IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

SHAMELL SAMUEL-BASSETT on behalf of herself and all others similarly situated, Plaintiff, vs. KIA MOTORS AMERICA, INC. Defendant	: : : : : : : : :	JANUARY TERM, 2001 NO. 2199

OPINION

"All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law...."

Constitution of Pennsylvania at Article 1 Section 11.

INTRODUCTION

After eight days of trial, a jury found that there was a common defective design of the brake system of the 1995 to 2001 Kia Sephia. Because of the design defect, even new Sephias required brake repair every 5,000 miles. Kia warranted to all new purchasers of the Sephia that their vehicle would be free from defect in material and workmanship for 36 months or 36,000 miles:

> "Kia Motors America, Inc. warrants that your new Kia Vehicle is free from defects in material or workmanship, subject to the following terms and conditions...
>
> Except as limited or excluded below, all components of your new Kia Vehicle are covered for 36 months or 36,000 miles, whichever comes first...."

The jury found that the common defective design, coupled with Kia's erratic and individualized responses to the brake problems forced owners to unnecessarily expend $600 for repairs. The defense stipulated that there were 9,402 class members, so after the jury verdict was received, the verdict was molded, and without objection, judgment was entered in the amount of $5,641,200.00.

PROCEDURAL HISTORY:

Plaintiff Shamell Samuel-Bassett, individually and on behalf of all other similarly situated Kia Sephia owners, filed this case on January 17, 2001 as a class action against Defendant Kia Motors America, Inc. Plaintiffs claimed damages arising from Defendant's violation of the Pennsylvania Unfair Trade practices and Consumer Protection Law,[1] ("UTPCPL"), breaches of implied and express warranties, and violations of the Magnuson-Moss Warranty Improvement Act.[2] On February 12, 2001, this case was removed to the District Court for the Eastern District of Pennsylvania. It was remanded to the Court of Common Pleas on April 7, 2004.

On May 21, 2004, Plaintiffs filed a motion for class certification. A class certification hearing occurred on July 15th and 16th, 2004. On September 21, 2004, the Court issued an opinion granting class certification on Plaintiffs' claims of breach of implied and express warranty, and violations of the Magnuson-Moss Warranty Improvement Act. The class was defined as "[a]ll residents of the Commonwealth of

[1] 73 P.S. § 201-1 et seq.

[2] 15 U.S.C. § 2301 et seq.

Pennsylvania who purchased and/or leased model year 1995 – 2001 Kia Sephia automobiles for personal, family or household purposes for a period of six years preceding the filing of the complaint in this action." The Court denied certification of Plaintiffs' UTPCPL claim because individual questions of fact made class certification inappropriate on this count. A copy of the Court's class action certification opinion is attached hereto and made part hereof. This opinion addresses all issues concerning certification raised on this appeal.

Prior to trial, the Court ruled on motions *in limine* and a defense motion to bifurcate. On May 18, 2005, the motion to bifurcate was denied. That same day the Court denied Defendant's motions to preclude the expert testimony of R. Scott King as to liability and Dr. John Matthews as to a specific measure of damages.

Shortly before the start of trial Defendant settled a similar class action which had been filed in the state of California. That California settlement resolved all similar class claims in 47 states. Excluded from the reach of that settlement were class members in Pennsylvania, New Jersey, and Florida. Despite that settlement, defendant proposed to the Pennsylvania plaintiffs a settlement of all 50 state class action claims conditioned upon (1) voiding the California settlement, (2) amending the class definition, (3) resolving all issues concerning the "stipulation and agreement of settlement" (4) resolving all issues concerning the "form of mailed notice" to class members (5) resolving all issues concerning the "form of claim form" for class members to make any recovery and (6) resolving any issues arising during negotiations about alternative proofs required of class members for recovery, including form of proof, documentation required, recovery without documentation, and further conditioned upon

(7) trial in Pennsylvania being stayed, and (8) a Florida Federal Court Judge agreeing to certification of the national class for settlement, and (9) approval of a national settlement by a Federal District Court Judge for the Southern District of Florida. The parties agreed upon the total amount of settlement,[3] the total bonus amount for representative Plaintiff, the total amount of attorneys fees and the fact that allocation of attorney fees to all attorneys including those who controlled the distribution pursuant to the California settlement would be controlled by Pennsylvania counsel.[4]

On the morning of trial, May 17, 2005, the parties announced they had reached a memorandum of understanding which, when all details were resolved, they would submit to a Federal Judge in the Southern District of Florida for approval. Because the memorandum of understanding was conditional and no petition for approval of settlement had been filed in Pennsylvania, the Court denied the request for continuance and proceeded to trial. The Court advised counsel that until such time as a Federal Court enjoined the trial, the Pennsylvania class action would proceed to verdict.

