

CV

CASE NO.

2018 07 1583

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

Plaintiffs

JUDGE: *How ARD*

vs.

FCA US LLC
c/o CT Corporation Systems, Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

**COMPLAINT- OTHER TORTS
WITH MOTION TO APPEAR
PRO HAC VICE
AND PROPOSED ENTRY
ATTACHED.**

and

TRI STATE CONCRETE INC.
c/o Dean Dillingham, Statutory Agent
1 Millikin Street, Suite A
Hamilton, Ohio 45013

MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

and

TRACY WAYNE MOORE
1226 North Frieda Drive
Fairfield, Ohio 45014

JUL 16 2018

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

Defendants.

COMPLAINT

Plaintiff in the above-styled action respectfully files this Complaint, showing the Court the following.

PARTIES, JURISDICTION, AND VENUE

1.

On October 20, 2017, [REDACTED] of Hamilton, Butler County, Ohio burned to death in her 2004 Jeep Liberty after it was struck in the rear by a truck. The rear impact demolished the rear-mounted gas tank in that Jeep Liberty causing a raging fire, and the seat back collapsed throwing [REDACTED] backwards toward the flames. The wreck and death occurred in Hamilton, Butler County, Ohio.

2.

Plaintiff [REDACTED] (“[REDACTED]” or “Plaintiff”) is the surviving spouse of [REDACTED] (“[REDACTED]” or “decedent”).

- a) [REDACTED] is the personal representative of [REDACTED] estate. Attached is a copy of the Letters of Authority issued by the Butler County Probate Court.
- b) [REDACTED] resides in Butler County, Ohio.

3.

Defendant FCA US LLC (“FCA”) is a foreign for-profit company that designs, manufactures, markets, advertises, sells, and (sometimes) recalls or repairs vehicles under various name brands, including but not limited to “Jeep.”

- a) FCA designed, manufactured, marketed, advertised, sold, and recalled the 2004 Jeep Liberty that [REDACTED] was operating (“the subject Jeep”) when she was killed.
- b) FCA is subject to the jurisdiction of this Court because it markets, advertises, sells, and recalls or repairs vehicles in Ohio; it places vehicles into the stream of commerce that are sold in Ohio; and it manufactures vehicles in Ohio.

- c) Venue is proper as to FCA under Civ.R.3(B)(6).
- d) FCA can be served with process pursuant to Civ.R.4.2 through its registered agent, CT Corporation Systems, at 4400 Easton Commons Way Suite 125, Columbus, Ohio 43219, or at any of its usual places of business by a method authorized under Civ.R.4.1(A)(1); or by serving an officer or managing or general agent of the corporation.

4.

The bankruptcy proceedings related to FCA's 2008-2009 bankruptcy and bailout are now closed. Therefore, the exercise of federal jurisdiction on that basis would be improper under 28 U.S.C. §§ 1334(c)(1) and 1452(b). *Overton v. Chrysler Group LLC*, No. 2:17CV01983, 2018 WL 847772, at *7 (N.D. Ala. Feb. 13, 2018).

5.

After being purchased by Fiat Chrysler Automobiles N.V., an international corporation, Chrysler Group LLC renamed itself "FCA US LLC." That change occurred on December 16, 2014. FCA US LLC is the named defendant in this case. Before the renaming, at various times before, during, and after the bankruptcy and bailout process, Chrysler had been known as Chrysler Corporation, DaimlerChrysler AG, Chrysler LLC, Old Carco LLC, Chrysler Group LLC, and other names. For the sake of simplicity, Plaintiff uses the name "FCA," which stands for "Fiat Chrysler Automobiles," to refer collectively to these Chrysler entities.

6.

At all relevant times, FCA owned and controlled the "Jeep" brand.

7.

Tri State Concrete Construction, Inc. ("Tri-State") is a domestic for-profit company that,

upon information and belief, transports and pours concrete.

- a) Tri-State owned and operated the truck that collided with the rear of the subject Jeep.
- b) Tri-State is subject to the jurisdiction of this Court because it is an Ohio company based in Hamilton, Ohio and conducts significant business in Ohio.
- c) Venue is proper as to Tri-State under Civ.R.(3)(B)(6) and Civ.R.(3)(B)(2).
- d) Tri-State can be served with process on its registered agent, Thomas R. Yocum, at 300 Pike Street, Suite 500, Cincinnati, Ohio 45202, or at any of its usual places of business by a method authorized under Civ.R.4.1(A)(1); or by serving an officer or managing or general agent of the corporation.

8.

Tracy Wayne Moore ("Moore") is an individual.

- a) Moore was an employee of Tri-State and was driving the Tri-State truck that collided with the subject Jeep.
- b) Moore is subject to the jurisdiction of this Court because he resides in Ohio.
- c) Venue is proper as to Moore under Civ.R.(B)(6) and Civ.R.3(B)(1).
- d) Moore can be served pursuant to Civ.R.4.2 with process at his residence, believed to be 1226 N. Frieda Fairfield, Ohio 45014, or anywhere else he may be found.

9.

Plaintiff refers to FCA, Moore, and Tri-State collectively as "Defendants."

THE SUBJECT JEEP'S FUEL SYSTEM

10.

FCA *has known for decades* that placing gas tanks behind the rear axle exposes occupants to the risks of fire and death because in a rear-impact collision, the tanks can rupture causing a post collision fuel fed fire or an explosion.

11.

Despite that knowledge, FCA designed, manufactured, marketed, and sold the subject Jeep with a gas tank mounted behind the rear axle without protection from foreseeable rear impact collisions.

12.

By at least 1978, FCA knew from the gas tank failures of Ford Pintos (or from “the Ford Pinto case,” to use the nomenclature of FCA’s internal memorandum) that gas tanks located behind the rear axle were dangerous, and that placing the tank forward of the rear axle was safer. An excerpt from an internal Chrysler memorandum dated August 24, 1978 follows.

thereby spread fuel onto the roadway. The approach used by Mitsubishi on the SP-27 of locating the fuel tank ahead of the rear wheels appears to provide good protection for the tank.

13.

By 1985, FCA advertisements promoting its Dodge brand stated that gas tanks placed ahead of the rear axle provided protection for the tank in rear impacts. An excerpt from the “’85 Dodge Engineering” brochure is below.

Fuel tank location

On all models except the rear-wheel drive Diplomat, the fuel tank is located under the car beneath the rear seat—where it's forward of the rear suspension and between the bodyside rails—giving it protection in the event the car is subjected to rear or side impacts. The lightweight aluminum filler tube is sealed

(In case it is hard to read, the excerpt says, “**Fuel tank location.** On all models except the rear-wheel drive Diplomat, the fuel tank is located under the car beneath the rear seat—where it’s forward of the rear suspension and between the bodyside rails—*giving it protection in the event the car is subjected to rear or side impacts.*”)

14.

By 1995, FCA was boasting in its advertising literature for other FCA vehicles that mounting the gas tank forward of the rear suspension provided impact protection for the tank. An excerpt from FCA’s brochure for the 1996 Dodge Caravan (which came out in 1995) follows.

Fuel tank is mounted for impact protection ahead of the rear suspension and between the bodyside rails.

(In case the excerpt above is hard to read, it says, “Fuel tank is mounted *for impact protection* ahead of the rear suspension and between the bodyside rails.”)

15.

By 1998, FCA was boasting in its advertising literature that *midships fuel tanks*—i.e., tanks located ahead of the rear axle—*provided superior protection for the tank.* An excerpt from FCA’s brochure for the 1999 Ram Cargo Van (which came out in 1998) follows.

