

My Meeting with NHTSA in the US DOT Building of Washington DC

July 1, 2013

10:30 a.m.

All That Were Present

1. Jenelle Embrey, creator of nationwide petition to recall Jeeps that united over 128,000 supporters of a recall
2. Ana Pina, survived a 2012 Jeep fire in Indiana; accompanied by her attorney, Ines Murphy
3. Angel Defilippo and her associate, Vanessa Friedhoff, to speak about Client Susan Kline who became deceased in a Jeep fire
4. Lynn Grisham, attorney for 4-year-old Cassidy Jarmon, became deceased in a Jeep fire in TX in 2006, her sister survived but is maimed permanently
5. Carl E. Nash, PhD, former NHTSA staff and expert witness in the Kline case
6. Joan Claybrook, former NHTSA Administrator
7. Clarence Ditlow, Executive Director, Center for Auto Safety
8. Dan Smith, NHTSA Senior Associate Administrator, Vehicle Safety
9. David Strickland, NHTSA Administrator
10. Kevin Vincent, NHTSA Chief Counsel
11. Nancy Lewis, NHTSA Associate Administrator for Enforcement
12. Frank Borris, NHTSA Director of Office of Defects Investigation
13. Karen Aldana, NHTSA Media Relations
14. Scott Yon, NHTSA Investigator

Yvonne Clarke, NHTSA staff, escorts our group from the security station in the lobby to the meeting room where Dan Smith greets all entering. All are seated. David Strickland enters and greets all in our group and then goes around introducing himself personally to each individual of our group.

34 minute mark on the audio file

David Strickland: Before we begin, first and foremost, I want to thank you I guess Clarence and the petition of over two years ago which began us on this journey. I know it is often very difficult to take up causes like this. It is emotionally very trying and the effort and hard work to get to this point. I always want to acknowledge that work. I've been working in consumer protection for gosh over 12 years now. Joan has dealt with me in various generations of my career. I was at the trial lawyers association and then I went over to --- protection subcommittee so you know it is thankless work trying to help people every single day. I want to thank you all for the time and the effort. I am happy to be able to get us to this part of the process in terms of dealing with Grand Cherokee and the Liberty. We have some more work to do which we will definitely talk to you about that. I just want to acknowledge your work. To get us here is important and I want to acknowledge. I know, Ms. Embrey, you've worked very hard as part of your campaign with change.org and really getting a lot of people's attention on this particular issue. Once again, I want to acknowledge and appreciate that work as well.

Jenelle Embrey: Thank you. I'd like to start the meeting and if you don't mind, I'm going to use my notes so I can stay on point and try to get through...

David Strickland: Please absolutely.

Jenelle Embrey: ...it as quick as possible. I'm Jenelle Embrey and the reason I am here today actually started on June 26th, 2011. On that Sunday morning, the Roe family was on their way to church – Mark and Amanda, and their two little boys Caleb and Tyler. They stopped for a red light at an intersection but when the light turned green, they didn't notice because they were burning to death in their Jeep Cherokee. This accident rocked the entire community.

A year later on October 5, 2012, I stopped at my dad's place after work. He had just purchased a car a couple of days prior. He wanted me to take it for a drive to see how impressive it handled. Right as we got on the highway, we stopped for a traffic jam. We felt what seemed like the world exploded. A distracted tractor trailer driver had plowed through us. I sat in the VA state cruiser of the head officer in charge of the accident scene afterwards. We were facing a Jeep and it's now charred occupants. As the officer sadly stated, "That's the same kind of vehicle that

killed the Roe family last year," I looked towards the remains of Heather Santor and Acoye' Breckenridge and I realized that state trooper was right.

The images of that night haunted me relentlessly. Entering 2013, with a lot of counseling and medication, I was able to pull myself together and think about what was next in my life. Feeling that these fiery deaths (of my accident) duplicated the Roe deaths in the same county the year before, I felt they should've been avoided. I could not understand how this was allowed to happen again. I needed to share what I felt with others, to see if anyone else felt that these Jeeps, with the gas tank in the crush zone, should be recalled. I drafted a petition on change.org and it seemed that everybody started talking about faulty designs of these Jeeps. 128,000 people registered at this site, signed their names, and left their contact info. A hundred twenty eight thousand people signed this petition asking for an effective recall to be implemented. I bring with me the 4,000 pages of those 128,000 signatures from concerned citizens so this can be part of the record of this meeting today.

I know that these 128,000 people are paying attention because I'm receiving emails, messages through Facebook, twitter, and change.org asking how this proposed modification can possibly help. I am here because I am questioning this as well.

David Strickland: For those who aren't familiar with our processes, when a remedy was proposed was when we took the petition and then we asked for Chrysler to undertake a recall for the Grand Cherokees, the KJ and the ZJ platforms, and then the WJ. It really is the very beginning of the process. We don't provide a suggested remedy. We don't actually accept remedies but what we do as an agency is take a look at the remedy to see if it is adequate. While Chrysler has proposed the remedy for the CJ and the KJ which is the adding of a tow hitch array, we are currently undertaking an engineering analysis on that particular remedy. If the agency finds that does not address the unreasonable risk to safety that we asked them to take care of then we will go back to Chrysler and ask them for a remedy that would. That's a process which is going to take us some time. We want to make sure that we get this right but we have not made a proclamation or decision about the remedy at this point in time. That is work that is definitely ongoing and underway so that is where we are in terms of the process. Hopefully... Speed is important. Clearly as Chrysler is ramping up and preparing to provide the free remedy to these folks, at the end of the day, we have the responsibility to all of you in this room and the American driving public that have these vehicles to make sure that it is right. We will definitely, as part of finishing our investigation, we will have a full detailed analysis and our ultimate decision regarding the remedy either one way or the other. That's where we are on that.