Although Defendant Kia requested such an injunction, the Federal Court declined to intervene. Federal Judge Zloch agreed with the Pennsylvania Court's course of action, noting that "the agreement articulated in the MOU [Memorandum of Understanding] could not, by its terms, be either "accepted" or "rejected" by Judge Bernstein in any manner that passed on the inherent legitimacy of the same. Judge

[3] An amount which in retrospect is grossly inadequate for a national settlement since it was only three times the value of the Pennsylvania verdict alone.

[4] One wonders whether the California attorneys would have meekly accepted this complete loss of control over their already earned fees.

Bernstein was simply able to decide whether the MOU presented him with an occasion to stop the proceedings before him."

As Federal Judge Zloch said in his final opinion denying the request to stay this Pennsylvania proceeding:[5] "...there is, therefore, no owner of a Sephia in the United States without a remedy currently being pursued." Judge Zloch continued, "...there is no basis for enjoining the various state court actions currently pending throughout the nation involving the same subject matter . . ." In ruling that Federal abstention was proper, Judge Zloch noted that the Florida action had been filed three years after the Pennsylvania complaint. He thought it significant that the other actions had made substantially more progress than the Florida action. "[T]he Court finds that 'wise judicial administration' dictates against exercising jurisdiction over an action which is largely duplicative in nature, and which would provide no plaintiff a remedy not already pursued in another more advanced action." The Federal District Court in Florida rejected the proposed settlement.

Rule 1714 of the Pennsylvania Rules of Civil procedure provides that "[n]o class action shall be compromised, settled or discontinued without the approval of the court after hearing." This Court was never asked to approve any settlement. No petition for settlement was ever filed. No settlement was ever completed.[6]

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[5] Judge Zloch declined to enter any order affecting this proceeding, and after briefs and argument, affirmed the propriety of the verdict in this case.

[6] The proposed amount of settlement of $16 million for all 50 states was grossly inadequate. This jury rendered a verdict for the Pennsylvania class members alone in the amount of 5.6 million dollars. Translated into a national class this Pennsylvania verdict is the equivalent of $120 million nationwide, $134 million above the proposed settlement.

Trial began on May 17, 2005. Plaintiffs presented class claims for breaches of implied and express warranties, and violations of the Magnuson-Moss Warranty Improvement Act. Plaintiff Shamell Samuel-Bassett's UTPCPL claim was tried simultaneously as an individual claim. Plaintiffs' evidence for class jury determination was deemed incorporated into named plaintiff's UTPCPL individual claim and the class claim for injunctive relief. The parties agreed that any additional testimony needed for Plaintiffs' claim for injunctive relief would be presented to the Court after the close of evidence before the jury. Evidence was presented for eight days before the jury. Neither party added any evidence to the record for the non-jury determinations but the parties did stipulate that whatever jury verdict was rendered for each individual class member would be trebled to become the named representative Plaintiff's own verdict under the UTPCPL.

After the conclusion of evidence, a jury charge conference on both May 25th and May 26th, 2005. On May 26, 2005, plaintiff and defense counsel agreed that the number of class members was 9,402. During the jury charge conference counsel also agreed upon the form of jury verdict interrogatories and most of the jury instructions.

On May 27, 2005, the jury returned a verdict for Plaintiff class. By special verdict interrogatories the jury found that the Defendant had breached its express warranty and had failed to remedy a common defect after being given an opportunity to do so. The jury found in favor of the Defendant on Plaintiffs' claim for breach of an implied warranty. The jury further found that Plaintiffs had not proven a decrease in the value of the Sephia, each of which at time of trial was at least four years old. The jury found that each class member had sustained $600.00 in repair expenses reasonably

incurred. Class representative Plaintiff Shamell Samuel-Bassett was awarded $1,800.00 by the Court for her UTPCPL claim. Based upon the parties' stipulation as to the actual number of class members, the Court molded the jury's verdict of $600 per individual class members to a class-wide verdict of $5,641,200.00. No objection to molding the verdict was raised by defense counsel despite specifically being given an opportunity to do so. Immediately following the reading of the verdict by the foreperson and before the jury had been discharged, the following occurred:

> THE COURT: Now, everybody has agreed that there are 9,402 Class members so multiplying the number of Class members by the amount of your verdict, the Court is recording a verdict of $5,641,200 on behalf of the Class.[7]

No objection was lodged.

