, this recall applies only to the above  
 8 vehicles that are equipped with a fuel tank brush  
 9 guard, and it indicates 2002 WJ Jeep Grand Cherokee,  
 10 correct?  
 11 A. Yes, sir.  
 12 Q. So that's what that recall notice pertains to  
 13 is the 2002 WJ body type Jeep Grand Cherokee, correct?  
 14 A. In terms of the actual wording of this document,  
 15 that is correct.  
 16 Q. Okay. So it has nothing to do with any 1996  
 17 Jeep Grand Cherokees or Jeep Grand Wagoneers, correct?  
 18 A. On the surface, no.  
 19 Q. Well, I mean on the surface, but, you know,  
 20 this whole recall notice is limited to just that  
 21 particular vehicle, 2002 WJ Jeep Grand Cherokee,  
 22 correct?  
 23 A. It is, yes, sir.  
 24 Q. All right. And in fact, this, as you're  
 25 calling it the technical service bulletin, indicates on

7  
 not  
 pertain  
 to 2002  
 the  
 surface

Sheridan - Cross

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1 page six owner notification and service schedule. It  
 2 indicates that notification would be sent to the owners  
 3 of these 2002 WJ Jeep Grand Cherokees, correct?  
 4 A. Yes, a letter was sent to the -- to the owners of  
 5 those vehicles.  
 6 Q. Of just those vehicles. All right, so in  
 7 your research, were you able to find anything that  
 8 indicated that there was a recall of any 1996 Jeep  
 9 Grand Cherokees?  
 10 A. In any of my investigations?  
 11 Q. In any of your investigations, did you find  
 12 any recalls for a 1996 Jeep Grand Cherokees?  
 13 A. The answer to that question is yes.  
 14 Q. All right. And the answer to that question  
 15 is you found recall notices but were any of the recall  
 16 notices for fuel tanks?  
 17 A. Well if I may, counsel --  
 18 Q. Answer my question and then we'll, you know,  
 19 we'll get to whatever your concerns are.  
 20 A. Okay.  
 21 THE COURT: Please listen to the question,  
 22 Mr. Sheridan. It'd be very helpful for you to respond  
 23 and then on redirect if Miss DeFilippo wants to ask you  
 24 questions she can. But the question is did any of the  
 25 recalls that you were aware of relating to the '96

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1 Grand Cherokee involve gas tanks or fuel systems?

2 MR. GOLD: Exactly.

3 THE WITNESS: Okay, the answer to that  
4 question is I did find information relating to recalls  
5 of the '96 Grand Cherokee.

6 BY MR. GOLD:

7 Q. Where are they?

8 A. And that's part of the ongoing investigation. But  
9 I don't have any actual technical service bulletins for  
10 those vehicles.

11 Q. Are you -- do you know whether they in fact  
12 exist or not?

13 A. Yes, they did exist at one time.

14 Q. And how do you come by way of that knowledge?

15 A. I interviewed several mechanics at several  
16 dealerships in the Detroit metro area regarding a  
17 previous recall on the ZJ vehicles.

18 Q. Okay. And ZJ vehicles but with four specific  
19 gears, correct?

20 A. It was for the '93 through '98 ZJ vehicles.

21 THE COURT: That's the first iteration.

22 THE WITNESS: Yes, sir.

23 MR. GOLD: Okay.

24 BY MR. GOLD:

25 Q. All right, so but you don't have any of those

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1 documentations, none of -- nobody would let you into  
2 their computer so you could access the Chrysler  
3 computers to get these recall notices?

4 A. Well to answer both questions in there, they tried  
5 to get the recall notices --

6 Q. Who's they?

7 A. The -- my contacts in the dealerships.

8 Q. All right.

9 A. And they were unable to locate the technical  
10 service bulletins that they told me had previously  
11 existed.

12 Q. Uh-huh. Okay. Who were these -- these  
13 dealers, give me their names.

14 A. I'm reluctant to identify the dealers because of  
15 the fact that the retaliatory practices of Chrysler  
16 against these dealers and --