Joan Claybrook: David, why don't we go around and have everyone introduce themselves.

David Strickland: Absolutely.

Ines Murphy: I am Ines Murphy, Ana Pina's attorney.

Ana Pina: I am Ana Pina. I was the driver of a Jeep Cherokee.

David Strickland: Thank you for being here.

Lynn Grisham: I am Lynn Grisham. I am from Texas. I am a trial lawyer and have handled a couple of post-collision fuel-fed fire cases against Chrysler, including the Jarmon family.

Vanessa Friedhoff: Hi. My name is Vanessa Friedhoff. I am here from New Jersey and represent Ms. Susan Morris Kline, a victim of the Jeep Grand Cherokee.

Angel Defilippo: Hi. I am Angel Defilippo. I represent Susan Kline, basically the attorney from its inception until now. You know basically the name. I do not think I have to go further.

Joan Claybrook: Don't you want to say what the case was?

Angel Defilippo: I will tell you about the case. My client, Susan Morris Kline, was doing a favor for a coworker by going to work on a Saturday morning. She was on a highway in New Jersey traveling as anyone would travel. She was rear-ended by a Toyota Sienna, which has a lower-profile front. It directly impacted the tank resulting in an explosion. As her autopsy reveals, she had very very minor injuries. She burned alive. Everyone else in the accident walked away. She had two young children, young teenagers, husband that was her high school sweetheart, and a family that is basically wrecked and never will be the same as a result of the knowledge that she burned alive.

Joan Claybrook: I'm Joan Claybrook.

Clarence Ditlow: Clarence Ditlow, the petitioner at Center for Auto Safety.

Carl E. Nash: Carl Nash, retired from NHTSA and I am the expert in the Kline case.

David Strickland: I am not sure if, before I came in if my staff was able to introduce themselves, so why don't you go ahead with that.

Dan Smith: Dan Smith, Senior Associate Administrator, Vehicle Safety at NHTSA.

David Friedman: David Friedman the Deputy Administrator.

Kevin Vincent: Kevin Vincent Chief Counsel.

Nancy Lewis: Nancy Lewis Associate Administrator for Enforcement.

Frank Borris: Frank Borris Director of Office of Defects Investigation.

Karen Aldana: Hi. Karen Aldana Media Relations.

Inaudible introduction from the last male.

Jenelle Embrey: Ana would you guys like to speak next?

David Strickland: (to Ana) Do you want to talk about your situation?

Clarence Ditlow: Let me just say, David, after Jenelle we have some of the victims who would like to speak, then the administrator, then myself and then Dr. Nash.

David Strickland: Absolutely. That's fine. (To Ana) Please.

Ines Murphy: Ana, I think they are ready to hear you tell your story.

Clarence Ditlow: By the way, David, before they get started, one thing I'd like to say, which isn't part of our petition, so many of these people burn in these vehicles because the doors jam. That is something that we raise with the agency separately and if there is something else the agency can do...

David Strickland: So there's an egress issue in all of these crashes?

Joan Claybrook: In most rear-end crashes, there are David. Can I say one other thing in short about rear-end crashes if you are thinking about that? Not relative to this, but the seatbacks fail. If there are children in the back seat, they are really hard to save. These rear-end crashes need to be tested for the whole performance of the vehicle.

Clarence Ditlow: You have seconds to get the people out and that is the issue.

Joan Claybrook: And the other big problem is that if you have children in child restraints, if the doors are jammed, there is no chance.

Lynn Grisham: That was one of the issues we had in our case. Both of the children were restrained and in car seats. Passersby and the mother had to extract them from the vehicle. The mother was burned. In fact, she was unhurt in the collision.

Ines Murphy: Ana's accident fits this. Exactly what we are talking about. Everything you have heard happened in Ana's accident. She is going to start telling you about it.

Ana Pina: I was going to my daughter's --tation (inaudible). That was on January 14th 2012, I noticed some burn. (speaking Spanish to Ines Murphy)

Ines Murphy: There was a rear-end collision.

Ana Pina: The car exploded. I remember waking up in the hospital a month later in a lot of pain. My life changed of course. We all changed. I'm sorry. I'm sorry but I cannot keep from getting upset. (Crying) Angry. Sad. All of those emotions together because I know in life there is more important than appearance, but this is painful. It is not right. I cannot go out. You know, I see everybody looking at me and that does not feel good. It is painful. It is most

painful when my little daughter who was – (she appears to be asking Ines Murphy, in Spanish words, for help explaining in English words)

Ines Murphy: In the Jeep, were also Ana's twins. Her little boy and little girl who were 6 years old at the time. Isabella also suffered burns to her head, her knee, and her buttocks. She spent a month in Chicago Comer Hospital for Children, in the burn unit.

Ana Pina: That is very hard because one day I remember when they came for Christmas, my little daughter asked me, "Mommy, when will you go back to being normal like me?" I know it is a little girl, you know, just 7 years old but that feels so bad. It hurts. I am sorry. (Inaudible speech through crying) This morning, I thought, maybe this is stupid. Maybe, there are more important priorities than looking nice. (Spanish to Ines Murphy)

Ines Murphy: Ana is very nervous. She does not want to make this about how she looks and she feels uncomfortable saying "I used to be pretty and now I am not pretty anymore" because this is beyond being pretty. Ana is missing major facial features that we recognize as human faces. Nose, ears. She no longer has those.