***"Midship" fuel tank
is mounted ahead of the
rear axle for protection***

16.

On February 26, 1998, a mother whose daughter nearly died in a Jeep with a rear-mounted gas tank wrote FCA a letter. The letter told FCA that her daughter's Jeep had been struck in the rear, and "[w]ithin moments, the Jeep was on fire because the gas tank had been hit." Although Ms. Norma Friend's daughter escaped this burning Jeep, Ms. Friend wrote that she could only imagine what would happen if the driver of a rear-tank Jeep "could not get out of the car within moments." A copy of Ms. Friend's letter follows.

Dear Chrysler Corporation:

I think it is important to know about the following questionable safety features of your Jeep Grand Cherokee.

In October of 1996, I leased a 1997 Grand Cherokee. Two weeks ago, my daughter was stopped at a traffic light and was hit in the rear of the vehicle. Within moments, the Jeep was on fire because the gas tank had been hit. The driver-side door was already in flames when she jumped out of the car. Within minutes, the car blew up.

As far as the condition of my daughter is concerned, I am the luckiest person alive. She was not harmed physically.

However, in thinking about this afterwards, I can only imagine how horrible a situation it would be, if a driver had to remove a child from a car seat, or could not get out of the car within moments.

In addition to the mental trauma that my daughter and I have experienced, I am now put in a position to lease another car and must realize the financial impact of paying the up front expenses for a another new vehicle. The financial investment I made in the Jeep is lost.

I feel you should take some responsibility for both the redesign of this vehicle and my financial loss. I hope to hear from you as soon as possible regarding this matter.

Yours truly,

Norma Jean Friend / C329758

Norma Jean Friend

PEX3AD 800-631-4693

In 1998, FCA ran a computer-aided crash test on a rear-tank Jeep and determined that the rear-most *twenty-five inches* of the Jeep were getting crushed. That was alarming, because the gas tanks were located *eleven inches* from the rear. FCA concluded that "[t]he crush in the

structure in the vicinity of the fuel tank is undesirable and therefore needs to be minimized.” But FCA did nothing about the danger it acknowledged.

18.

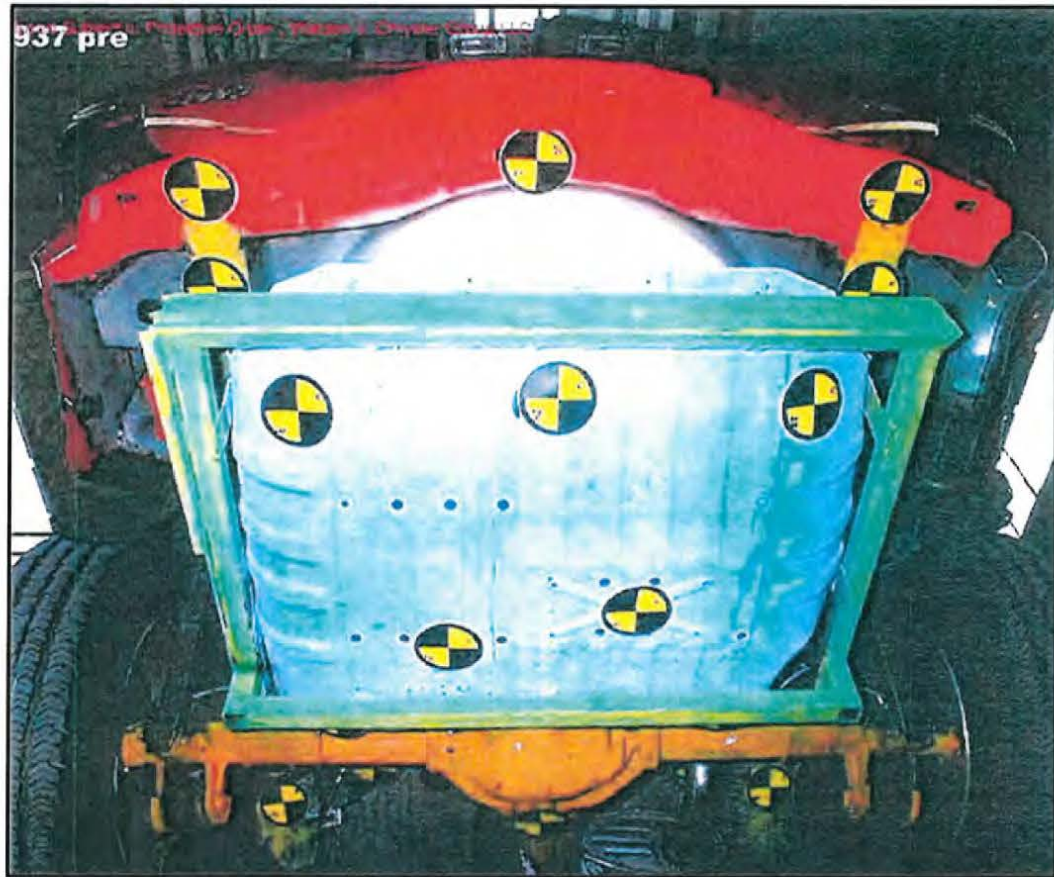
On January 26, 1999, in an internal book entitled “Fuel Systems,” FCA acknowledged that the gas tank should **not** be placed in “known impact areas.” An excerpt from that book follows.

The tank should be located in a manner that avoids known impact areas and provides isolation from the passenger compartment. Fuel Systems Engineering is to be consulted during advanced fuel tank packaging studies.

It is undisputed that the rear of a vehicle *is* a “known impact area.”

19.

On November 16, 1999, in preparation for federally-required rear impact testing at 50 miles per hour (as opposed to the previous requirement of 30 miles per hour), FCA conducted a crash test to see if one of its rear-tank Jeeps could pass the test. In an attempt to see what it would take to make the rear-tank Jeeps pass that test, FCA added a bumper-type guard and a steel frame around the tank before running the test. A photograph of the underside of the tested Jeep is below. The bumper-type guard is red and the steel frame is green.



It is undisputed that FCA put neither the bumper-type guard nor the steel frame on the vehicles that it sold to the public. Instead, FCA kept right on selling the rear-tank Jeeps, without that protection and despite actual knowledge that rear impacts into those Jeeps would occur at speeds of 50 miles per hour or more. The Jeeps with rear-mounted gas tanks that FCA sold had no rear bumper at all.

20.

In 2000, FCA's "Rear Impact Tech Club" (an internal organization created to study rear impacts) stopped placing test instruments in the rear-most twenty-four inches of Jeeps undergoing rear-impact testing because those instruments were getting crushed and destroyed. But FCA left the gas tanks in that crush zone. An excerpt from FCA's internal directions is below.

No accelerometers or other instrumentation in rear 24" of vehicle. These channels are often lost due to significant crush in that area and are non-value added

21.

In 2001, FCA's Rear Impact Tech Club acknowledged the obvious truth that as to crush zones, there "should be no crush in [the] tank area." An excerpt from the December 19, 2001 meeting agenda is below.

- 4) Review on Fuel Systems Guidelines and Methodology:**
- Overall methodology for evaluating fuel systems.
 - Determining the crush zone (should be no crush in tank area).
 - Obtaining pressure pulses and deceleration data.

It is undisputed that FCA kept right on manufacturing and selling Jeeps with rear gas tanks located in the crush zone after the Rear Impact Tech Club's findings in 2001. The Jeep Liberty in which [REDACTED] burned to death was a 2004 model.

22.