17 Q. You brought them up, sir.

18 MS. DE FILIPPO: I object to that, Judge.

19 THE COURT: Yeah, --

20 MS. DE FILIPPO: That's way beyond the scope  
21 of the LOPEZ hearing anyway.

22 THE COURT: Well, and what's the point.

23 MR. GOLD: Well, I mean, you know, I

24 wanted --

25 MS. DE FILIPPO: And that's not --

Sheridan - Cross

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1 MR. GOLD: -- to find out when he started  
 2 going to these dealers and conducting this research.  
 3 THE COURT: Well, ask him that. Excuse me,  
 4 ask him the timeframe 0--  
 5 MS. DE FILIPPO: He can ask the question --  
 6 BY MR. GOLD:  
 7 Q. Let me ask you this. You have, you -- you  
 8 are obviously of the opinion and communicated to Miss  
 9 DeFilippo in October of 2008 that the Chrysler Jeep  
 10 Grand Cherokees and Chrysler Jeep Wagoneers were  
 11 defectively designed with regard to the positioning of  
 12 the fuel tank?  
 13 A. And the lack of shielding.  
 14 Q. And the lack of shielding. And you  
 15 communicated that to Miss DeFilippo in October of 2008,  
 16 correct?  
 17 A. Yes. Yes, sir.  
 18 Q. Between October 8 if 2008 and December 31 of  
 19 2008, did you have occasion to go to any of the dealers  
 20 to conduct your investigation with regard to any recall  
 21 notices pertaining to the Butler Chrysler Jeep Grand  
 22 Cherokee or the Butler -- excuse me, the Chrysler Jeep  
 23 Grand Cherokee or the Chrysler Jeep Wagoneer?  
 24 A. Not in that timeframe, no. 7  
 25 Q. No. When did you first go to these dealers

Sheridan - Cross

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1 to try and find out if there was any recalls?  
 2 A. It would have been after March 12th, 2009.  
 3 Q. Okay. Did you begin to collect or assimilate  
 4 papers with regard to defects in these Jeep Grand  
 5 Cherokees or these Jeep Grand Wagoneers at all during  
 6 the year 2008?  
 7 A. No.  
 8 Q. Okay. So all you did in the beginning of  
 9 your contact with Miss DeFilippo sometime in October of  
 10 2008 is tell her what your opinion was about the  
 11 defect, what vehicles they included, that the defect  
 12 was in fact the fuel system and the fact that there was  
 13 no protective device for the fuel system?  
 14 A. Yes, sir.  
 15 Q. Miss DeFilippo knew that was your opinion  
 16 October of 2008?  
 17 A. She was informed of my opinion in that timeframe,  
 18 yes.  
 19 Q. Right. I think you testified on direct that  
 20 the recall notices were never sent out to the -- to the  
 21 owners of the vehicles.  
 22 A. No I did not.  
 23 Q. You didn't testify to the -- the recall for  
 24 these 2002 WJ Jeep Grand Cherokees were sent out to the  
 25 -- was not sent out to the owners of the vehicles?

Looked for recalls after 3/12/09

1 A. What I believe I testified to was that this  
 2 document was not sent to the -- there was a recall  
 3 letter sent to the customers which I answered your  
 4 question but on direct I believe I referred to the fact  
 5 that this document was not shared with the customers.  
 6 Meaning P-2.

7 MR. GOLD: Let me have this one marked as D-2  
 8 if I may. Thank you.

9 BY MR. GOLD:

10 Q. Let me show you D-2 for identification. Is  
 11 this the letter that was sent out to the owners of  
 12 those 2002 Chrysler Jeep Grand Cherokees?

13 A. That's my understanding, sir, yes.

14 Q. All right. Do you know if any letters were  
 15 sent out to consumers of 1996 Jeep Grand Cherokees  
 16 regarding any fuel tank defects?

17 A. I am not aware of those, no.

18 Q. Okay. Did you help in any drafting of any  
 19 interrogatory questions or notice to produce document  
 20 demands?

21 A. Yes.

22 Q. And in fact --

23 MR. GOLD: If I could have this marked as the  
 24 next exhibit number please.

25 THE CLERK: D-3.

*No way for  
 to recall  
 WS  
 (b)(7)(C)  
 25 23*

1 MR. GOLD: Thank you.

2 BY MR. GOLD:

3 Q. Let me just show you what's been marked as  
 4 D-3 for identification and have you seen that document  
 5 prior to today?