Ana Pina: When I come here to Washington, I thought "Oh I am going to Washington. Big city with nice (looking) people." I had to bring my picture to say okay I remember when I was like that so I do not feel so bad.

Ines Murphy: We'd like to pass this around. This is Ana. (Shows a picture of Ana before being disfigured by fire, to be passed around to all.)

50 minute mark on the audio file

Ana Pina: That (picture) is for the physical. For the spiritual and for my body, it is painful. I go to sleep and when I woke up, they cleaning up my body, changing my bandages. It was painful and I remember. That is pain I feel. This is why I feel like this. I had to (learn to) start to walk again, to drive, to eat. My daughter, who is 17 years old, helped me go to the bathroom. She changed me. She helped me with everything. I hope. I'm sorry. (Crying) I feel so angry when it is on the news, because I watch the news both on the local channels in English and on the Spanish channels too, when they say Chrysler does not think there is any problem. (Speaking with Ines Murphy in Spanish)

Ines Murphy: What makes her angry is that Chrysler is actively telling the community that there are no problems with these Jeeps and she believes it is a lie.

Ana Pina: Hello! I am sorry! Hello! I am here! I survived, yes, but this is very painful. I am sorry. There is pain. You can see this. It is real. I am sorry. This is not my imagination. You know? I am right here. I say thank you god but this is not nice. I want to be a chef but how can I cook? I can't cook in my house. My house has to be freezing all of the time. It is so cold but I have to turn the fans on. I can't cook for more than a 20 minutes. I ask how can they be that irresponsible. They say that's not true, nobody dies and nobody has an issue with us. Me?! This is me!! I can tell you. I can prove this happened because of the Jeep in the accident. I am not here to lie. I am not here to say don't worry about it and they (Chrysler) are right. It's a lie. It's a lie. It's a lie.

Joan Claybrook: This brings up the issue, David of the adequacy of the repair because we deeply appreciate the fact that you and Secretary Lahood grappled with this and grappled with Chrysler. I talked to him a little bit about this when I ran into him. It does make a huge difference when the heavy hand of the federal government says to fix something and we're not taking this. You are going to have to fix it. The question is about the fix. I am here only for one reason. In 1978, I had the same experience with Ford and the Pinto. Ford finally decided that they just wanted to get this behind them and they said, "We will fix it." So we said fine. And I said, "Well, I'd like to see a crash test because I want to make sure the fix is real." We are not in the business, as you've already said, of deciding what the fix should be. We just wanted to make sure it was safe. So we sent an engineer and a lawyer out to Ford. They did a crash test and the vehicle failed. I firmly believe the only way you are going to understand whether or not the fix is correct for these vehicles, is if you see a crash test. Because we looked at the engineering analysis of what they were doing and thought well that looks pretty good. But it wasn't. So I urge you from the bottom of my heart. Do a crash test, or crash tests, on the vehicles. I think it ought to be to the current standards. One of the questions is, is it going to be the old standards or to the new standards. I urge you to do high-impact testing because this paper makes clear, on top of page 7, (flips to page 7 of the CAS White Paper released that day) there are a whole bunch of things that are defective about the design of this vehicle including the frame around the tank is weak, the filler neck has a weak connection, and this was true of the Ford also when it is hit from the rear, the filler neck pulls away from the connection to the frame, to the body and so the gas just pours out. It is not just the gas tank itself, -

- is harmed and that the filler cap is easily dislodged and the fuel tank itself lacks an effective check valve. A check valve is now something that every company puts in their fuel tanks in their fuel filler system. It is a cheap simple thing which stops the fuel from coming out if it shouldn't be coming out.

Clarence Ditlow: This actually is from the '99 that we tested (pulls out an example, from his bag, to display) and it illustrates 2 of the 3 things that Joan just indicated. This filler hose pulled loose from the filler inlet. And then this check valve is really an EPA spit back valve so that when you take the gas cap off, if there is pressure in the tank, the valve goes up and seals it so there is no spit back but the valve floats and if it floats on gasoline, the inlet or the outlet whichever you want to call it, is open. The Automotive Safety Research Institute, - - - this operation, looked at all the other manufactures. This is the only one they can find that used a floating check valve at that time, which in fact is no check valve. A good check valve is a couple of bucks which is why Joan is indicating test the remedy. If the remedy works, we can't argue.

Joan Claybrook: NHTSA can test it or you can actually have Chrysler test it and witness it yourself, whichever it is.

Clarence Ditlow: Yes, when I say test it, it is fine if Chrysler tests it. Just have NHTSA engineers there

Joan Claybrook: and a lawyer

Clarence Ditlow: As President Regan said, trust but verify.

Carl Nash: Quoting President Regan now? (General laughter)

Joan Claybrook: Anybody who helps! (General laughter)

Carl Nash: (inaudible through laughter) ...actually did not have a connection like this. It had a big plate here that was kind of welded in place and the plastic welded in place. That whole assembly could come lose. A check valve wouldn't make any difference in the early models.

Clarence Ditlow: We looked at, and uh we have a number of questions, about the recall and the proposed remedy. We are confused about what is a low energy crash and what is a high energy crash. When NHTSA did the CK investigation - - crash - - valve - - tests showed in what an FHWA did at 75 mph, Ford Explorer test had an instrumented test dummy in that so you can tell that crash had more energy than 29 out of 40 of the cases that Chrysler sites. So you have a test dummy that will tell you if it is a survivable crash or not.