After the jurors left the courtroom the Court again made sure there were no objections:

> THE COURT: Anything further at this time?
>
> MR FELDMAN (for Plaintiff): No, Your Honor.
>
> MR. MCCLURE (for Defense): No, Your Honor. Thanks to the Court.[8]

Defendant filed a motion for post-trial relief on June 10, 2005. Defendant included a motion to decertify the class in its motion for post trial relief.

On October 21, 2005, Defendant filed with the Court a motion to stay pending final disposition by the United States District Court for the Southern District of Florida in Leger v. Kia Motors America, Inc., Case no. 04-80522-CIV-ZLOCH.

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[7] 5/27/05 Jury Trial Verdict, at 7.
[8] 5/27/05 Jury Trial Verdict, at 10.

Although denied at the trial level and again denied by the Superior Court by Order dated December 1, 2005, no dispositive action was taken by this Court until the Federal Court affirmed the action of this Court in proceeding with the trial.

On October 25, 2005, pursuant to Rule 227.4 Plaintiffs filed a Notice of Praecipe to Enter Judgment on the Jury Verdict of May 27, 2005. Judgment on the Jury Verdict of May 27, 2005 in the amount of $5,641,200.00 was entered by the Prothonotary.

On October 28, 2005, Defendant Kia Motors timely appealed. A 1925(b) Order was entered on December 14, 2005. On December 28, 2005, Defendant filed a "Concise Statement of Matters Complained of on Appeal," raising five category headings of alleged error. These five categories of alleged error included numerous subparts.[9] Defendant claims error in certifying the class and in denying their motion to decertify. The Defendant claims that the jury's verdict was against the weight of the evidence. The Defendant claims error in denying Defendant's motion to bifurcate the trial. The Defendant claims error in allowing Plaintiffs' experts, R. Scott King and Dr. John

[9] Although Defendant's post trial motions identified 29 allegations of error, each having subparts amounting to 93 claims, the Court does not have to address each purported issue raised. The Pennsylvania Superior Court stated in Kanter v. Epstein, 866 A.2d 394 (Pa. Super. Ct. 2004).

> "[t]he Defendants' failure to set forth the issues that they sought to raise on appeal in a concise manner impeded the trial court's ability to prepare an opinion addressing the issues that the Defendants sought to raise before this Court, thereby frustrating this Court's ability to engage in a meaningful and effective appellate review process. By raising an outrageous number of issues, the Defendants have deliberately circumvented the meaning and purpose of Rule 1925(b) and have thereby effectively precluded appellate review of the issues they now seek to raise."

Since Defendant has limited its issues on appeal in accord with Rule 1925(b) and waived all other issues, the Court will attempt to seriatim address the issues raised in the 1925(b) statement as understood.

Matthews[10] to testify. The Defendant claims it was significant error to use the phrases "market price" and "fair market value" instead of "contract price" in instructing the jury about the claim of decrease in value, [11] and by not using the words "actually incurred and paid" by not charging Kia's proposed charges No. 26 and 37; by explaining to the jury the nature of a class action, in charging the jury about awarding damages; and, by not instructing the jury that Plaintiffs' claims were limited "solely to the repair or replacement of parts defective in Kia-supplied material or workmanship by an authorized Kia dealer at its place of business." Defendant also claims the Court erred in not using the exact jury verdict form requested by the defense. Finally, the Defendant claims that the Court erred in failing to continue the trial until the parties had finalized the terms of the settlement, finalized the form of notice and the claim form, voided the California settlement applicable to 47 states which had already been agreed upon, filed a petition to settle on a national basis the Florida Federal Court action before Judge Zloch and awaited his decision.

On November 2, 2005, Plaintiffs filed a Notice of Cross-Appeal. On December 20, 2005, Plaintiffs filed a Concise Statement of Matters Complained of on Appeal. Plaintiffs appeal only this Court's September 21, 2004 Order denying class certification of Plaintiffs' UTPCPL claim. Plaintiffs acknowledge the ruling of the Superior Court as set forth in Debbs v. Chrysler, 810 A.2d 137 (Pa. Super. Ct. 2002),

[10] The Court notes that Dr. Matthews' testimony relates only to claims upon which a defense verdict was returned.
[11] The Court notes that these words also relate to claims upon which a defense verdict was returned.

requires proof of individual reliance for UTPCPL claims. Plaintiffs appeal in the hope that what they believe to be incorrectly decided law will be changed on appeal herein.[12]

The Court held a hearing on Plaintiffs' motion for attorney fees and expenses on September 13, 2005. On January 11, 2006, this Court awarded reasonable attorney fees in the amount of $4,125,000.00 based on actual time expended, and awarded reasonably incurred costs and expenses of $267,513.00, to be added to the judgment as required by 15 U.S.C. 2310 (d)(2).