After the Rear Impact Tech Club acknowledged in writing that there "should be no crush in [the] tank area," FCA *disbanded the Rear Impact Tech Club and deleted its database of documents*. See 01/22/2015 Dep. of Michael Teets at 68:15-72:21, Dep. Ex. 20.

23.

On September 1, 2011, the nonprofit Center for Auto Safety wrote to FCA's Chairman and CEO, Sergio Marchionne, about the rear-tank Jeeps and warned that "[a]s with the Pinto, the fuel tank is located behind the rear axle; a dangerously vulnerable area in the rear impact crush

zone.”

24.

On June 3, 2013, the National Highway Traffic Safety Administration (“NHTSA”), the federal agency tasked with regulating automakers, wrote to FCA that “[t]he vulnerability of tanks located behind solid rear axles in rear impacts became well known following a series of fiery crashes involving the Ford Pinto” and warned FCA that the rear-tank Jeeps had “*defects relating to motor vehicle safety*.” (Emphasis added). *That was over four years before [REDACTED] burned to death in Hamilton, Ohio on October 20, 2017.*

25.

On December 10, 2014, FCA engineer Judson Estes admitted under oath that the rear-tank Jeeps were “vulnerable to rear impact.” 12/10/2014 Dep. of Judson Estes at 67:02-11.

26.

On April 2, 2015, a jury rendered a \$150,000,000.00 verdict against FCA after one of its rear-tank Jeeps exploded in a rear-end collision, killing four-year-old Remington Walden.

- a) In a special interrogatory, the jury found that FCA “acted with a reckless or wanton disregard for human life” in the design of the Jeep. *Walden v. Chrysler Group LLC*, Verdict Form (Superior Ct. of Decatur Cty., Ga., April 2, 2015).
- b) In a special interrogatory, the jury found that FCA “had a duty to warn and failed to warn” about the dangers of the Jeep. *Walden v. Chrysler Group LLC*, Verdict Form (Superior Ct. of Decatur Cty., Ga., April 2, 2015).
- c) After the verdict, in denying FCA’s motion for a new trial, the trial judge held that “[t]he evidence against FCA was overwhelming.” *Walden v. Chrysler Group LLC*, Order (Superior Ct. of Decatur Cty., Ga., April 2, 2015).

- d) In affirming the trial court's judgment, the Georgia Court of Appeals held that "a jury might legitimately conclude that 'from facts which [Chrysler knew], [it] should [have] realize[d] that there [was] a strong probability that harm may result...'" *Chrysler Group LLC v. Walden*, 792 S.E.2d 754, 761 (Ga. App. 2016).
- e) In affirming the trial court's judgment, the Georgia Supreme Court held that "[e]vidence showed that Chrysler *had long known* that mounting a gas tank behind the rear axle *was dangerous*. Evidence also showed that Chrysler's placement of the gas tank behind the rear axle was contrary to industry trends, which favored placing tanks in front of the rear axle." *Chrysler Group LLC v. Walden*, 812 S.E.2d 244, 247 (Ga. 2018) (emphasis added).

27.

FCA knew from real-world collisions that the gas tanks in its rear-tank Jeeps (specifically, 1993-2004 Grand Cherokees, 1993-2001 Cherokees, and 2002-2007 Liberties, all of which had tanks mounted within the rear-most eleven inches of the vehicle) were leaking in rear-end collisions. Plaintiff cannot identify each and every collision that FCA knew about before October 20, 2017. But the collisions known to FCA in which the gas tank leaked or exploded include *at least the following*. These other similar incidents, or OSIs, are presented below by *date*; *occupant(s)*; and *vehicle*.

- a) February 13, 1998; Lauren Friend; 1997 Jeep Grand Cherokee
- b) January 1, 1999; Jose Sierra, Natasha & Nicole Austin; 1997 Jeep Grand Cherokee
- c) July 12, 1999; Rhona Maulano; 1996 Jeep Grand Cherokee
- d) July 29, 1999; Eugene & Katherine Rolfe; 1998 Jeep Cherokee

- e) October 9, 1999; Tony Jackson; 1996 Jeep Grand Cherokee
- f) August 3, 2000; Sherman Hughes; 1996 Jeep Grand Cherokee
- g) October 17, 2000; Daniel Geddes; 2000 Jeep Grand Cherokee
- h) November 29, 2000; Ronald Coleman; 1993 Jeep Grand Cherokee
- i) December 27, 2000; Ashlei Dunn; 1997 Jeep Grand Cherokee
- j) January 26, 2001; John Belli, Lynne Belli, Nicole Belli; 1991 Jeep Cherokee
- k) August 14, 2001; Stacey Wolf; 1999 Jeep Grand Cherokee
- l) October 6, 2001; Kenneth Smith; 1995 Jeep Grand Cherokee
- m) June 14, 2002; Kristine Adler; 2002 Jeep Liberty
- n) June 30, 2002; Frederick Friedman 1998 Jeep Grand Cherokee;
- o) July 19, 2002; Latesa Moriss; 2002 Jeep Liberty
- p) November 21, 2003; Kimberly Hampton; 2004 Jeep Liberty;
- q) October 2, 2004; Robert Fontenot; 1993 Jeep Cherokee
- r) July 11, 2005; Lisa Turek; 2003 Jeep Liberty
- s) September 30, 2005; Jonathan Gero; 2004 Jeep Liberty
- t) February 12, 2006; Cassidy Jarmon; 1993 Jeep Grand Cherokee
- u) October 31, 2006; Jaye Donahoe; 2004 Jeep Liberty
- v) November 11, 2006; Michael Spillars; 2006 Jeep Liberty
- w) February 24, 2007; Susan Kline; 1996 Jeep Grand Cherokee
- x) March 8, 2007; Wallace Vicknair; 1995 Jeep Cherokee
- y) March 17, 2007; Luciano Ascencio; 1999 Jeep Grand Cherokee
- z) July 28, 2007; Stacey Mayer; Jeep Grand Cherokee
- aa) October 16, 2007; Antonia Aguilera, Maricela Carreon; 1993 Jeep Grand

Cherokee

- bb) November 22, 2007; William Jones; 2007 Jeep Liberty
- cc) March 19, 2009; Constance & Michelle Curtain; 1996 Jeep Cherokee
- dd) October 1, 2009; Susan & Thomas Smith; 1994 Jeep Grand Cherokee
- ee) September 21, 2010; Francis Freel; 2007 Jeep Liberty
- ff) March 1, 2011; Rivera Martinez; 2005 Jeep Cherokee
- gg) September 13, 2011; Travis Persinger; 2005 Jeep Liberty
- hh) November 16, 2011; Manuel Bringas-Mejia & Rafael Jaimes-Mejia; 1997 Jeep