In addition, when you look at Ana's crash, when you look at the Jarmon crash, they had trailer hitches. So it is only natural that when you

Joan Claybrook: How many of the cases that you have, had trailer hitches?

Clarence Ditlow: Well, we don't know.

Joan Claybrook: I mean the cases that you have? 2?

Clarence Ditlow: Well, these 2 that we know of but we never... until the trailer hitch became a "remedy" we weren't really focusing in on that. We do know that there are other vehicles. I mean the investigation covers the Cherokee. The agency's recall request to Chrysler asks that the 99 through 04s be recalled but the other 4-year-old child, Remi Walden in Georgia, was in a 99 so the recall doesn't cover that one. He is another one that was in a child seat with the doors jamming. We began looking at the energy of the crashes that Chrysler calculated and Carl did most of that analysis but those are survivable crashes. The other thing is that the agency put it so succinctly. We have 44 crashes. 51 people died. We looked at the records and it is our conclusion that these were deaths by fire and not by trauma. Chrysler's entire defense to the public, not really to the agency which certainly has more expertise, is based on well if you look at trauma and fire deaths then some of these vehicles like a Toyota MR2 which is a 2100-2300 pound vehicle, sure you are always going to have a lot more trauma death in that vehicle because it is so light. So.

Joan Claybrook: I am confused, David, about the actual scope of this recall because as I understood it, there is an inspection process and not necessarily a recall. Is that correct?

David Strickland: Inspection process?

Joan Claybrook: Or an evaluation process?

David Strickland: There is a typical data evaluation that (Huleander?) takes in terms of looking at you know rates and incidences versus compared with peer vehicles. The whole notion of once again, for us to be able to push any manufacturer to do a voluntary recall, at the end of the day we have to be, as you know, to be fully prepared to go all the way to prosecute this case in federal court. We have to look at what we would be able to defend as a defect that poses an unreasonable risk of safety. As part of that is the data analysis in terms of the rates and that was always part of the initial evaluation along with everything else. I don't know, once again, in terms of what other work that ODI did in terms of looking at these cases.

Joan Claybrook: My question is, Is Chrysler willing to put the fix on all of the vehicles?

David Strickland: Oh, the Cherokee? Grand Cherokee?

Frank Borris: I think you are talking about the WJ 99-2004?

Several voices: Yes. Yeah. Yes.

Frank Borris: That is being done under a customer satisfaction campaign and not a recall. So on those particular models, if the vehicle currently has a hitch installed, that hitch will be inspected. If it is an aftermarket hitch, it will be replaced with a Chrysler-designed hitch. If it already has a Chrysler hitch on it, it will be inspected to ensure that it is installed properly that there are no missing fasteners, no modifications that have been made to it that might create...

Joan Claybrook: For these 5 model years?

Frank Borris: For 99-2004? Correct. On the other model years, the ZJ which went from 93-98 that's a hundred percent installation of a Chrysler-designed hitch and the same holds true for the KJ 2002 through 2007 hundred percent installation of a Chrysler-installed hitch.

Joan Claybrook: So for the 99-2004, then they either have to already have a Chrysler hitch or they will have one put in? Is that correct?

Frank Borris: If they already have a hitch...

Joan Claybrook: It'll be inspected?

Frank Borris: It'll be inspected. Right.

Joan Claybrook: And if they don't have one? Then it will be put in?

Frank Borris: 99-2004? No. No. No.

Joan Claybrook: So what will happen with those?

Frank Borris: Ummmm...

Joan Claybrook: Nothing?

Frank Borris: Nothing.

Joan Claybrook: So... could. Could you explain why that is?

David Strickland: Once again, to sort of lay out the case and I'll leave out the lawyer part of it. Once again looking at unreasonable risk of safety in our analysis of customer service campaign with the data we had, KJ and the ZJ were the ones that were off the charts. You know, WJ, we pulled in because it was, we did see from a data standpoint overrepresentation. But in terms of comparing fire-related fatalities in these particular vehicles, it was very close to their peers and frankly...

Joan Claybrook: Just on the basis of data.

David Strickland: On the basis of data. So when Chrysler addressed to be honest, ZJ and KJ, theoretically speaking, and this is the analysis that I think was right from the part of the agency, if we went forward with WJ purely as an unreasonable risk to safety case corpora, we probably would not have prevailed because it didn't...

Joan Claybrook: On the basis of the data. But what about crash testing, David? It does seem to me to be the ultimate test doesn't it? I mean In fact, if you crash test it and it fails as heavily as the others, the fact is that the data doesn't show something and just means it is damned lucky. Right?

David Strickland: The way you always look at this is all of our cases are based on data. We don't crash test every single vehicle on the planet as well you know. For us at this particular point in time, if the data shows that the peer vehicles of this particular vehicle are in the same range, it isn't an unreasonable risk to safety. Of course, you could crash every vehicle you know, that are within that particular zone and try to get a particular result. If I don't have legal basis, you know, to show there is an unreasonable risk of safety based upon the data, which is the foundation of all that we do, then that is where we are. So that is why and Chrysler made the decision on that point to offer a customer service campaign for these vehicles. Again, you know, if the decision was that they wanted to fight us all the way through they could have. They made a decision at least for these particular vehicles, the ones that actually have an aftermarket hitch that wasn't Chrysler provided, to go ahead and change those out. But there is, across the entire fleet of WJs, in terms of peer-data representation, those were probably, those were very close to their peers.