FACTS:

I. Systemic Sephia Brake Problem, 1995-2001

A. All Kia Sephias Were Created Equal

The Kia Sephia is manufactured in Korea by Kia Motors Corporation. It is sold in the United States through Kia's American subsidiary, Defendant Kia Motors America, Incorporated. Kia began selling the Kia Sephia in the Commonwealth of Pennsylvania in 1997. By the time Plaintiffs' Complaint was filed on January 17, 2001, Kia had sold 10,042 Sephias.[13]

All Sephias sold during the class period are substantially the same car. The engineering of the braking system remained unchanged for the duration of the class period, despite periodic modifications to the brake pads and slight changes to the rotors in unsuccessful attempts to resolve the defects demonstrated at trial. Kia's Director of

[12] Since Plaintiffs candidly admit their appeal is grounded in the belief that the law as presently articulated should be corrected, the Court need say nothing more than that the Court's oath of office requires it to follow the law.

[13] 05/23/05, morning session, at 11.

Technical Operations, Timothy McCurdy,[14] testified that all Sephias sold from 1995 to 2000 in Pennsylvania had interchangeable braking system components:[15]

> In every case from 1994, '95 on, whenever there has been an improvement or change in a part, whether it's brakes or engine or whatever, we superseded the part number so that the previous part – we generally push it aside and scrap it then we replace everything with the latest part so we don't keep adding additional problems into the system unnecessarily.[16]
>
> In every case from the – because the brake system from 1993 through 19 – 2000, that whole Sephia model, everything is interchangeable. There is nothing that doesn't fit an earlier car or an earlier car that won't fit a later car. So, in every case there is an evolution of improved parts. We just supersede it. And now those parts will be applicable for any Sephia from 1994 on . . .[17]

Plaintiffs' class expert agreed:

> Q. Mr. King, before we reach the Field Fix change in the braking system for January 20, '02, to what extent was the design of the braking system in all earlier Sephias similar or identical?
>
> A. The underlying design of that braking system remained constant. There were tweaks or modifications as evidenced by various TSBs, but generally underlying design remained the same. It was constant from throughout 1997 all the way through 2001 prior to this Field Fix.
>
> Q. In fact, Mr. King, did you hear Mr. McCurdy say that all the brake system components in all the Sephias up to model year 2000 were interchangeable?
>
> A. They were interchangeable, yes.
>
> Q. Does that mean you could take a rotor from a '97 and a pad from a '99 and interchange them in the vehicle and they would work?
>
> A. They would, yes.
>
> Q. And does that support your conclusion that the braking systems of the vehicle shared a common design?

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[14] Designated portions of the deposition of Timothy McCurdy were read to the jury at trial.
[15] In January of 2002 Kia redesigned the entire Sephia braking system. 05/18/05, afternoon session, at 88.
[16] 05/18/05, afternoon session, at 76.

[17] 05/18/05, afternoon session, at 78.

A. Yes, it was a common design.[18]

B. Sephia Brake System Problems.

Kia sold the Sephia with a known brake-system-defect that caused premature wear of brake pads and rotors. Kia engineers determined that a major cause of the Kia braking system problem was the brake system's inability to effectively dissipate heat.

Timothy McCurdy was Kia's Director of Technical of Operations and had been with Kia since 1993. Mr. McCurdy's responsibilities at Kia included, "product investigation of vehicle, product concerns, and reporting to our factory, Kia Motor Corporation." Mr. McCurdy was also responsible for all technical communications with dealers, publication of technician newsletters called Technical Service Bulletins, and the development of all technical repair information for dealers through a website.[19] Mr. McCurdy was designated by defendant Kia as the corporate designee most knowledgeable about the Sephia systemic brake defect.[20]

Mr. McCurdy admitted there was a known systemic design problems with the Sephia braking system:

> Q. The problems that you said related to the brakes included brake pad wear, that was one; is that correct?
>
> A. Uh-huh.
>
> Q. Another was pulsing of the brakes or vibration of the brakes?

[18] 05/19/05, morning session, at 108-109.
[19] 05/18/05, morning session, at 80.
[20] 05/18/05, morning session, at 80.