Grand Cherokee

- ii) January 2012; Ana Piña; 2000 Jeep Cherokee
 - jj) March 12, 2012; Remington Walden; 1999 Jeep Grand Cherokee
 - kk) June 12, 2012; James Crotty; 1998 Jeep Cherokee
 - ll) August 11, 2012; Sharon Ams; 1999 Jeep Grand Cherokee
 - mm) September 2, 2012; Kati Womack; 2002 Jeep Grand Cherokee
 - nn) October 5, 2012; Heather Santor, Acoye Breckenridge; 1998 Jeep Cherokee
 - oo) October 28, 2012; Nolan Raboy; 2004 Jeep Liberty
 - pp) June 4, 2013; Omar DeLarosa; 1993 Jeep Grand Cherokee
 - qq) June 16, 2013; Dustin Davis, Amy Owens, David Reily; 1993 Jeep Cherokee
 - rr) August 11, 2013; Thomas and Kamilia Davis, Jaliah Williamsbey; 1999 Grand
- Cherokee
- ss) August 15, 2013; Williams Family of 7; Jeep Cherokee
 - tt) August 19, 2013; Gregory Burgett; 2002 Jeep Liberty
 - uu) October 29, 2013; Andrew Sommer; 2003 Jeep Cherokee

vv) November 10, 2013; Skyler Anderson-Coughlin; Jeep Grand Cherokee
ww) December 10, 2013; Katherine O'Neal; 2002 Jeep Grand Cherokee
xx) December 12, 2013; Reed Whitaker; Jeep Cherokee
yy) March 11, 2014; Esther & Joseph DiGiovanni; 2004 Jeep Liberty
zz) April 5, 2014; Magdaleno & Raymundo Sanchez; 1994 Jeep Cherokee
aaa) May 12, 2014; Edward & Theresa Dearden; 1995 Jeep Grand Cherokee
bbb) October 24, 2014; Patricia Vargo; 2006 Jeep Liberty
ccc) November 8, 2014; Fred Bailey; 2007 Jeep
ddd) November 11, 2014; Kayla White; 2003 Jeep Liberty
eee) November 1, 2015; Cortez Chism, Antoine Henley, Lamonte Riggs, Walter
Johnson; Jeep Cherokee
fff) December 24, 2015; Arvin Batra & Hamza Rizvi; 2015 Jeep Cherokee
ggg) December 4, 2016; Cesar Garcia, Cesar Urquiza; 2002 Jeep Liberty
hhh) July 29, 2017; Erica Scannavino; 1996 Jeep Cherokee
iii) August 28, 2017; Vicki Hill; 2007 Jeep Liberty

28.

Over the last twenty years, FCA has been in constant litigation involving post collision fuel fed fires in its rear-tank Jeeps and has faced sustained pressure from regulators, citizens, the press, and nonprofit entities to buy the vehicles back or conduct a meaningful recall.

29.

Through litigation and other means, FCA has received dozens or hundreds of expert reports from independent engineers and investigators identifying the dangers of its rear-tank Jeeps.

30.

All of the foregoing facts were known to FCA, and FCA was on notice of them, *before*

██████████ burned to death in Hamilton, Ohio on October 20, 2017.

31.

Because the renaming, acquisition, or recombination of companies does not ‘delete’ a company’s knowledge, FCA knew what its predecessor entities (such as Chrysler Corporation, DaimlerChrysler, Chrysler LLC, Chrysler Group LLC, etc.) knew.

32.

Although FCA *already knew* that rear-mounted gas tanks exposed occupants to fire and death, FCA designed, marketed, and sold the 2002-2007 Jeep Liberties with rear-mounted gas tanks.

33.

FCA mounted the gas tank on the subject Jeep *ten inches* from the extreme rear of the vehicle, and hanging down *five inches* below the piece of plastic that FCA euphemistically called a “bumper.”

34.

FCA did not warn anyone about the dangers of the rear-tank Jeep’s fuel system *before* selling those vehicles.

35.

FCA did not warn anyone about the danger of the subject Jeep’s fuel system *after* selling it. Instead, FCA did the opposite—*FCA’s Chairman and CEO repeatedly told the public that FCA’s rear-tank Jeeps were “absolutely safe.”* 01/09/15 Dep. of Sergio Marchionne at 19:12-

23.

36.

By model year 2008, FCA had moved the gas tanks on all of its Jeeps *forward* of the rear axle—but did not warn buyers of its existing rear-tank Jeeps about the dangers of the vehicles that FCA had sold them.

THE SUBJECT JEEP'S SEAT BACK

37.

FCA *has known for decades* that collapsing seat backs are dangerous. In the context of a vehicle fire, a collapsing seat is particularly bad because the occupant falls rearward, toward the fire. The occupant is both *disoriented*, which makes escape less likely, and *harder to reach*, which makes rescue less likely. Collapsing seat backs are dangerous even in the absence of fire because occupants can strike their heads on seat backs or roof pillars behind them, suffering head or cervical spine injuries; or can strike the heads of infants mounted in rear-facing child seats, killing or injuring the infant. All those things had happened, and FCA knew about those things happening. FCA knew about these dangers.

38.

FCA nonetheless designed, manufactured, marketed, and sold the subject Jeep with weak, collapsing seat backs.

39.

For decades before the subject Jeep was sold in 2004 and before [REDACTED] burned to death in 2017, rear impact crash tests conducted by FCA—often for the supposed purpose of fuel system integrity, or to test for compliance with federal minimum standard 301—revealed that seat backs with dummies in them collapsed in rear impact. (FCA knew that these tests were useful in “[i]nvestigat[ing] front seat performance” because FCA so acknowledged in

internal meeting minutes from November 8, 1996.)

40.

On December 10, 1980, FCA engineer A.R. Lenker reported to FCA's Engineering Safety Committee that in his review of ten rear impact tests conducted on FCA vehicles pursuant to federal minimum standard 301, the seat backs *failed* to some degree in *every test*. The committee acknowledged that "improvements could be made," but *declined* to strengthen the seats in part because of "development costs." An excerpt from the report follows.

Seat Belt Performance During MVSS 301 Rear Impact Tests

Mr. Lenkner presented a brief summary of results of seat back performance in approximately 10 recent MVSS 301 rear impact tests. At least some degree of seat back collapse and/or seat track slippage occurred in every test.

Mr. Simpson stated that improvements could be made, but would require development costs and a piece penalty would result. Subsequent discussion yielded that it appears that our seats perform at least as well as those of our competition. Field experience does not show this to be a significant injury producing problem. Seat strength requirements are specified by MVSS 207, Seating Systems, and we must and do meet those requirement.

Safety Committee did not make a recommendation.

41.

In February and March 1992, Daimler Benz (which was merged with FCA as "DaimlerChrysler AG" from approximately 1998 to 2007) advertised in various newspapers that Mercedes seats were safer because they were "designed to resist bending rearward, and twisting, in a wide variety of rear impacts." A copy of the advertisement follows.

It's not just a seat. It's a safety feature.

EXHIBIT NO. 9

Good seat design includes keeping the driver relaxed and alert. Beneath the firm but supple support of a Mercedes-Benz seat are layers, seven in all, of cloth, foam, reinforced rubber, and felt.

The backrest frame's sturdy formed-steel uprights and crossmember are designed to resist bending rearward, and twisting, in a wide range of rear impacts.

In a 30-mph car-to-car rear impact, the backrest's ability to absorb energy and resist collapsing is important. In a Mercedes-Benz seat, the backrest hinge point is designed to resist very high "bending moments."

The seat is securely mounted on tracks bolted to reinforced anchor points in the floor.

On February 16th, a national TV audience learned one major difference between every Mercedes and many average cars: front seats designed to withstand the energy of a rear impact. That's just one of the many virtues that makes a test drive worth your time. And Mercedes well worth the difference.

(The advertisement is unfortunately hard to read. The bold text in the top right with a line pointing to the seat back says, "The backrest frame's sturdy formed-steel uprights and crossmember are designed to resist bending rearward, and twisting, in a wide range of rear impacts.")