Joan Claybrook: And in terms of their design? Are they not similar to the others...?

David Strickland: You know, Joan, you are asking basically, and I am not sort of here to sort of debate the case, and we will definitely talk about this in the closing resume...

Joan Claybrook: I don't want to debate the case in those terms either. I just want to. I mean. Data has never been sufficient and you know that. You do the best you can. But you don't just say data and stop if there are other factors that will help you understand whether the vehicle has a problem. And if the design is virtually identical to, or similar to, in respect to the fuel tank, then the data could be, just not there because we don't have perfect data. Right? I wish we had perfect data. I have some proposals for that but no one's ever liked my proposals like having EDRs where the data comes into NHTSA so you get every crash. Right? Right? That would be perfect data. Oh, the head is popping in the door there...

Yvonne Clarke (our group's escort in the building) steps into the room for a brief moment: I am so sorry. I am trying to keep the Administrator on a fairly decent time.

David Strickland: Okay, I got it. Thank you.

Clarence Ditlow: Let me make one data point. This, we really need clarification on. The voluntary recall letter that went to Chrysler included the WJs. It was found that there was data separation as everyone called it. What changed in terms of the data between that voluntary recall request and what Chrysler agreed to do? Was there anything in the June 18th submission by Chrysler that, you know, significantly disputed the data that the agency earlier presented to Chrysler saying to recall the WJs too.

David Strickland: As you know is part of the process, Clarence, they have the opportunity to present evidence and they did. I think that from the perspective where we were at the time, that will be part of the analysis and part of the closing resume in terms of how we fully responded to the original letter. So that will be part of the entire analysis and process. But you know. Chrysler did provide more information and we will talk about that in our closing analysis.

Joan Claybrook: Is that not public?

David Strickland: At this point, no because the investigation is still open.

Clarence Ditlow: One of the things in this paper...

Joan Claybrook: Well wait. Wait. Hold on. Hold on.

Clarence Ditlow: Two seconds.

Joan Claybrook: Okay.

Clarence Ditlow: We looked at, at least the energy analysis which was new for the first time in Chrysler's presentation, and we think it's bogus. To be blunt. Uh we don't see any exculpatory new evidence from Chrysler on the energy analysis so we will go through it just as you are but from the public view point, we just don't see a difference between then when the agency asked for a voluntary recall of WJ, and now. The people look at it like this We really need to be sure. Fire deaths are horrible. Just horrible.

David Strickland: You know. Traffic fatalities, no matter what the source or cause, is the same result and we want to make sure we don't have them. Clearly people suffering, such as Ana, there are things beyond fatality and clearly grievance injury as well some of those very important things that we hear of. At the end of the day, for us, as part of the closing resume, there are a number of questions that frankly, all of you have about the analysis and whether or not in terms of whether we do or ultimately do not accept Chrysler's offer for remedy or even on the scope, I mean, that is all part of the process. We are making those evaluations right now. There are engineering analyses working, going through right now. As I said, it is going to take us some time. Notice even though Chrysler made the offer for the remedy going on two weeks now, time is flying, we have not responded yet because we are still evaluating because we are asking, frankly, the very same questions that everybody at this table is asking. Does the remedy address, you know, the unreasonable risk of safety? Chrysler's proffer of ZJ and KJ and then the KW, we have not made our final determination in terms of whether or not the agency accepts it or not. But we have to go through all the data and clearly, you know, parts of the evidence that we have will come from the petitioner and other folks in terms of this and we'll definitely, we've got work, we will provide the answers in a closing resume and then we will definitely have to be accountable for that analysis. There is no doubt about that.

Joan Claybrook: Okay David, I am trying to get back to the two points. One is the letter that came in from Chrysler. I don't understand why that is not public because Chrysler already knows the information and I thought that under the freedom of information act...

Frank Borris: I think it is public.

David Strickland: I may be wrong. I could be wrong. Apologize. It may be public.

Clarence Ditlow: It is public.

David Strickland: My mistake.

Joan Claybrook: I'm sorry. I got that. Okay, so then the issue is the question of data versus a crash test. In most defect recalls, are crash tests necessary or even relevant? In this one, it is the most relevant. It does seem to me because it is a design defect. The only way that you can determine whether or not the vehicle has a problem is to crash test it. I know that's expensive but it does seem to me that if you have three different vehicles and two of them are being recalled and one is going to be a customer satisfaction, it doesn't mean much.

Carl Nash: Can I say a little bit about that? We were disappointed that your defect letter made no reference at all to the three crash tests that we have sited repeatedly in our court and even if you don't accept them because they were not done in NHTSA, we think it would be worthwhile for NHTSA to repeat some of those tests just to find out how the 99-2004 cars that have no shields, none of that stuff, no trailer hitches, to see whether they fail in a low-speed actual collision by a car going into the back of the Jeep.

Joan Claybrook: Are you familiar with the crash test that Clarence...?

David Strickland: Uh huh.

Joan Claybrook: Yeah? Well, we urge you to think about that and particularly before you accept any remedy that Chrysler proposed, to do what happened with the Pinto which is to actually have them do a crash test to show you that their remedy resolves the problem. We urge you to do that.

Carl Nash: Clarence just said that the crash test we did at Cargo(?) was one of your contractors and was about 12,000 dollars plus a few thousand for the car so. So. It's not terribly expensive.