A. Vibration, pulsation.

Q. Was there a third problem that you discovered relating to warping of rotors?

A. There was brake vibration. Pulsation is a result of rotors being – the thickness variation in running, yes.

Q. Is that in itself a product of heat not being dissipated sufficiently?

A. That's a major source, yes.

Q. Was one of the principal foundational problems that you at least determined to exist in the Kia braking system the failure or inability to dissipate heat effectively?

A. The development of vibration and pulsation – the heat is a major cause, yes.

Q. And was the heat a major cause in these braking issues at least from 1995 through the year 2000 in the Sephia?

A. The fact that the rotors created vibration, heat was one of the causes, yes.[21]

Plaintiffs also called[22] Kia's Vice President of Parts and Service, Donald Pearce, to testify. He said:

"[F]rom years of operational experience, there are a couple of general issues that usually will create wear. And heat is one of them. The ability of the brake system to dissipate heat quickly will eliminate premature wear and judder problems. What that simply means is if a brake pad heats up, it becomes very hard. If it becomes very hard, then it is more abrasive to the rotor, which then creates warpage on the rotor, which creates the vibration symptom."[23]

Plaintiffs' expert agreed:

Q. What's the problem with the brakes on the Kia Sephia that causes them to wear out, make noise and vibrate?

A. Heat is a natural consequence of braking, of applying the brakes. When we apply the brakes and the brake pads squeeze against the rotor, heat is generated,

[21] 05/18/05, afternoon session, at 41-42.
[22] Designated portions of the deposition of Donald Pearce were read to the jury at trial during Plaintiffs' case in chief.
[23] 05/23/05, morning session, at 64-65.

and its normal. Heat is normal. Its just like rubbing your hands together very rapidly, heat is built up and that's normal.

There's a normal level of heat that you should expect from braking, but in this particular case, with this particular rotor, and this particular designed vehicle, there's too much of it and the heat is destructive and it begins to break down components.

Q. What is the result of excessive heat?

A. Excessive heat causes excessive wear.

Q. Does heat also associate with vibration and noise?

A. There's evidence that it absolutely is, yes.[24]

C. Kia Knew About The Sephia Systemic Brake Problem

Timothy McCurdy, Kia's Director of Technical Operations, testified that Kia became aware of Sephia brake system problems as early as 1995.[25] He acknowledged that the braking system of the Sephia continued to be a problem in subsequent model years.

Q. To what extent do you have a recollection that the braking system of the Kia Sephia continued to be a problem in subsequent model years?

A. The -- all components of cars as well as the brake system, if we have issues with it, it's continued. In the case of the brakes, we've had issues on the brakes where we – it's an ongoing – it's an ongoing issue where we're continuously trying to make improvement and make part changes and so on. [26]

Kia's Senior Vice president of Fixed Operations, Lee Sawyer, testified: "...[a]fter – after a while, you know, as you get into '98 and '99, it becomes, quote,

[24] 05/19/05, morning session, at 109-110.
[25] 05/18/05, afternoon session, at 3.
[26] 05/18/05, afternoon session, at 4.

unquote, a known product problem."[27] Indeed, numerous Kia records and documents offered into evidence illustrate the systemic Sephia braking problem. Kia documents also demonstrated defendant Kia Motors America's mostly unsuccessful attempts to convince Kia Motors Corporation in Korea to fix the Sephia braking problem.

Donald Pearce was Kia's Vice President of Parts and Service.[28] Prior to 2003, Mr. Pearce had been Kia's Vice President of Service. He was responsible for all warranty claim administration, product quality, and technical operations support for Kia's field and retail organization. He participated in a "Customer Satisfaction Program".[29]

Mr. Pearce explained that "warranty claim rate" is a mathematical calculation of the percentage of total claims versus the total number of vehicles sold.[30] In all his experience in the automotive industry, Mr. Pearce had never seen brake claim rates as high as the Sephia.[31] There was a 91% claims rates for brake problems on the '97 Sephia.[32] In 1998, Kia sold 45,847 Sephias and had 70,000 claims about the brakes.[33] In 1999 Kia sold 57,000 Sephias and 97.9 percent of that number of cars had brake claims.