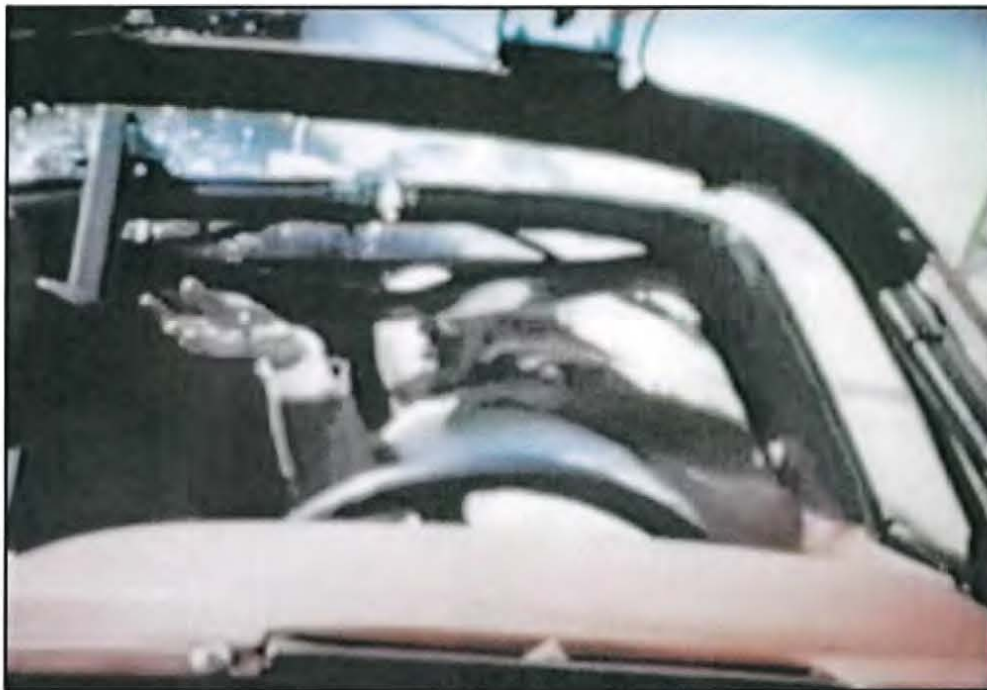
42.

On June 23, 1992, in an official engineering meeting, a group of FCA engineers gathered to watch a "60 Minutes" television show about automotive seat backs that had aired on CBS on February 16, 1992. The engineers discussed the issues raised by the show in light of their training, experience, and occupations, then made recommendations for FCA. They recommended that to keep occupants safe, *FCA should use stronger seats* like those used by Daimler Benz. An excerpt from their meeting minutes follows.

- Intermission: Paul Sheridan showed recent "60 Minutes" television segment on automotive seat back strength and its importance to occupant safety/fatality during rear collisions. Emphasis was placed on documented inadequacy and irrelevance of existing NHTSA standard (seat back strength must resist force 20 times greater than seat back weight). The only manufacturer that appears to have a seat back strength specification that is adequate and relevant is Mercedes-Benz (seat back strength must reliably resist collapse during a 35 mph rear collision with standard dummy). Chrysler (and Mitsubishi) was mentioned as one of several manufacturers that are involved in litigation involving rear collisions/seat back failures, etc.

43.

On March 16, 1993, one of FCA's Safety Leadership Teams watched the same 60 Minutes show about seat back strength. The show warned these executives that if a seat back failed, occupants could be "catapulted backwards," putting their spines at risk, and could "lose control of the car" as they slid backward. It also featured crash test videos showing dummies shooting rearward after their seat backs collapsed.¹ A screenshot follows.



¹ Excerpts from the 60 Minutes special are available online. Available at <https://www.youtube.com/watch?v=YeTHbDKPyc8>; <https://www.youtube.com/watch?v=FXIVHwX-rvQ>.

44.

On September 27, 1994, R.W. Hetherington wrote a letter to FCA warning about seat back failure.

45.

On January 12, 1996, an internal FCA memorandum described the *strong, non-collapsing* seats that it had installed in FCA's Sebring sedan, which had "frames and tracks . . . made from high strength steel." The memorandum concluded that these stronger seats "performed very well in impact tests, including rearward directions" and showed "very good rear impact and NCAP performance."

46.

On November 8, 1996, the meeting notice for FCA's "Seat Systems Tech Club" acknowledged that "technological advances have made possible significant improvement in the ability of the car seat to add appreciable crash victim occupant protection..."

47.

On November 23, 2004, a Tennessee jury returned a \$105.5 million verdict against FCA, having found that the weak, collapsing seat back in a Dodge minivan caused the death of minor Joshua Flax. The jury found that the seat backs were defective and unreasonably dangerous, that FCA failed to warn the Flax family about the dangers of the seat backs at the time of sale, that FCA failed to warn the Flax family about the dangers of the seat backs after the sale, and that FCA acted recklessly such that punitive damages should be imposed.

48.

On May 21, 2009, the executive director of the Center for Auto Safety, Clarence Ditlow, testified before Congress that "Chrysler vehicles dating from model years 1990 through 2009,

involving over 10 million vehicles, continue to pose the threat of seat back collapse” and that “[a]s early as 1980, Chrysler meeting minutes revealed that seat backs had collapsed rearward in every rear impact crash test but that any improvements were resisted because they would entail additional development costs.”

49.

In March of 2016, U.S. Senators Ed Markey and Richard Blumenthal sent a letter to FCA raising concerns about collapsing seats and warning that the then-existing federal minimum strength requirement was “not sufficient to mitigate injury or death of a rear-seat occupant due to seat back collapse in a rear-end collision.” That was a year and a half before [REDACTED] [REDACTED] seat back collapsed and she burned to death. FCA did nothing; FCA warned no one.

50.

On March 9, 2016, the nonprofit Center for Auto Safety sent an open letter to NHTSA Administrator Mark Rosekind, which noted that when a seat back collapsed, “the occupant of the seat will no longer be restrained and will be thrown into the rear seat area or even out of the vehicle. He or she may be injured. The front seat occupant or failed seat may also injure someone sitting in the rear.” The letter specifically mentioned two people killed in a 2006 Jeep Liberty fire following rear impact, noting “[t]he failure of the seatbacks may have hindered the ability of occupants to get out of the vehicle before it was consumed by fire.” That was also a year and a half before [REDACTED] seat back collapsed and she burned to death. FCA did nothing; FCA warned no one.

51.

Upon information and belief, [REDACTED] seat in the subject Jeep was manufactured for FCA and to FCA’s specifications by Johnson Controls Inc. (“JCI”), which also manufactured

many other seats for FCA (including but not limited to those in the Jeep Wrangler).

52.

FCA knew from real-world collisions that its seat backs were collapsing and causing injuries—sometimes in connection with a fire, and sometimes not. Plaintiff does not know, without the benefit of discovery, which FCA vehicles used the same seats as the subject Jeep, and Plaintiff cannot identify each and every collision that FCA knew about before October 20, 2017. But the collisions known to FCA involving seat back collapse include *at least the following*. These other similar incidents, or OSIs, are presented below by *date*; *occupant(s)*; and *vehicle*.