6 A. Yes.

7 Q. And would you please advise the Court what  
 8 that document is?

9 A. This is a letter from plaintiff's counsel --

10 THE COURT: An email?

11 THE WITNESS: Email.

12 THE COURT: It's an email.

13 THE WITNESS: What did I say?

14 THE COURT: Letter.

15 BY MR. GOLD:

16 Q. Letter.

17 A. I'm sorry, yes, this is an email from plaintiff's  
 18 counsel, Angel DeFilippo to me, Dear Paul, as we  
 19 discussed, I am enclosing a draft of proposed notice to  
 20 produce and supplement interrogatories. Please tweak  
 21 as you will and call me later today. I will be back at  
 22 5 p.m. today. Thank you for your help. And I saw this  
 23 yesterday.

24 Q. Okay.

25 THE COURT: What's the date of that?

1 THE WITNESS: It's dated February 10th, 2009.

2 BY MR. GOLD:

3 Q. Now, before February 10th, 2009, had you  
4 contact with Miss DeFilippo to tell her what questions  
5 should be contained in interrogatories and what the  
6 documents should be contained in demands for production  
7 of documents?

8 A. Prior to this February timeframe --

9 Q. Yes.

10 A. -- and even afterwards I was giving her my  
11 consultations regarding organization charts, so the  
12 answer, the broad answer to your question is yes.

13 Q. Okay. So organizational charts, what do you  
14 mean by organizational charts?

15 A. Well reporting structures, those people who were  
16 inside Chrysler Corporation, designing the ZJ and the  
17 WJ vehicles.

18 Q. Right.

19 A. You know, the interconnections inside the company.

20 Q. Okay. And did you give her any information  
21 about, you know, asking what dealers -- strike that.

22 Did you give her any information about  
23 dealers having access to the Chrysler hard drives to  
24 determine what recalls there were or were not?

25 A. No.

*no  
knowledge  
by IT the  
compact*

1 Q. Those interrogatory questions, did you  
2 ultimately make any corrections or modifications to the  
3 ones that she had sent you and sent them back?

4 A. No, at that time I didn't do very much on those  
5 interrogatories. I don't recall doing much work in  
6 that February timeframe.

7 Q. But you did some?

8 A. I don't recall. I don't recall doing a lot of  
9 work during February on those, with respect to what was  
10 attached to that email.

11 Q. What about the notice to produce documents?

12 A. I don't believe so.

13 MR. GOLD: That's all, Your Honor.

14 THE COURT: Do any of the other lawyers have  
15 any questions?

16 MR. GILL: No, Your Honor.

17 MS. JAMES: No, Your Honor.

18 THE COURT: Miss DeFilippo, do you have any  
19 redirect of the witness?

20 MS. DE FILIPPO: I just have a very brief  
21 redirect, Your Honor.

22 THE COURT: Sure.

23 REDIRECT EXAMINATION BY MS. DE FILIPPO:

24 Q. Mr. Sheridan, the recall notice that, or the  
25 T.S.B. that we've been referring to that's in front of

1 you, you had talked about on its surface was limited to  
2 the WJ 2002 Jeep Grand Cherokee --

3 A. Yes.

4 Q. -- in your cross examination. And based on  
5 your opinion, was it limited to the WJ once it went to  
6 the dealers in this particular, you know, in this  
7 particular context that it did?

8 MR. GOLD: Objection to the question. I  
9 mean --

10 MS. DE FILIPPO: I'll rephrase it.

11 BY MS. DE FILIPPO:

12 Q. What in your opinion did the dealer -- should  
13 the dealer have understood or do they understand in  
14 your opinion when they get a document such as the  
15 T.S.B.?

16 MR. GOLD: Objection as to what the dealer  
17 may think.

18 THE COURT: It's a bit broad. Rephrase it  
19 please.

20 I think he's covered it.

21 BY MS. DE FILIPPO:

22 Q. Mr. Sheridan, you had indicated that this  
23 document on the surface was worded as limited to the  
24 2002

25 WJ Jeep. What did you mean when you made that comment

7

1 that it was on the surface.

2 A. In my opinion this document, although it's worded  
3 to appear limited with respect to repair of the fuel  
4 system to only 2002 WJ's, in my opinion this document  
5 provides the dealer with information and an official  
6 notification to the effect that a skid plate repairs  
7 fuel system design defects.