These records were not compiled for litigation, they were created for Kia's business purposes. In 1999, Kia compiled warranty claims rate records for the Sephia

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[27] 05/23/05, morning session, at 23.
[28] 05/24/05, morning session, at 48.
[29] 05/24/05, morning session, at 49, 54.
[30] 05/24/05, morning session, at 59.
[31] 05/24/05, morning session, at 64.
[32] 05/24/05, morning session, at 63. Q. "[i]f Kia sold 42,713 cars, the number of claims was 90 percent of that number?" A. "In total raw volume, yes sir."
[33] 05/24/05, morning session, at 63.

from September 1997 to July 1999 to present to Korea Kia Motors vendors visiting the United States. This chart was shown to the jury.[34] Timothy McCurdy testified:

> In 1999 – the years 1999, 2000, we – the manufacturer, Korea Kia Motor Corporation, sent all of the vendors who make components parts for the manufacturer, Korea Kia Motors Corporation, sent all of the vendors who make components parts for our vehicles to the United States. There is 103 vendors. They sent them to us for us to make a presentation to them to their president on their particular component that they made or manufactured for our vehicle in Korea. And for each vendor we used this format, and we provided them warranty history, parts sales, obviously the component name, and the problem with the component, and any comments or recommendations. So just a brief overview. So this particular one was for the vendor, the manufacturer in Korea, of the brake rotor-- yeah, the brake rotor.[35]

Kia's own warranty repair records over a two year period demonstrated that Sephias had a 41.8% warranty claims rate due to the defective brake system. In contrast, the rate for the Kia Sportage was 6.3%.[36]

Plaintiffs' automotive engineering expert, Mr. King, found this huge discrepancy significant:[37]

> The difference is significant. The difference is significant because I think it would be unreasonable to expect that a driver of a Kia Sephia is any different than a driver of the Kia Sportage, that Sephia vehicles are driven in any different conditions or at any different locations than a Sportage.
>
> So the only difference between those two vehicles, then, really is the braking system. So if there's that much of a difference in the claims rate, then it points to a problem with the braking system on that vehicle and nothing else.[38]

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[34] 05/19/05, morning session, at 91.
[35] 05/18/05, afternoon session, at 60-61.
[36] 05/18/05, afternoon session, at 63-66
[37] Defendant Kia's engineering expert, Bruce Bowman, also relied on the same Kia warranty claims data in forming his opinion 05/24/05, afternoon session, at 4, 15.
[38] 05/19/05, morning session, at 92-93.

Kia also learned about Sephia brake problems from Kia District Parts and Service Managers in the field. Kia distributors around the country routinely had to deal with worn out brakes and customer complaints. Of course they told Defendant Kia about these problems. District Parts and Service Managers told Defendant Kia about the Sephia's brake problems through Quality Assurance Field Product Reports. Mr. McCurdy testified that Defendant Kia relied on these Field Product Reports as their primary authoritative source for product issues.

> Q. The field product reports, which I'll be asking you about in a little bit, are they documents that you rely upon in attempting to figure out whether there is a problem with a particular component and why that problem exists?
>
> A. We rely on it to get information from the field on product issues.[39]

Kia repeatedly received these reports complaining of systemic Sephia brake problems.[40] One report, typical of the many Kia received, was from a Kia District Parts Service Manager in May of 1999:

Condition: Brake vibration at 1602 miles owner drives vehicle very little; Cause: Front rotors warped; Action/results: Replace front rotors. Comments/recommendations: This is a well known condition and needs to be corrected ASAP. It is the cause of numerous buy backs, BBB arbitrations, and legal cases.

Kia also maintained a National Technical Assistance Center hotline for repair technicians at Kia dealerships to call for technical advice. These calls documented that systemic design problems existed causing unreasonably early wear-out of brakes and rotors.[41] Kia recorded these technician calls in reports called Technical Assistance

[39] 05/18/05, afternoon session, at 79.
[40] 05/19/05, morning session, at 79
[41] 05/19/05, morning session, at 80-81.

Center Incident Reports. One typical Technical Assistance Center Incident Report for a Sephia with 27, 135 miles listed the condition of the car as: "Brake pads worn out after about 3,000 miles." The report continued,

> "12/01/99: LKM > Customer states the brakes are squeaking. Harold states the vehicle has had the brakes replaced about 3,000 miles ago. He states the pads are worn down to the indicators."[42]

Similarly, a report dated June 8, 1999 for a Sephia with 21,092 miles stated: "Condition: Weldon the service mngr, said this vehicle is in for the third time for brakes pulsation caused by disk warpage."[43]

Plaintiffs' engineering expert used Kia Technical Assistance Center Incident Reports in forming his opinion: "...[t]he indication that it's in for its third brake repair within just over 21,000 miles, that's an abnormal scenario."[44]

D. Sephia Brakes Continued To Be Problematic Despite Attempts To Fix The Problem

In response to the mounting customer and service technician complaints about systemic Sephia brake system problems, Kia repeatedly modified the Sephia pad specifications. Timothy McCurdy testified:

> [O]ver time we've had several different brake pad materials and changes in the brake system. There has been a lot of change in the Sephia brake system over time, and those have all come about trying to improve on vibrations and brake pad wear noise.[45]
>
> [W]e saw that they were being replaced earlier and more frequently than we would like. I mean, we had a – we knew that improvements could be made, you know. We knew we had consumer complaints. We knew we had warranty

[42] 05/19/05, morning session, at 82-83, P21.
[43] 05/19/05, morning session, at 84-85.
[44] 05/19/05, morning session, at 85.
[45] 05/18/05, afternoon session, at 21.

history, you know. So we were doing everything we could over time, and we've been continuously doing that since 1995, to try to reduce the number of claims and customer complaints. And the only way you can do that that I know of is to make improvements on the brake parts, and that's been our objective all along...[46]

Mr. Sawyer, Kia's Senior Vice President of Fixed Operations, outlined Kia's attempts to remedy the Sephia brake problem:

"There was probably some squeaking and then it evolved to soft pads to fix the squeaking, the soft pads evolve to premature wear, premature wear evolved to brake vibration in the rotor and lots of heat generation. And then I can chamfering, C-H-A-M-F-E-R-I-N-G, brake pads. Lots of attempts to fix the car. So this is a function of quality assurance, feeding back to the factory we have a problem, the factory engineers are working on fixing it by putting chamfers or changing the composition of the pads, et cetera. I think even at some point they changed the pad manufacturer."[47]

Defendant Kia developed and issued Technical Service Bulletins to disseminate information to dealers about the new pads Kia developed in an attempt to remedy significant repair problems. Kia issued five Technical Service Bulletins[48] related to the Sephia brakes alone.[49]

Plaintiffs' expert agreed with corporate designee McCurdy and Kia's own analysis:

Q. Could you describe for the jury what a Technical Service Bulletin is?

A. Technical Service Bulletin is a document that outlines or prescribes a new component or a new procedure that's to be used within the repair shop.

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[46] 05/18/05, afternoon session, at 22-23.
[47] 05/23/05, morning session, at 22-23.
[48] The first Technical Service Bulletin regarding Sephia brakes was issued by Kia in March 1997. The March 1997 TSB stated "[t]he new brake pads are a replacement for previous Sephia brake pads and should also be used to correct Sephia brake noise complaints in models produced between 5/26/95 and 2/3/97." 05/19/05, morning session, at 100-101, P13A.
[49] 05/18/05, afternoon session, at 84-85.

> Sometimes it can implement a change or implement a superseded part, if you will. But it's a communication from the corporate office, if you will, to the technicians at the service dealerships of a change in a service or procedure.
>
> Q. Do you agree that the description that Mr. McCurdy offered of the Technical Service Bulletin yesterday as being issued in connection with "significant repair problems?"
>
> A. I do, yes.
>
> Q. Was there a series of technical Service Bulletins issued for the Kia Sephia regarding the braking system?
>
> A. There were. There were, as I recall, five or six such bulletins.[50]

Trying to analyze and fix the Sephia brake defect, Kia hired an outside engineering testing firm to perform industry standard brake tests to determine the effectiveness of the new pads that had been developed.[51] Mr. McCurdy stated: "in our ongoing development of improved pads and so on, we did hire an outside engineering testing firm to do the L.A. city brake test for new pads that had been developed to determine the effectiveness of the new pads."[52] The L.A. City Brake Test is an objective test used by automobile manufacturers in the United States to determine a vehicle's brake pad life and effectiveness. Kia conducted L.A. City Brake tests on Sephia brake pads in 1999, in 2000, and again in 2001. These tests showed that the Sephia's brake pad life fell substantially below U.S. market standards. Mr. McCurdy reported the results of the brake tests to Korea in support of his continual for Sephia brake improvement:[53]

> Q. There is a document numbered 0412 called "Sephia Brake Pad Test Overview," and then in the L.A. City Brake Test, appears to be dated 7/12/99. Did you prepare this document?

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[50] 05/19/05, morning session, at 99.
[51] 05/18/05, afternoon session, at 69.
[52] 05/18/05, afternoon session, at 24-25.
[53] 05/18/05, afternoon session, at 75.

A. Yes.

* * *

Q. There is a reference to the test results and to the pad wear, and then it says "minimum" in parens. Now, do I understand that on the automatic transmission the pad wear that resulted from the test was an expected 9,400 miles?