- a) July 3, 1988; Timothy, Lori, and Joshua Proehl; 1985 Dodge Caravan
- b) July 5, 1989; Jo Ann Pierno; 1983 Dodge station wagon
- c) October 29, 1994; John & Susan Borgia; 1989 Dodge Caravan;
- d) February 17, 1998; Anitra Fuller; 1997 Jeep Wrangler
- e) July 10, 1999; Morgan Dize; 1996 Dodge Caravan
- f) November 15, 1999; Robert H. Crawford; 1993 Dodge minivan
- g) January 26, 2001; John Belli; 1991 Jeep Cherokee
- h) June 30, 2001; Joshua Flax; 1998 Dodge Grand Caravan
- i) October 4, 2002; Vickie Jones; 2000 Dodge Caravan
- j) January 17, 2004; Dennis Gundy; 2000 Jeep Grand Cherokee
- k) October 15, 2004; Jerry Reid; 1999 Jeep Wrangler
- l) February 22, 2006; Wayne Bixler, Francisco Javier Gonzalez Hernandez, Olga Leticia Salazar Hernandez; 2003 Dodge Caravan;
- m) March 25, 2006; Glenn W. Brummer; 2003 Chrysler PT Cruiser

- n) August 4, 2007; Dzemila Heco; 2000 Dodge Neon
- o) October 8, 2007; Lyle Austin; 1996 Dodge Ram
- p) October 24, 2007; Aaliyah George; 1997 Plymouth Neon
- q) January 2, 2009; Christopher Sheldon, Carolina Hatton; 1999 Chrysler 300M
- r) April 25, 2010; Clint Whitstine and Penny Johnson; 2002 Jeep Liberty
- s) August 7, 2010; Dylan Burrus; Dodge Dakota
- t) November 2, 2010; Steven Fitzgerald and Joann Reid-Fitzgerald; 2002 Dodge Dakota
- u) May 6, 2011; Adam Laird; 1997 Jeep Cherokee
- v) July 2, 2011; Joshua Berry, Robin Perlo Berry, three minors (P.B., A.B., W.B.); 2003 Chrysler Town & Country Minivan
- w) August 26, 2013; Nicholas Maples; 2000 Jeep Wrangler
- x) October 14, 2013; Michael Parsons; 2008 Jeep Wrangler
- y) January 11, 2014; Chantae & Danny Reed; 2006 Jeep Liberty
- z) February 2, 2014; Weston Kingsley; 2003 Dodge Caravan;
- aa) April 27, 2015; Rachel Howell; 2008 Dodge Avenger
- bb) September 12, 2015; Linda Stripling; 2004 Chrysler Town & Country
- cc) September 25, 2015; Debra Clonts; 2006 Dodge Grand Caravan

53.

Over the last twenty years, FCA has been in constant litigation involving weak, collapsing seats and has faced sustained pressure from regulators, citizens, the press, and nonprofit entities to change its designs.

54.

Through litigation and other means, FCA has received dozens or hundreds of expert reports from independent engineers and investigators identifying the dangers of its weak, collapsing seats.

55.

All of the foregoing facts were known to FCA, and FCA was on notice of them, before [REDACTED] burned to death in Hamilton, Ohio on October 20, 2017.

56.

Because the renaming, acquisition, or recombination of companies does not 'delete' a company's knowledge, FCA knew what its predecessor entities (such as Chrysler Corporation, DaimlerChrysler, Chrysler LLC, Chrysler Group LLC, etc.) knew.

57.

Although FCA knew that collapsing seat backs put occupants at risk, FCA designed, marketed, and sold the 2002-2007 Jeep Liberties with weak, collapsing seat backs.

58.

FCA did not warn anyone about the dangers of the subject Jeep's weak seat back *before* selling it.

59.

FCA did not warn anyone about the danger of the subject Jeep's weak seat back *after* selling it.

THE RECALL

60.

On June 3, 2013, the Office of Defects Investigation (“ODI”) within NHTSA determined that the rear-tank Jeeps—specifically, the 1993-2004 Grand Cherokees and 2002-2007 Liberties—“*contained defects relating to motor vehicle safety*” and *asked FCA to recall them*. An excerpt from ODI’s letter follows.

This investigation revealed numerous fire-related deaths and injuries, fires that did not result in deaths and fuel leaks in rear impacts. As discussed more fully below, ODI believes that the MY 1993-2004 Grand Cherokee and MY 2002 – 2007 Liberty contain defects related to motor vehicle safety. Accordingly, ODI requests that Chrysler initiate a safety recall of these vehicles.

61.

FCA refused to recall its rear-tank Jeeps.

62.

Instead, Sergio Marchionne—the Chairman and CEO of FCA—sought a private, undisclosed meeting with the highest automotive regulators in the U.S. government, the Secretary of Transportation and the Administrator of NHTSA.

63.

Marchionne got his meeting—with only the Secretary, the Administrator, and himself present, as he had wanted—at O’Hare International Airport on June 10, 2013. An excerpt from an email from NHTSA’s Administrator, David Strickland, setting up that meeting follows.

From: david.strickland@dot.gov [mailto:david.strickland@dot.gov]
Sent: Friday, June 07, 2013 10:31 AM
To: Jody Trapasso
Subject: RE: Phone Call

Ok. The Secretary will be in Illinois on Sunday. We are willing to come to Detroit next week with a time that works for everyone. The meeting would only be with the Secretary and I, no other staff, as Sergio wanted.

64.

At the meeting, Marchionne and the government officials outlined an agreement.

65.

FCA knew, and had long known, that putting tow packages/trailer hitches on the rear-tank Jeeps would not fix the safety problem. As the President of Chrysler International had testified two years before, “the tow package does not protect the tank.” 06/14/2011 Dep. of Francois Castaing at 233:13-18.

66.

In fact, the tow package/trailer hitch made the danger created by the Jeeps’ rear tank location even worse because in a rear impact the trailer hitch can be driven forward *into the gas tank* like a spear. That obvious and dangerous fact was well known to FCA.

67.

Nonetheless, pursuant to the deal discussed at the private O’Hare meeting, FCA conducted only a limited recall that involved putting tow packages/trailer hitches on some of its rear-tank Jeeps. 01/09/2015 Dep. of Sergio Marchionne at 141:19-24.

68.

Pursuant to that “recall,” the [REDACTED] family took the subject Jeep in to an FCA dealer.

69.

[REDACTED] [REDACTED] Jeep already had an original-equipment (“OEM”) tow package/trailer hitch.

70.

Because [REDACTED] Jeep already had the OEM trailer hitch, FCA modified nothing on the subject Jeep pursuant to the recall.

71.

FCA did not warn the [REDACTED] family or anyone else that the tow package/trailer hitch would not protect the tank. FCA did not warn the [REDACTED] family or anyone else that the tow package/trailer hitch made the rear tank Jeeps *more* dangerous.

PURCHASE AND RETENTION OF THE SUBJECT JEEP

72.

[REDACTED] bought the subject Jeep new from a Jeep dealer in Hamilton, Ohio on or about October 2, 2004.

73.

[REDACTED] relied upon FCA, and FCA's expertise as a carmaker, to identify and disclose material risks associated with the subject Jeep at the time of the Jeep's initial sale.

74.

[REDACTED] relied upon FCA, and FCA's expertise as a carmaker, to identify and disclose material risks associated with the subject Jeep *after* the Jeep's initial sale.

75.

Both before and after the Jeep's initial sale, FCA concealed the risks known to FCA of the Jeep's fuel system, seat back, and tow package/trailer hitch from [REDACTED].

76.

Instead of warning [REDACTED] about the risks, FCA made affirmative misrepresentations about its rear-tank Jeeps (including the subject Jeep) by repeatedly announcing that the rear-tank Jeeps were "absolutely safe." 01/09/15 Dep. of Sergio Marchionne at 19:12-23.

77.

██████████ believed that FCA would conduct a meaningful recall of the subject Jeep if it had a significant defect or posed a safety risk, and they relied upon FCA to do so.

78.

██████████ believed and relied upon FCA's representation that, because the subject Jeep already had a trailer hitch, it did not need any additional modifications in order to be safe.