Joan Claybrook: We urge you to do that because I think in the end that would serve the public and the agency better than just looking at data.

Clarence Ditlow: One last observation, when we looked at the cost of this trailer hitch "remedy" and I always put quotes around remedy, you know we look at the things we suggested like a check valve and better filler hose and a skid plate, I don't think there is a difference in cost to Chrysler. For us, when we look at the additional protection, it might be that 1.2 inches lower down with the trailer hitch under the bumper but as in any of these crashes we looked at here, if that striking vehicle comes in under the bumper and the trailer hitch, and there is no skid plate. You know.

Angel Defilippo: Can I just say one thing before we end this meeting? In every deposition in my case of all of the Chrysler engineers and all of the Chrysler, very high-up people involved in the design, any testing at the time of the ZJ, which is my vehicle in my case, everyone to a fault says wherever the tank is, because NHTSA doesn't tell us, we can put the tank wherever we want, and they hide behind NHTSA in that regard. But in every one of them, it says without fault, wherever the tank is it must be protected. So when I questioned Chrysler's own individual expert and former employee of 40 years, what protects the portion of the tank that hangs below the bumper? He said to me, "The tank is on its own." So he admitted clearly without equivocation that nothing protects that tank. In my (case) vehicle, it didn't have a tow hitch, it didn't have a bracket, it didn't have a skid plate. They talk about skid plates as being not only protection to encapsulate the tank, we are not talking about the flimsy one, we are talking about the heavier metal, they also talk about it as an impact-deflection device, so in some accidents, it may deflect the impact away from the tank? In other words, a vehicle can go under it and it can ride under and not puncture the tank like it did in my case? Or it can protect the tank in the actual force of collision itself but in vehicles with just a tow package, you still have that portion of the tank that hangs below. In my (case) vehicle, and we have photographs, I don't know if the photos were given to you, which actually show that when a person goes in to buy a car, this is what they see (shows a picture of the back of a Jeep). They don't know where the tank is. No one ever says where is my fuel tank. But if it was painted, this is what they would see (shows a picture of a back of a Jeep with the fuel tank painted yellow) and I know everyone has seen this picture. We also have taken off the bumper and we have measured the distance, if you look even from the side as the tank goes downward, you are talking about more of the tank being exposed to whatever can hit it. The point of my questioning in my case was to say, well tell me as far as anything hitting the tank, what is there to protect it? And it used to be that they would say oh the frame rails the frame rails. Finally, when we refined the question to what about the portion that hangs below? When the tank is put in mid ship position, my understanding is that it is tucked up even into the frame rails. But this one, the most precarious of all positions behind the axle and right by the bumper, is even hanging below so there are two problems. I really think that, as Joan said...

Joan Claybrook: Let me just ask you, did you ask what the remedy was?

Angel Defilippo: Yes. "There is no remedy because there is no defect."

Joan Claybrook: No no no, did you ask them what can be done to protect the tank?

Angel Defilippo: They feel. They continue... You mean in that questioning when I asked what about this part? No, he said the tank is on its own. Nothing. You're vulnerable. You know, just in closing, I would like to say that when my case (client) walked in the office with his case, I had that vehicle and I researched, just from a personal level, and I rode around with a hammer in my car until I could get rid of it because my person also could not get out. In fact, she got over the console, away from the flames coming in from the left and they came fast and violently and the heat was intense, she got into the passenger seat and could not get out the passenger door. And then just sat there and burned alive. According to my experts, 2 to 3 minutes of burning while alive with being conscious. So I think Joan is right in saying the testing is important because I think, and if I were a betting person I would bet, that on the ZJ, you can put that tow hitch on it and I don't think it's going to do one thing for that portion of the tank that gets direct impact.

Lynn Grisham: and in my case, it didn't. We have a field test in my case because I (the Jeep) had the tow package. This Jeep was struck by a 2001 Lumina. There was under ride. There was some pitch and dip of the car under rode and compressed the tank against the back axle right under the tow hitch. And I know each case is anecdotal on its own but it's some pretty good evidence from a real-world crash.

Ines Murphy: I would like to. Just one last question. When you talk about unreasonable risk to safety, in Ana's accident, Ana does not have a single broken bone okay. Her fingers are amputated because of 4th degree burns. Not one broken bone. Not one broken rib. She could've walked away from that accident. Everyone in that car could've walked. The only injuries were burns. How is that? They should've been able to open the doors. I'm not saying they wouldn't have had a big headache but that's all it should've been.

Lynn Grisham: There were no physical injuries other than burns in our vehicle either. This child was a year and a half old, and was in her car seat, and was trapped.

Jenelle Embrey: Same with our accident. The teenager my dad pulled out of the car just seconds before it was engulfed in flames is alive and fully functioning today with nothing wrong with him. But the people that we didn't have time to get to burned to death right in front of us.

