$150 million verdict against Chrysler in first rear gas tank Jeep fire trial

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At 6:15 pm yesterday, April 2, a jury in Bainbridge, Georgia returned a verdict in a case filed in 2012 by the parents of Remington Cole Walden, who died from fire after the 1999 Jeep Grand Cherokee in which he was riding exploded in flames following a rear impact. The rear impact ruptured the gas tank, causing a leak and fire. The jury found that Chrysler had acted with a "reckless or wanton disregard for human life" and that Chrysler "had a duty to warn and failed to warn of a hazard associated" with the Jeep. The jury also found the striking driver liable. The jury returned a verdict for $30 million for Remington Walden's pain and suffering, and for $120 million for the full value of the life of Remington Walden. The jury determined that Chrysler was 99% at fault, and Mr. Harrell was 1% at fault.

Chrysler had never before stood trial in any rear gas tank lawsuit filed against it, having settled prior lawsuits. The Plaintiffs in the Walden case declined to settle.

The verdict was rendered in the Superior Court of Decatur County, Georgia, after a nine day trial before Judge J. Kevin Chason. Plaintiffs in the case were Lindsay Newsome Strickland and James Bryan Walden. At the time of Remington's death on March 6, 2012, his parents were married. Their marriage did not survive their son's tragic death.

The verdict was against "Chrysler Group LLC now known as FCA US LLC," a division of FCA N.V., an acronym for Fiat Chrysler Automobiles. Fiat changed the name of its subsidiary on December 16, 2014.

The Grand Cherokee in which Remington was a passenger had a rear gas tank, only 11 inches from the back of the car and hanging 6 inches below the bottom of the car. Plaintiffs claimed that Chrysler had known for decades about the dangers of that gas tank design and that a "midships" gas tank location – forward of the rear axle – was much safer. Plaintiffs claimed that Chrysler had itself been warned repeatedly that its rear gas tank design was dangerous in rear impacts. Those warnings came from Chrysler customers who'd been in Jeeps with rear gas tanks that ruptured in both low-speed and high-speed rear impacts, and from Chrysler's own knowledge of real world collisions.

Chrysler admitted that the rupture of the gas tank caused the fire and that it could have put the gas tank on the 1999 Grand Cherokee in the "midships" position. Plaintiffs argued there was no evidence that a "midships" gas tank would have been punctured in this wreck.

Chrysler argued that the wreck was "severe" and that the pickup truck that struck the back of the Jeep was going at least 51 mph, but it was undisputed that neither the driver of the Jeep nor the driver of the pickup were injured at all, and the only injury suffered by Remington Walden from the impact was a fractured leg. The evidence was undisputed that Remington died from burn injuries. Chrysler had named a pathologist from Billings, Montana to testify to the contrary, but Chrysler chose not to call him to the witness stand.

Plaintiffs presented evidence that Chrysler knew about 17 other rear impact wrecks where Jeep rear gas tanks failed before Remington Walden died on March 6, 2012. One of them involved a crash in New Jersey in 1998, where a young lady managed to escape her burning Jeep. On February 26, 1998 her mother, Norma Jean Friend, who owned the Jeep, wrote to Chrysler to warn it. "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." Fourteen years later, Remington Walden, belted and in a booster seat, died from fire because no one could get him out fast enough.

Plaintiffs contended that in many of those other similar wrecks the impact was at low speed and the damage to the Jeep was minimal. Plaintiffs' counsel Jeb Butler argued to the jury "when the tank fails at low speed and fails at high speed, the problem isn't speed – its tank location."

"It has been an honor and a privilege to represent Lindsay and Bryan," said Jim Butler of Butler Wooten Cheeley & Peak LLP. "They are very pleased with the verdict and hope it will help people realize the dangers posed by these rear gas tank Jeeps."

"Chrysler consciously chose to put American families at risk, and gambled that juries would not figure it out," said Jeb Butler of Butler Tobin LLP. "A jury in Bainbridge, Georgia has proved them wrong."

Chrysler put only one person from Chrysler on the stand – Fiat-Chrysler Chief Operating Officer Mark Chernoby. Chernoby testified that he was not authorized to speak for the corporation – that only FCA Chairman Sergio Marchionne could do that. Marchionne did not attend the trial. When cross examined at trial, Chernoby refused to admit that if an automaker knows of a danger from its product it has a duty to warn the public of that danger.

Plaintiffs presented four Chrysler witnesses at trial, all by videotaped depositions: Chrysler engineers Judson Estes, Michael Teets, and Philip Cousino, and FCA Chairman Marchionne. Chrysler's lawyers did not ask any of those witnesses a single question.