79.

FCA's representations were false, and FCA knew it.

THIS COLLISION

80.

On October 20, 2017, ██████████ was operating the subject Jeep as its driver and only occupant.

81.

██████ ████████ was headed westbound on S.R. 129 in Butler County, Ohio.

82.

The rear of the subject Jeep, where the gas tank was located, was struck by a truck driven by Defendant Moore and owned by Defendant Tri-State.

83.

The part of the Jeep *forward* of the rear axle—where a midships gas tank would have been located—was not significantly damaged. But the rear crush zone, where FCA had placed

the gas tank, was severely damaged. A picture follows.



84.

The subject Jeep's gas tank ruptured.

85.

██████████ seat failed and collapsed rearward, as shown in the picture below.



86.

Because her seat back collapsed, [REDACTED] body fell rearward, such that she was facing upward with her head toward the ruptured gas tank.

87.

The gasoline ignited.

88.

The Jeep caught fire.

89.

The Jeep exploded.

90.

██████████ could not escape the burning Jeep.

91.

Bystanders were unable to rescue ██████████ from the burning Jeep.

92.

██████████ suffered unimaginable pain.

93.

██████████ burned to death.

94.

The trailer hitch on the subject Jeep—which FCA had presented to the public, to NHTSA, and to the ██████████ as a *solution* to this problem—had pierced the subject Jeep’s gas tank like a spear. A picture taken from underneath the subject Jeep, showing the underside-rear, follows.



BANKRUPTCY AND BAILOUT

95.

In 2009, FCA declared bankruptcy and received a taxpayer-funded bailout.

96.

FCA initially tried to use the bankruptcy to escape liability for vehicles manufactured before the bankruptcy.

97.

When the press picked up on the story of FCA's attempt to avoid its liabilities *to* taxpayers based on the bailout funded *by* the taxpayers, public pressure on FCA mounted.

98.

FCA relented. FCA accepted liability for *pre-bailout vehicles* involved in *post-bailout wrecks* (such as this case).

99.

To formally accomplish the assumption of these liabilities, in its federal bankruptcy proceedings, FCA amended Section 2.08(h) of the Master Transaction Amendment as follows.

1. Section 2.08(h) of the MTA shall be amended in its entirety to read as follows:

"(h) (i) all Product Liability Claims arising from the sale after the Closing of Products or Inventory manufactured by Sellers or their Subsidiaries in whole or in part prior to the Closing and (ii) all Product Liability Claims arising from the sale on or prior to the Closing of motor vehicles or component parts, in each case manufactured by Sellers or their Subsidiaries and distributed and sold as a Chrysler, Jeep, or Dodge brand vehicle or MOPAR brand part, solely to the extent such Product Liability Claims (A) arise directly from motor vehicle accidents occurring on or after Closing, (B) are not barred by any statute of limitations, (C) are not claims including or related to any alleged exposure to any asbestos-containing material or any other Hazardous Material and (D) do not include any claim for exemplary or punitive damages."

100.

On August 27, 2009, FCA issued a press release announcing that it would “accept product liability claims on vehicles manufactured by Chrysler LLC (now OldCarco LLC) before June 10, 2009, and involved in accidents on or after that date.”

101.

On August 27, 2009, FCA wrote a letter to U.S. Senator Richard Durbin assuring him that “the company will accept product liability claims on vehicles manufactured by Old Carco before June 10 that are involved in accidents on or after that date.”

102.

On March 1, 2016, the bankruptcy proceedings closed. *Overton v. Chrysler Group LLC*, No. 2:17CV01983, 2018 WL 847772, at *2 (N.D. Ala. Feb. 13, 2018).

103.

On March 10, 2015, the trial court in *Walden v. Chrysler Group LLC* denied FCA’s motion for summary judgment in which FCA had argued that it was not liable for product liability claims arising out of vehicles manufactured before the bankruptcy. Although FCA (unsuccessfully) appealed the trial court’s judgment to the Georgia Court of Appeals and Georgia Supreme Court on other grounds, FCA *did not appeal* the trial court’s ruling about the bankruptcy and bailout.

FEDERAL MINIMUM STANDARDS

104.

To sell a vehicle in the United States, a manufacturer must attest to the National Highway Traffic Safety Administration (“NHTSA”) that the vehicle meets certain minimums set by

NHTSA. These minimums are collectively called the Federal Motor Vehicle Safety Standards (“FMVSS”).

105.

The FMVSS are “minimum standard[s].” 49 U.S.C. § 30102(a)(9).

106.

Although compliance with the FMVSS means that a vehicle may be sold in this country, compliance does not preclude liability under state law. 49 U.S.C. § 30103(e).

107.

The federal minimum that requires manufacturers to conduct rear-impact crash tests in order to evaluate fuel system integrity is FMVSS 301 (codified at 49 C.F.R. § 571.301). At the time the subject Jeep was sold, FMVSS 301 required only a 30-mph rear impact by a wide, flat barrier resembling a sheet of plywood. This “test” dated from the 1970s.

108.

FCA knew that compliance with FMVSS 301 was not enough to protect vehicle occupants. FCA knew that in part because NHTSA had informed FCA in 2013 that its rear-tank Jeeps “contain[ed] defects related to motor vehicle safety” despite their alleged compliance with FMVSS 301, and because FCA ultimately had to recall certain rear-tank Jeeps despite their alleged compliance with FMVSS 301.

109.

The federal rule that sets a minimum for seat back strength is FMVSS 207 (codified at 49 C.F.R. § 571.207). At the time the subject vehicle was sold, FMVSS 207 was so easy to pass that *some commercially available lawn chairs passed it*. This “test” dated from the 1970s.

110.

FCA knew that compliance with FMVSS 207 was not enough to protect vehicle occupants. FCA knew that because its own “Seat Systems Tech Club” had concluded in 1996 that FMVSS 207 “requires inadequate seat strength” and that FMVSS 207 had been the subject of “several valid criticisms.” The Seat Systems Tech Club went on to conclude, in 1996, that “technological advances have made possible significant improvement in the ability of the car seat to add appreciable crash victim occupant protection...” An excerpt from their memorandum follows.

There have been several valid criticisms of the current Federal Motor Vehicle Safety Standard (FMVSS) 207 addressing seating systems. Generally it is acknowledged that the current standard requires inadequate seat strength to insure that the seat does not fail when a car is subject to a severe rear impact. Furthermore, technological advances have made possible significant improvement in the ability of the car seat to add appreciable crash victim occupant protection, especially with the advent of integrated seat concepts.

111.

As a matter of law, compliance with the federal minimums, even if FCA alleges such compliance, is not a defense.

LIABILITY OF FCA

112.

At the time of the subject Jeep’s initial sale *and* afterward, FCA knew that its rear-tank Jeeps (including the subject Jeep) were defective and unreasonably dangerous because they were vulnerable to fires and explosions following rear impact.

113.

At the time of the subject Jeep’s initial sale *and* afterward, FCA knew that its vehicles

equipped with the seat that FCA installed in the subject Jeep, and substantially similar seats, were defective and unreasonably dangerous because the seat backs collapsed in rear impact.

114.

At the time of the subject Jeep's initial sale *and* afterward, *FCA knew that collapsing seat backs were especially dangerous in a vehicle prone to catching fire in rear impact*, such as the subject Jeep, because a collapsing seat disorients an occupant, makes the occupant less accessible to rescuers, and moves the occupant closer to the source of the fire.

115.