WJ's  
to the

8 Q. And was the fuel system design defect that  
9 was being repaired the same in the WJ as in the ZJ?

10 A. In my opinion the skid plate fixes the same design  
11 defect of the ZJ and the WJ and it also fixes the  
12 narrow on the surface compliance issue that is worded  
13 in this T.S.B.

14 Q. And I think we marked a document that went  
15 along with the -- the dealer connect document which  
16 indicated that the skid plate applied to the ZJ and the  
17 WJ, correct?

18 A. Yes, and in my expertise, the skid plate part  
19 number is the same for the ZJ as it is for the WJ.  
20 It's the same part number.

21 Q. And is there any particular reason why you  
22 did not do any investigation before you were retained  
23 in this case?

24 A. Is there any reason why I didn't do any.

25 Q. Did not do investigation before you were



1 retained?  
 2 A. Yes, because --  
 3 THE COURT: You weren't retained.  
 4 THE WITNESS: I wasn't retained and there are  
 5 times when --  
 6 THE COURT: We refer to that as Mr. Green.  
 7 It hadn't arrived.  
 8 UNIDENTIFIED: Waiting for Mr. Green.  
 9 THE COURT: Is that, I mean you're not going  
 10 to work for nothing.  
 11 THE WITNESS: In a nutshell, Your Honor, yes.  
 12 THE COURT: I don't mean to be facetious,  
 13 ~~this is a serious case, and warrants very serious~~  
 14 ~~consideration. But to break the ice a little bit --~~  
 15 THE WITNESS: Yes, sir.  
 16 MR. GOLD: Very briefly, Your Honor, one  
 17 quick question and then I'm done.  
 18 THE COURT: Okay.  
 19 RECROSS EXAMINATION BY MR. GOLD:  
 20 Q. That recall notice that -- or that T.S.B. as  
 21 you're calling it, you said applies to the ZJ model,  
 22 correct?  
 23 A. In my opinion, yes, sir.  
 24 THE COURT: Yeah, he is saying that the  
 25 concept --

1 MR. GOLD: I understand.  
 2 THE COURT: -- that he interprets in it  
 3 applies to the earlier versions of the Jeep.  
 4 MR. GOLD: Okay.  
 5 THE WITNESS: Yes, sir.  
 6 THE COURT: Grand Cherokee.  
 7 BY MR. GOLD:  
 8 Q. And that recall notice is limited to just  
 9 2002 models, correct? At least that's what that recall  
 10 notice says, right?  
 11 A. Yes, sir.  
 12 Q. You're not aware of, or you haven't seen any  
 13 other recall notices for Jeep Grand Cherokees or Jeep  
 14 Grand Wagoneers prior to 2002, correct?  
 15 A. Correct.  
 16 Q. All right, thank you.  
 17 MR. GOLD: Nothing further.  
 18 THE COURT: Thank you.  
 19 THE WITNESS: Thank you, Your Honor.  
 20 THE COURT: You may step down, sir.  
 21 THE WITNESS: Yes, thank you.  
 22 THE COURT: I am prepared to make a decision  
 23 in this matter.  
 24 I have I believe made comments regarding the  
 25 nature of the discovery rule, especially in regard to

7  
 didn't  
 see any  
 other  
 recall  
 notices

## Decision

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1 actions, personal injury actions, involving potential  
2 product liability cases I believe in the earlier  
3 decision which led to this hearing.

4 At the risk of being redundant, I will note  
5 for the record that the discovery rule is a rule of  
6 equity, which provides in appropriate cases, that a  
7 Cause of Action will be held not to accrue until the  
8 injured party discovers or by the exercise of  
9 reasonable diligence and intelligence should have  
10 discovered, that he, or she, frankly, may have a basis  
11 for an actionable -- actionable claim.

12 The seminal decision which stands for that  
13 proposition of course is LOPEZ VERSUS SYER, S-Y-E-R, 62  
14 N.J. 267, a 1973 Supreme Court of New Jersey decision.

15 Discover that one may have a basis for an  
16 actionable claim involves not only knowledge of the  
17 existence of an injury, but of facts that would alert a  
18 reasonable person exercising ordinary diligence that a  
19 third party's conduct may have caused or contributed to  
20 the cause of the injury and that, and that conduct  
21 itself might possibly have been unreasonable or lacking  
22 in due care.