Chrysler sought to defend itself by claiming that the 1999 Grand Cherokee passed the old federal standards crash test in force in 1999. That federal motor vehicle safety standard is called FMVSS 301. But Fiat-Chrysler's own Chairman Marchionne rebutted that argument. Marchionne was deposed on videotape on January 14, 2015, and his videotaped deposition was

played at trial. Marchionne, a lawyer, admitted that under federal law compliance with the 301 standard was no defense, and the federal standards are only "minimum" standards, and that compliance with a minimum standard is not sufficient.

Plaintiffs also proved that NHTSA had studied that old 301 standard, which in 1999 had not been changed since the early 1970s, and concluded that it was not effective. The old 301 standard did not replicate real world wrecks. In that old 301 crash test, a car is hit directly in the rear by a device at 30 mph. The device is constructed so that no "underride" can occur. "Underride" is when the front of the striking vehicle goes under the rear of the hit vehicle. Chrysler's own expert witnesses at trial admitted the Walden wreck was an underride wreck. Plaintiffs contended the rear gas tank on Chrysler's Jeeps has no protection in an underride wreck, and can be hit directly by the striking vehicle.

Automakers knew of NHTSA's studies regarding old 301, and had been given advance notice as early as 1992 that the standard was going to be upgraded and made more rigorous. In 1999 Chrysler ran the first and only crash test of a rear gas tank Jeep at more than 30 mph. That crash test was on a 1999 Grand Cherokee, at 50 mph, and "offset" – meaning the car was hit in the rear at an angle. That was the new 301 crash test. But before running that crash test Chrysler modified the Jeep by putting a steel cage around the gas tank and a steel bumper beam behind the gas tank to protect it. Chrysler obviously knew that to survive a 50 mph rear impact the rear gas tank needed that protection – but Chrysler never added any protection to the gas tanks in the Grand Cherokees it sold and never warned anyone that it knew the gas tank could not survive a real world 50 mph rear impact.

The new, more rigorous 301 standard became effective in 2003. For the 2005 model Grand Cherokee, first sold in 2004, Chrysler moved the gas tank from the rear to the midships location. Chrysler did not bring any witness to explain why it had moved the gas tank in the Grand Cherokee. Plaintiffs proved through the videotaped depositions that Chrysler had formed, in 2000, a "Rear Impact Tech Club" to study the then-proposed new 301 crash test, and that that group had created a database of documents. Plaintiffs proved that database of documents had been destroyed by Chrysler.

Plaintiffs contended that the rear was a bad place to put something as potentially dangerous as a gas tank, and that the gas tank on the Chrysler Jeeps was particularly vulnerable to rear impact because it was only 11 inches from the rear, hanging 6 inches below the bottom of the car. Chrysler engineer Estes admitted that the rear gas tank "is vulnerable to rear impact" and that in 1998, Chrysler knew that the rear gas tank on a 1999 Grand Cherokee would be crushed in rear impact. Estes admitted that for the 30 mph crash tests, Chrysler had a rule against putting any instruments in the back 24 inches of the Jeeps – where the gas tank was located – because Chrysler knew they would be crushed.

Chrysler injected into the trial the investigation of the rear gas tank Jeeps by the National Highway Traffic Safety Administration (NHTSA). On June 3, 2013, after a long investigation,

that agency's Office of Defects Investigation (ODI) notified Chrysler that it believed the Jeeps with rear gas tanks were defective because of the gas tank location. On June 7, 2013, Fiat-Chrysler Chairman Marchionne requested a private meeting with then-NHTSA Administrator David Strickland. That meeting was held in secret on June 10, 2014 at the FAA office at Chicago O'Hare airport. At Marchionne's request, the meeting was limited to himself, Strickland, and then-Secretary of Transportation Ray LaHood. (NHTSA is an agency within the Department of Transportation.) The career professionals from ODI who had spent nearly three years investigating the jeeps were not invited. LaHood later told the press that the three men reached agreement at that meeting.

NHTSA agreed to let Chrysler recall some of the Jeeps and add trailer hitches to them, for "incremental protection in certain low speed impacts."

Strickland then left NHTSA and became a partner at the Venable law firm, which has for years represented and done lobbying work for Chrysler. Plaintiffs' counsel in the Walden case sought to depose Strickland, who referred them to the NHTSA lawyers, who denied Plaintiffs' request to depose Strickland. One of Chrysler's lawyers in the Walden case was former NHTSA Chief Counsel Erika Z. Jones.

In the trial Chrysler contended that the ultimate NHTSA decision agreeing with Chrysler's proposed recall meant those Jeeps were not defective. Plaintiffs responded by showing that ODI never retracted its finding of defect, but that the investigation was closed only when the top political officials, the Administrator Strickland and the Secretary LaHood, directed it be closed.