The subject Jeep was defective, and FCA is liable, because the foreseeable risks associated with its design exceeded the benefits associated with that design. *See* O.R.C. § 2307.75; *see also* O.R.C. § 2307.73(A).

116.

The subject Jeep was defective, and FCA is liable, because FCA failed to warn about risks known to it at the time that the subject Jeep left FCA's control. *See* O.R.C. § 2307.76(A)(1); *see also* O.R.C. § 2307.73(A).

117.

The subject Jeep was defective, and FCA is liable, because FCA failed to warn about risks known to it *after* FCA marketed and sold the subject Jeep. *See* O.R.C. § 2307.76(A)(2); *see also* O.R.C. § 2307.73(A).

118.

FCA is liable for a negligent undertaking with respect to the hitch and "recall." *See Brink v. Giant Eagle*, 2017 Ohio 7960, ¶ 44 (2017) (elements of undertaking liability).

119.

FCA is liable for negligent inspection and repair. *See Durham v. Warner Elevator Mfg. Co.*, 166 Ohio St. 31, 39-40 (1956) (describing cause of action).

120.

FCA is liable even though the subject Jeep is more than ten years old because FCA engaged in fraud with regard to information about the subject Jeep. *See* O.R.C. § 2305.10(C)(2); *Papasan v. Dometic Corp.*, No. 16-CV-02117, 2017 WL 4865602, at *2-4, *11 (N.D. Cal. Oct. 27, 2017) (applying Ohio law and concluding that manufacturer could be liable for product older than ten years because manufacturer engaged in fraud); *In re Whirlpool Corp.*, 45 F. Supp. 3d 706, 721-23 (N.D. Ohio 2001) (manufacturer's fraudulent concealment tolled statute of limitations); *Jones v. Am. Tobacco Co.*, 17 F. Supp. 2d 706, 720 (N.D. Ohio 1998) (manufacturer's concealment constituted fraud).

121.

FCA engaged in fraud. *See Schmitz v. Nat'l Collegiate Athletic Ass'n*, 2016 Ohio 8041, ¶ 54-57 (2016) (elements of fraudulent concealment); *Upperman v. Grange Indemn. Ins. Co.*, 135 Ohio Misc. 2d 8, 15-16 (2005) (same).

- a) FCA had a duty to disclose the risks associated with the subject Jeep's fuel system, the subject Jeep's seat backs, and the tow package/trailer hitch. *See* O.R.C. § 2307.76 (duty to warn at time of initial sale and afterward).
- b) FCA fraudulently concealed the dangers of the subject Jeep's fuel system and seat backs when the subject Jeep was first sold.
- c) FCA fraudulently concealed the dangers of the subject Jeep's fuel system and seat backs *after* the subject Jeep was first sold.

- d) FCA fraudulently concealed the fact that “the tow package/trailer hitch does not protect the tank” during the recall process. *See* 06/14/2011 Dep. of Francois Castaing at 233:13-18.
- e) FCA fraudulently concealed the dangers created by the tow package/trailer hitch.
- f) The risks associated with the subject Jeep’s fuel system, the subject Jeep’s seat backs, and the tow package/trailer hitch were material.
- g) FCA knew about the risks associated with the subject Jeep’s fuel system, the subject Jeep’s seat backs, and the tow package/trailer hitch.
- h) FCA concealed the risks associated with the subject Jeep’s fuel system, the subject Jeep’s seat backs, and the tow package/trailer hitch because disclosing these risks would have hurt FCA’s sales.
- i) FCA concealed the risks associated with the subject Jeep’s fuel system, the subject Jeep’s seat backs, and the tow package/trailer hitch; and instead announced that the Jeeps were “absolutely safe;” because FCA “wanted the American people to believe” that the Jeeps were safe. 01/09/2015 Dep. of Sergio Marchionne at 157:10-158:01.
- j) [REDACTED] justifiably relied on FCA, with its automaking expertise, to warn them of known dangers as Ohio law required. *See* O.R.C. § 2307.76 (duty to warn at time of initial sale and afterward).
- k) If [REDACTED] had known about the risks that FCA knew about but concealed, they would not have purchased or kept the subject Jeep.
- l) The risks that FCA knew about, but nonetheless concealed, killed [REDACTED] when, in a foreseeable rear-end collision, the Jeep’s rear gas tank location was

crushed, the trailer hitch buckled into the gas tank area, the gas tank ruptured, and [REDACTED] seat collapsed such that she could neither escape nor be rescued from the resulting fire.

m) FCA made affirmative misrepresentations about the subject Jeep, including that it was "absolutely safe."

122.

[REDACTED] did not know about the dangers associated with the subject Jeep despite their exercise of reasonable diligence.

LIABILITY OF MOORE

123.

Moore negligently struck the subject Jeep in the rear.

124.

Moore was negligent because he failed to maintain an assured clear distance ahead.

125.

Moore was negligent *per se* because he followed too closely in violation of O.R.C. § 4511.34.

LIABILITY OF TRI-STATE

126.

At the time of the collision, Moore was an employee of Tri-State.

127.

At the time of the collision, Moore was working in the course and scope of his

employment with Tri-State.

128.

Tri-State is vicariously liable for Moore's misconduct.

129.

Tri-State is liable for Moore's misconduct under the doctrine of *respondeat superior*.

CAUSATION

130.

But for Moore's misconduct, the collision would not have occurred.

131.

Moore's misconduct proximately caused the collision.

132.

But for FCA's misconduct, [REDACTED] would have survived the collision.

133.

FCA's misconduct proximately caused [REDACTED] death.

134.

But for Defendants' misconduct, [REDACTED] would not have been killed.

135.

Defendants' misconduct proximately caused [REDACTED] death.

DAMAGES

136.

[REDACTED] suffered unimaginable pain.

137.

██████████ was burned to death.

138.

██████████ was fifty-eight years old. She was the wife of Plaintiff ██████████, the sister of ██████████, the mother of two sons, and the grandmother and guardian of her granddaughter. She had worked as a surgical nurse for Hamilton area hospitals.

139.

Plaintiff seeks to recover all damages to which Plaintiff is legally entitled.

140.

Plaintiff seeks to recover damages for decedent's beneficiaries as follows:

- a) wrongful death (*see* O.R.C. § 2125.02), including but not limited to:
 - a. loss of society (including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education),
 - b. mental anguish, and
 - c. loss of support and services; and
- b) survivorship (*see* O.R.C. § 2305.21), included but not limited to:
 - a. pain and suffering, and
 - b. personal injury.

141.

Defendants are jointly and severally liable for these damages.

WHEREFORE

142.

Plaintiff respectfully requests judgment against Defendants in an amount to be shown at trial (exceeding \$25,000, *see* Civ. R. 8(A)) together with interest, costs, and such further relief as is just and proper.

This 16th day of July, 2018.

Respectfully submitted,

BUTLER WOOTEN & PEAK LLP

BY:

James E. Butler, Jr. *wep/PR*
JAMES E. BUTLER, JR.

Georgia Bar No. 099625

Pro Hac Vice Admission Pending

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BY: Richard A. Hyde *wep/psf*

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INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please cause summons and a copy of the complaint to be served upon the within named defendants by Certified U.S. Main Return Receipt Requested to wit:

FCA US LLC
c/o CT Corporation Systems, Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

TRI STATE CONCRETE INC.
c/o Dean Dillingham, Statutory Agent
1 Millikin Street, Suite A
Hamilton, Ohio 45013

TRACY WAYNE MOORE
1226 North Frieda Drive
Fairfield, Ohio 45014