23 These primarily are principles emanating from  
24 malpractice, medical malpractice cases and I cite  
25 SAVAGE VERSUS OLD BRIDGE SAYERVILLE MEDICAL GROUP, 134

## Decision

83

1 N.J. 241 (1993); CARAVAGGIO VERSUS D'AGOSTINI, 166 N.J.  
2 237; and other decisions. That's a 2001 case, and  
3 other cases.

4 Generally an injured party or their  
5 representative has two years from the date of the,  
6 quote, discover, to bring the action. That principle  
7 is enunciated in FOX VERSUS PASSAIC GENERAL HOSPITAL,  
8 71 N.J. 122 at 126 (1976) Supreme Court case.

9 Of course as I said earlier, the seminal  
10 decision Probably is FERNANDI VERSUS STRALLING  
11 (phonetic), (1961) decision of the Supreme Court, 31  
12 N.J. at 434, in which is the famous leaving the wing  
13 nut in the abdomen of the patient case where the  
14 patient's complaints of persistent back pain went on  
15 and the actual foreign object was not found until more  
16 than two years after the surgery when the plaintiff's  
17 complaints got worse. Court allowed the Cause of  
18 Action in that circumstance for obvious reasons.

19 Since that time, the rule as I said has been  
20 extended to other contexts. Surveyors cases, utility  
21 companies negligence cases, and I will assume in  
22 appropriate cases to products liability cases.

23 The law is relatively simple. It is the  
24 application of the law to the facts which is always  
25 problematic.

Decision

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1 In this case, certain facts are not  
2 problematic. Sadly Miss Kline was killed in an  
3 automobile accident which occurred on February 24,  
4 2007. Eventually she brought an action within the  
5 timeframe of the two year statute of limitations, or an  
6 action was brought on her behalf by her estate and by  
7 her surviving spouse on his behalf, and on behalf of  
8 other survivors. That action was brought on November  
9 26, 2008.

10 As obviously patent from the testimony of Mr.  
11 Sheridan, as early as August of 2008 counsel for the  
12 plaintiff was inquiring regarding potential to bring  
13 the action. And was concerned, properly so, about the  
14 ~~products liability implications and potential liability~~  
15 of the manufacturer of this particular component of the  
16 vehicle, that is the gas fuel, gas tank fuel system as  
17 apparently the vehicle caught fire as a result of the  
18 accident. And Mrs. Kline was burned alive in the  
19 vehicle. Terrible, terrible accident.

20 Named in the complaint was the, obviously the  
21 drivers that were involved, the other drivers, or  
22 driver, Chrysler Corporation at the time, Daimler  
23 Chrysler, whatever it was known as. Who is Natalie  
24 Rawls? She --

25 MS. DE FILIPPO: The driver.

Decision

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1 MR. GOLD: One of the drivers.

2 THE COURT: And Alcalla --

3 MS. DE FILIPPO: Alcalla was the back driver,  
4 Rawls was the front driver.

5 THE COURT: Front driver. So question was  
6 Rawls, did Rawls somehow contribute to the accident by  
7 what, stopping short or something?

8 MS. DE FILIPPO: Yes.

9 THE COURT: So there are two drivers in the  
10 accident and Daimler Chrysler. Also named was the  
11 Lohmann Auto Group which was the re-seller or dealer  
12 that actually sold the vehicle in or about 1996 or 1997  
13 to the Klins, Mr. or Mrs.

14 Unfortunately for the plaintiff and probably  
15 many others, Daimler Chrysler and the Chrysler  
16 Corporation declared bankruptcy and in that process,  
17 was exonerated from claims such as this. All is not  
18 lost, however, from the plaintiff's perspective as  
19 under our products liability action, a Cause of Action  
20 may still be maintained against Lohmann which is the  
21 ultimate seller now but last surviving entity in the  
22 chain of sale.

23 And Lohmann's liability of course is not  
24 involved in this Motion.

25 What happened though is that on May 12, 2009,

Decision

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1 plaintiff sought to amend its complaint. And for the  
2 first time, seeks a Cause of Action or asserts a Cause  
3 of Action against Butler Chrysler Jeep.

4 Butler Chrysler Jeep did not sell the vehicle  
5 in the first instance, but did from time to time  
6 service the vehicle. And it is not debated that  
7 between the time of the accident, or I should say  
8 between a certain date in 2000, we'll say January 1,  
9 2000 until the time of the accident, it did service the  
10 vehicle one or two times. I'm not sure.