ODI had investigated four different Jeep models with rear gas tanks – the Cherokee, 1993-98 Grand Cherokee, 1999-2004 Grand Cherokee, and 2002-2007 Liberty. ODI found that the latter three were defective. After the private secret meeting in Chicago, NHTSA approved Chrysler's proposed trailer hitch recall only for the 1993-1998 Grand Cherokee and 2002-2007 Liberty, but not for the 1999-2004 Grand Cherokee model that was at issue in the Walden case. The Walden case was then pending, having been filed on July 9, 2012.

NHTSA's decision to let Chrysler recall two of the models ODI had concluded were defective came just two years after the former head of Engineering for Chrysler, Francois Castaing, testified under oath that the trailer hitch does not protect the tank. At trial Chrysler's own expert witness Jon Olson, formerly a Ford fuel systems engineer testified that adding a trailer hitch "can be a detriment" in rear impacts except at low speeds, and "can become a puncture source."

Chrysler sought to defend its rear gas tank design at trial by claiming that back in 1999 other automakers were still putting gas tanks at the rear on some of their vehicles. Plaintiffs showed, as ODI had found, that automakers had been abandoning the rear gas tank design since the Pinto debacle in the 1970s, that Chrysler well knew the safety benefits of a midship gas tank location, that Chrysler itself had moved gas tanks on many of its cars, pickups, and SUVs to the midship

location before 1999, and that no automaker currently sells any passenger cars in this country with a rear gas tank. Plaintiffs presented multiple Chrysler documents from before 1999 where Chrysler itself wrote - including in advertising brochures for various Chrysler vehicles – that the gas tank was located midships "for protection in rear impacts."

After the verdict, a Chrysler spokesperson complained that the trial Court had not allowed Chrysler to present some "statistical" evidence to the jury. The Court excluded Chrysler's statistical analyses because Georgia law requires that before other incidents evidence may be admitted the proffering party must show the other incidents are substantially similar to the subject wreck. Chrysler admitted that its statistical analyses were based on dissimilar wrecks and dissimilar vehicles, which meant the statistical analyses were not admissible in evidence as a matter of law. Chrysler also admitted that substantial similarity must be shown, and even argued that some of the other similar incident evidence Plaintiffs sought to present was not substantially similar to the subject wreck. The statistical analyses Chrysler sought to introduce were prepared by Chrysler hired witnesses to submit to ODI, and were categorically rejected by ODI. "To borrow from Mark Twain, there are three kinds of lies: lies, damned lies, and statistics," said Jim Butler. "Chrysler's 'statistics' are so cooked up they fit all three categories."

Before trial started Chrysler sought to have Plaintiffs' case dismissed on "summary judgment" on the grounds that Plaintiffs' claims were barred by the 2009 order of a the bankruptcy court in New York that had supervised the Chrysler bankruptcy proceedings, commonly referred to as the "bailout," which culminated in Fiat taking control of Chrysler. But Plaintiffs proved that Chrysler had filed a stipulation in the bankruptcy court that Fiat-Chrysler would remain liable for claims involving vehicles made by Chrysler before 2009 that were involved in wrecks after 2009. That stipulation was signed by Marchionne himself. The Walden Jeep was a 1999 model, and the Walden wreck was on March 6, 2012. Plaintiffs proved that Chrysler had sent letters to U. S. Senators stating it would be liable for such claims, and that Chrysler had issued a press release in 2009 stating it would be liable for such claims. In his videotaped deposition Marchionne admitted that for Chrysler to contend it was not liable for the Walden claims would be "dishonest." The trial Court rejected Chrysler's arguments.

Because of the 2009 bankruptcy, however, Chrysler was not liable for punitive damages.

Plaintiffs were represented by Jim Butler of Butler Wooten Cheeley & Peak (Atlanta and Columbus, Georgia) and Jeb Butler of Butler Tobin (Atlanta, Georgia), George Floyd (Bainbridge, Georgia), Cathy Cox (formerly of Bainbridge and currently President of Young Harris College in Young Harris, Georgia), and David Rohwedder of Butler Wooten Cheeley & Peak, ably assisted by paralegals Beth Glen and Kate Dondero, Ray Davis, IT Specialist and investigator Nick Giles.

Chrysler was represented by Brian Bell and Anthony Monaco of Swanson Martin & Bell (Chicago, Illinois); Diane Owens, Terry Brantley, and Alicia Timm of Swift Currie (Atlanta,

Georgia); Sheila Jeffrey and Brian Westenberg of Miller Canfield (Detroit, Michigan); Erika Z. Jones of Mayer Brown (Washington, DC); Alan DeGraw of Chrysler (Auburn Hills, Michigan); and Bruce W. Kirbo Jr. (Bainbridge, Georgia).

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