David Strickland: This is one of the reasons why that, we as an agency felt very strongly to push for this. I mean this is you know some, as Joan and Clarence, and Carl know from their time here at NHTSA, some defect cases are fairly straight forward and some take a lot of effort to get the manufacturer to do one thing. I will tell you. Even you know we have questions about whether the right thing has been addressed here in terms of what Chrysler has presented. I am just going to be blunt. They weren't going to do a damned thing. They weren't. It took a lot of pushing and prodding and threats and yelling and frankly you know, my legal department to get ready. It's like we were going to go to war. The unfortunate thing was that if it ended up in that particular posture, we are looking at 3 to 5 years before we actually got resolution from the NHTSA perspective. I am telling everybody in this room here. The Secretary and I cut no deals because it was convenient. The first order of this is, is for me as Administrator is to make sure that we have a safety risk that is addressed properly. And at this particular time, Chrysler made an offer in terms of the remedy and we are taking a hard look at that. But please don't be uh walk away from this meeting thinking that something was done expediently because we just want to sort of push it out of the way you know because there are a lot of people like you, Ana, that are still with us and that have their lives irreparably altered. There are frankly a lot of people who aren't with us at all from crashes that frankly as you know could've easily been walked away from. That was one of the things that moved me very deeply to make sure that we fought and put the resources to get to where we are. So while Chrysler has made an offer willingly, we will make sure that we are satisfied that the remedy does address the safety need and there is a lot of work going on. Um. The fact that all of you are here to try to make sure that this, you know, hopefully what has happened to all of you collectively for your clients that you represent or for folks like you, Ana, we don't want this happening you know. Nobody does. And as I said before I'm sure it is very upsetting about some of the things that Chrysler has said you know. I am sure it is really tough when you hear anybody say that there is nothing wrong when you are living proof that something went horribly wrong.

Jenelle Embrey: Excuse me. (raises hand)

David Strickland: We definitely want to make sure that we do this right and it is going to take us some time. And we will definitely have to be held accountable for the decisions and the answers that we make. We appreciate the fact that there are still a number of questions that are outstanding but we will definitely make sure that we address them directly when we do close. Yes, Ms. Embrey?

Jenelle Embrey: It is not just Chrysler's statements that are disturbing. It's Ray LaHood's. I mean he is saying that they've made a deal and that it is a good deal and these vehicles are going to be made safe. I keep reading statements that he is giving to the public that it's all over and we are going to put trailer hitches and my mother drives a 2004 Jeep Grand Cherokee. Her black plastic tank is right there in plain view. How can that be safe? Why is Ray LaHood saying this to the public? I know you can't speak for him. It is unfortunate that I asked him to be here but he couldn't.

David Strickland: Well, he is no longer secretary so basically... His successor is being sworn in tomorrow morning.

Lots of laughter from most.

Jenelle Embrey: Right. Today is it but I would like to have known why he is making these statements. And I invited Mayor Foxx but he is giving goodbye speeches today.

Joan Claybrook: I would like to say that I think that Ray LaHood really has safety as a top priority in his mind and he has done some wonderful things in his department when he was here. He didn't have to go beat up on the President of Chrysler to make him agree to do at least what they've agreed to do so far and I think that was an off-the-cuff comment that he made that we've confronted them we've resolved this. We're moving forward. The agency always does what David has described which is after they've now got Chrysler on the hook you might say then they evaluate. And I would just like them to evaluate with a crash test because I think that is the only thing that would tell the truth.

David Strickland: I think I think Joan captures it perfectly. You know the secretary is a very direct man and you know at the end of the day when the agency gives an agency decision, we give all of the caveats and verifications in process but the secretary at the end of the day is. You know do we think that you know. The fact that they are presenting a remedy directionally speaking is directionally proper. Well directionally proper in terms of thinking about how to protect

the tank is definitely directionally proper. The question is whether it is effective. With that, the secretary can make his own conclusions and his own statements. You know, at the end of the day he is a direct-talking guy. He is a former congressman. He is not a lawyer and he is not an engineer. It is what he feels in his heart. I don't think he said this to basically tell everybody to stop working on this or you should be okay but he feels very strongly that he got Chrysler to do the right thing and he was being you know...

Joan Claybrook: He moved them off the negative and into the positive.

David Strickland: Exactly. So I think that sometimes you know it happens. As Administrator, I do the same thing. Sometimes for the sake of simplicity and clarity sometimes you lean a little bit too forward on the tips of your skis in terms of what you are exactly saying. I think the Secretary was very well-intended and didn't mean to sort of to foreclose people thinking that this is over and everybody can stop working on it and move on to the next issue. I don't think he meant that at all.

Jenelle Embrey: Okay.

Frank Borris: As a matter of fact, we have spoken to him and he understands that we are doing further analysis and that we are not prepared to close so it's... so it's...

Joan Claybrook: Well, I think that the bottom line here is that this design for a fuel tank is a 1970s design and to save money and for cheapness, they just stuck it in there. They had to know the whole time that this was you know going to cause death and injuries. This is just outrageous I think.

David Strickland: Well one quick question. I have a budget meeting but they can wait for me just a minute.

Joan Claybrook: The hell with the budget (laughing).

David Strickland: Well you know it is important but this is important too. I've been with the agency spending lots of time and effort having lots of conversations with Chrysler and this is my first meeting with all of you. I definitely want to make sure that you have full opportunity as our first meeting and I definitely don't want to short shrift it. With that being said, my question is, how many active suits are? I guess is there a class action? Or is there a number of individuals around the country against Chrysler right now?

Ines Murphy: We don't have a count.

Angel Defilippo: We don't have a count of active suits.

Joan Claybrook: Is there a number of total suits files?

Angel Defilippo: We never could get an accurate... I don't trust the number that we got so I don't want to say. You might be able to do better than we were.

Joan Claybrook: Yeah, you can ask Chrysler.

David Strickland: In terms of the engineering lawsuits are part of the UWA(AWA?) reporting so I mean at some point in the future, we will get the count.