11 A few months before.

12 MR. GOLD: For the record --

13 THE COURT: What?

14 MR. GOLD: For the record, Your Honor, I  
15 could tell you it was January -- it was March 13, 2006,  
16 March 20, 2006.

17 THE COURT: March 20, 2006, about 11 months  
18 before the accident.

19 The defendant, Butler Chrysler Jeep, has now  
20 moved for summary judgment asserting that predicated  
21 upon the LOPEZ principles and other principles that I  
22 have noted, the statute of limitations has run on this  
23 matter and that the plaintiff has failed to assert this  
24 Cause of Action within the two year period of time.

25 And we did have the argument earlier this

Decision

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1 year and as a result, I felt, and in hindsight properly  
2 so, that a hearing should be conducted.

3 And I'm glad we had the hearing because it  
4 allowed me to have a much better understanding of the  
5 position of the -- of the parties vis-a-vis this  
6 particular issue.

7 Now under the principle of LOPEZ as  
8 interpreted by it and other cases, it is the  
9 plaintiff's burden to establish to the Court that the  
10 action should be allowed, notwithstanding the fact that  
11 it was filed more than two years from the date of the  
12 death. In this regard, the plaintiff asserts that it  
13 had no knowledge, nor could it have known, that Butler  
14 had some responsibility or potential responsibility to  
15 either warn the decedent of the defect in the fuel  
16 tank, i.e., its relatively naked and unprotected  
17 condition which could subject it to be easily punctured  
18 in rear end collisions or other types of trauma, even  
19 underneath the vehicle allowing highly combustible  
20 gasoline to make its way into the engine. Or I should  
21 say either the engine or the passenger compartments of  
22 the vehicle with obvious consequences. Or, to repair  
23 such a defect.

24 Plaintiff asserts that it did not know this  
25 fact until its expert, Mr. Sheridan, conducted a

Decision

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1 inquiry subsequent to the date when he was actually  
2 retained, March 12, 2000 -- or March 11, 2009.

3 In the process of that undertaking, Mr.  
4 Sheridan somehow gained access to a dealer's computer  
5 base through a friend or associate who happened to be  
6 either the dealer service manager or person with access  
7 to such information. And consequently he learned that  
8 in February 2002, there was a safety recall service  
9 instruction or bulletin. It's referred to as safety  
10 recall number 8-10-fuel tank blocker bracket.

11 Mr. Sheridan indicates that when he learned  
12 of this, he became excited. This was in his judgment a  
13 document which reflected that the dealers did know of  
14 the defect in the tank and were placed on notice that  
15 vehicles which did not have preexisting skid plates  
16 were in fact dangerous.

17 With that knowledge, it's then easy to  
18 extrapolate the duty to the dealers as it is inferred  
19 that Butler as well as all other Chrysler dealers would  
20 have had received the notice in question. Recall --  
21 recall number 8-10.

22 Consequently, when the knowledge was received  
23 under the -- under the rule as I've explained it, the  
24 plaintiff would have two years from that notice to  
25 bring the action. Having no reason to know that Butler

Decision

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1 was in any way responsible, it should have the benefit  
2 of the discovery rule and that's counsel's argument.

3 So it is argued that the May 12, 2009  
4 application to amend is well within the statute of  
5 limitations and the Motion should be denied.

6 I certainly appreciate the seriousness of  
7 this case. It's hard to envision a case more serious  
8 in terms of the impact on the family, on the survivors.  
9 It's a terrible case, indeed.

10 But nevertheless, there are other factors  
11 here which I believe are problematic for the plaintiff.

12 First of all, this vehicle which was the  
13 first iteration of the Jeep itself. I think it was a  
14 WJ model -- or ZJ, excuse me, Z as in zebra, J body  
15 style, had been in existence for many years. This was  
16 a 1996 model. Apparently started in '93 and worked  
17 through 2000 whenever it was. Then it was upgraded  
18 with the J -- JZ -- the other model, whatever it is.  
19 Both models allegedly had defective gas tanks. Very  
20 similar design.

21 There was nothing to prevent the plaintiff  
22 from looking into recalls throughout the period of  
23 time. There's no evidence that Mr. Sheridan could not  
24 have gone to his local friendly dealer and gotten  
25 access to this information in August of '08. The fall

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1 of '08.

2 As a matter of fact, there's some evidence  
3 here that even before he received his retainer he was  
4 performing substantial services for the plaintiff  
5 counsel by way of reviewing interrogatories and demand  
6 for production of documents to assist the plaintiff in  
7 focusing those requests to Chrysler in a -- in an  
8 effective way. Just didn't get around to it because  
9 the money hadn't arrived.

10 The fact that the plaintiff did not exercise  
11 the due diligence that one would require under the rule  
12 is a factor here. There is no doubt that the  
13 plaintiff knew, or certainly should have known, that  
14 Butler was involved. It had serviced the vehicle.

15 The question that plaintiff says that changes  
16 it all as I noted earlier was the fact that Butler had  
17 access to recall number ten, and that as the dealer, it  
18 knew or should have known that the tank was defective  
19 occasioned by having received this document.

20 I don't agree. I think any fair reading of  
21 safety recall number ten entitled Fuel Tank Blocker  
22 Bracket, must conclude with the following  
23 interpretations, which I believe are clear and  
24 unambiguous. Number one, that this is not a fuel tank  
25 safety issue per se, as Mr. Sheridan said. The fuel

*It not only  
of  
didn't  
Sheridan*

7

1 tank blocker bracket issue is a technical one. It  
2 involves the installation of an item on the side of the  
→ 3 tank simply designed to enhance its shape. Not its  
4 ability to withstand punctures, crashes or the like.  
5 It's just not intended to do that.

6 It's on the side of the vehicle, in the -- as  
7 I said, right most position. I guess that would be on  
8 the, looking from the rear of the vehicle, it would be  
9 on the passenger side.

10 (new tape put in)

11 THE COURT: -- model, that are equipped with  
12 a fuel tank brush guard without the off-road or skid  
13 plate package built through December 13, 2001.

14 The subject vehicle is not covered at all.

15 The plaintiff wishes and I think this is to  
16 -- to argue that this particular document must be  
17 inferred to mean that Chrysler is either telling its  
18 dealers, all dealers, that they -- they are selling  
19 defective vehicles with dangerous fuel tanks unless  
20 they have a skid plate installed.

21 That is a stretch which I believe is  
22 unreasonable and invalid in this particular case.

23 The fact that this was discovered later,  
24 frankly is the basis for the Cause of Action. And  
25 among the factors is whether the plaintiff reasonably

*P. 91*

*wrong*

↓

*wrong*

*wrong*

↓

Decision

1 learned of the Cause of Action or the basis for fault.  
 2 I do not see that in this matter because I do  
 3 not see any reasonable basis for Butler Chrysler Jeep  
 4 to be saddled with that knowledge by virtue of assuming  
 5 it received the document, which I do for purposes of  
 6 this hearing, I'll assume it did, although there's no  
 7 proof that it actually did. But I'll assume it did.  
 8 I'll infer it did. And even if it did, that would be  
 9 insufficient for the Cause of Action to really bear  
 10 fruits.

11 For all the foregoing reasons, I find that  
 12 the Motion for Summary Judgment was properly filed and  
 13 has merit. And I'm entering an order dismissing the  
 14 ~~case only as to Butler Chrysler Jeep, Inc. in~~  
 15 accordance with the form that was submitted.

16 Thank you.  
 17 MR. GOLD: Thank you Your Honor.  
 18 MS. DE FILIPPO: Thank you, Your Honor.  
 19 \* \* \*

20  
 21  
 22  
 23  
 24  
 25

CERTIFICATION

1 I, DOROTHY A. MIRAGLIOTTA, the assigned  
 2 transcriber, do hereby certify that the foregoing  
 3 transcript of proceedings in the Morris County Superior  
 4 Court, Law Division, Civil Part, on May 7, 2010, Tape  
 5 2010-218, Index 4788 - 7310; Tape 2010-219, Index 0001  
 6 - 7352; and Tape 2010-220, Index 0001 - 0164, is  
 7 prepared in full compliance with the current Transcript  
 8 Format for Judicial Proceedings and is a true and  
 9 accurate compressed transcript of the proceedings as  
 10 recorded to the best of my knowledge and ability.  
 11  
 12  
 13  
 14  
 15

16   
 17 A. R. T. AGENCY, INC. *lys*

A.O.C. No. 295  
 Dated: 5/19/10

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