Angel Defilippo: We know that lots of lawsuits were settled confidentially and we know that there have been all kinds of agreements.

Clarence Ditlow: Class action is a very uphill concept because of the bankruptcy.

Ines Murphy: Some were settled without even going to lawsuits so there will be no record of those.

Carl Nash: Also because of the bankruptcy, some of the suits can't be against Chrysler.

David Strickland: Oh, that's right it would be the former entity known as Chrysler...

Angel Defilippo: No you can't. You don't have a case. I have a dealer but I have to prove a Chrysler case because the dealer stands in the shoes when there are no assets in New Jersey.

Carl Nash: When you ask the question of Chrysler, be sure to frame it in such a way that a total number of cases on the issue and not just against Chrysler. I want to say by the way that another thing is that it appears to me that the Jeep

engineers were far less sophisticated than Chrysler engineers. I suspect that had the Chrysler engineers designed this vehicle, they probably would not have put the tank in such a vulnerable position and solved the protection issue. And it was probably only after Chrysler finally got involved in it in the early 2000s that they said they put the tank in the right place.

Angel Defilippo: Carl is right because we have testimony from the engineers that said that when the merger came with AMC and Chrysler, the Jeep was almost 90% finished so they already had designed and packaged and they knew where the tank was going to be and they weren't changing it. Chrysler had in the works, I think the Dakota that they were thinking about making into an SUV. They had an SUV at the time but because the Dakota was behind the Jeep in design, production, and time, they went with the Jeep when the merger took place.

David Strickland: Gotcha.

Angel Defilippo: So he is right about that. It makes sense.

Ines Murphy: Administrator, we all want this problem solved. How can we help?

David Strickland: I think that help has come already. I know clearly analysis we have already received as part of the petition and everything else you know. I'll have to say, to be honest with you, that we are working through the engineering analysis and we will make the decision in terms of how that process goes forward. There are a number of other elements, there are submissions from the manufacturer, there is other work that we have to do. At that particular point in time as part of our work, engineering analysis, and close, we will figure out whether we should or need to have the car tested here at the RTC or whether Chrysler does it or whether there is a sufficient data engineering analysis provided by Chrysler so that we can directly assess the facts. The one thing process wise, I will make no promises because at the end of the day I want to make sure that frankly our engineering team has a maximum amount of flexibility to be able to make the decisions. I will guarantee you this. You know. We will have to be rock solid on the effectiveness of this remedy. I know that there are a lot of people looking at the effectiveness of this remedy and we are going to be able to answer every single one of you and everybody else about the effectiveness of this remedy. Process wise, that's a Jeep determinant. It is important. You never want to close or to tie the hands of the folks who are way smarter than me but I will tell you whatever answer the agency gives, I personally am going to have to be rock solid in that particular decision and ultimately I am going to have to convey that to the secretary designate as well. Please feel and understand that we are not going to short shrift this thing at all. We are going to do everything by the numbers. We are going to do it right and we are going to have to be intensely confident about it.

Joan Claybrook: I just have one piece of advice for you, as a former trouble maker (laughter), there are two ways that you can get Chrysler to do more. One is to have a public crash test and invite the press to watch it – after they put the remedy in. The second is to use gasoline instead of solvent.

Unidentifiable male voice: Who is driving the bullet?

General laughter

Angel Defilippo: The dummy is driving! Mr. Strickland, I have a question. Would it help you in your negotiations or discussions with Chrysler to have copies of the testimony that might be relevant or is the testing just independent?

David Strickland: Yeah, we're really not... in terms of the voluntary recall process you know they're there. I feel eyeballs in the back of my head.

General laughter at Yvonne Clarke peeking in the meeting-room door.

David Strickland: But in terms, I mean in this particular point in time, the question and sort of the decision depends on one of two things. If the agency works with the engineering analysis and we are satisfied that the remedy does address the safety risk we have identified in the initial letter then that's where we are. If we are not satisfied and the remedy does not address it in a particular way then negotiations will begin anew to say we don't think that this remedy is appropriate and at that point, we may need to find pressure points if you will. Hopefully, it won't get to that point but I think that once again is to be determined depending on the decisions that we make.

Angel Defilippo: You can always ask me for anything because I do have depositions of almost everyone who was involved, testing and design.

Ines Murphy: All of us relating to this case welcome any information requests.

David Strickland: That is good to know. Before the eyeballs come back into the room and start boring into the back of my head, I guess I should get upstairs to actually talk about our budget. Thank you so much Ana I mean speaking for a group of people who frankly do not have the opportunity to speak for themselves is an incredibly difficult task and frankly a huge honor for you to be able to do this for them. You are a very eloquent and direct spokeswoman in talking to a group of people that frankly need help. I know it is never easy and I really do appreciate what you've done and I very much respect what you do. Same thing Ms. Embrey. I appreciate your clearly giving a voice and becoming a strong advocate for a group of people and clearly having to engage with a large multibillion dollar multinational company which frankly has a lot of resources on their dial to be able to do particular things and the fact that you have moved the process to where you are speaks to your passion and your effectiveness. Thank you. And again really Clarence and your petition it really does begin with you in the center from the point of the petition that we accepted in the year 2010 and you began it so we definitely want to make sure we finish this in the right way so we can get this situation dealt with as best as possible. Thank you and we will be definitely I am sure we will be in touch continually going forward as we finish up this work. Thank you for taking your time.

All begin exiting.

Meeting ends at the 1:34 mark on the audio file