A. Yes, that's correct. That was the results of the test from objective measurements.[54]

The tests objectively showed that the Sephia brakes would last only 9,400 miles.[55]

Defendant's own trial expert, Mr. Bowman, ordered tests for litigation which confirmed the results of Kia's brake tests. Mr. Bowman, testified that he had commissioned tests on the pad life of the original design of the Sephia brakes.[56] The jury heard that the defense trial expert's own tests showed an average minimum pad life of 7,000 miles.[57] The results of defense expert Bowman's tests, which were performed exclusively for litigation purposes, were 2,000 miles worse than Kia's previous poor test results of 9,400 miles.[58]

In a last ditch attempt to salvage some customer goodwill and avoid lemon law lawsuits because of a seriously increasing brake problem, Kia instituted a "Brake Coupon Program." The defendant provided free brake repairs to Sephia owners who had

[54] 05/18/05, afternoon session, at 85.
[55] 05/18/05, afternoon session, at 34.
[56] 05/24/05, afternoon session, at 61. Defendant did not ask their expert about the testing he had commissioned. Plaintiffs elicited this testimony on cross exam.
[57] 05/24/05, afternoon session, at 64. Defendant's expert also performed testing of the 2001 Sephia brakes after the "field fix." The 2001 Sephia brakes lasted only 14,000 miles, still well below Kia's goal of 20,000 miles.
[58] Mr. Bowman testified that he did not rely on the brake test results in forming his expert opinion. 05/24/05, afternoon session, at 61.

three or more warranty brake repairs, without regard to general driving conditions or particular driver habits or the specific version of brake components on the car.[59]

The brake coupon was sent to 15,259 Sephia owners.[60] Donald Pearce, Kia's Vice President of Parts and Service testified how Kia determined which Sephia owners would receive the brake coupon:

> Q. Why was the '97 through 2000 vehicle years chosen for this program?
>
> A. Looking at a number of factors that we've already talked about, but predominantly focused in a couple of key areas of those customers that had three or more warranty claims within the 3/36 time frame. That puts us into a critical customer satisfaction effort, as well as, to be frank, puts us at risk with a number of state lemon laws.[61]

Even given Kia's restrictive view of "customer good will" the program readily discovered cars which had more than 45,750 warranty brake repairs.

Plaintiffs' expert witness concurred with Kia's conclusions and testimony and relied on the Defendant's own conclusions, records and testimony in formulating opinions.

II. Kia Warranty Promises

A. Kia Sephia Warranty

Defendant Kia sold all Sephia models in the United States with identical written warranties. The Kia written warranty stated:

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[59] 05/24/05, morning session, at 33-39.
[60] 05/24/05, morning session, at 35-37.
[61] 05/23/05, morning session, at 68-69.

> Kia Motors America, Inc. warrants that your new Kia Vehicle is free from defects in material or workmanship, subject to the following terms and conditions.
>
> Except as limited or excluded below, all components of your new Kia Vehicle are covered for 36 months or 36,000 miles, whichever comes first, from the earlier date of either retail delivery or first use of the Kia Vehicle.

Kia gave purchasers the same written Warranty Booklet with every new Kia vehicle. The Kia Warranty Booklet also contained a Maintenance Schedule. The first recommended inspection of the braking system was at 30,000 miles or 30 months for ordinary driving use, and 15,000 miles or 15 months for instances of severe driving conditions.[62] This same Warranty and Maintenance Schedule was provided for every model of Kia Sephia vehicle.[63]

B. American Consumer Expectations

Corporate designee McCurdy, testified that the expected minimum brake pad life in the U.S. market is 20,000 miles or 32,000 kilometers. "[I]n the United States customer expectation is 20,000 miles."[64] Mr. McCurdy explained:

> There is no – there is no –there is no written or firm expected brake life by Kia. There has been a – that term "expected brake life," over the years we've used a brake life of 20,000 miles expected. And that number has been used – nobody knows exactly, you know, it's nothing firm, its not a standard, but it's a number that's been used over the years by other manufacturers based on what customers think that if they were asked the question – what do you expect the average brake life in your car should be, and 20,000 miles seems to be a number.
>
> That number came up in the past at Toyotas in brake issues; it came up at Hyundai; it's been at Ford.[65]

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[62] 05/17/05, afternoon session, at 73-74. For normal use Kia claimed the brakes didn't even need to be inspected before 30,000 miles. The reader would not expect to face actual replacement of brake pads and rotors six times before reaching 30,000 miles as Ms. Samuel-Bassett's car required.
[63] 05/18/05, afternoon session, at 14, 24.
[64] 05/18/05, afternoon session, at 72.
[65] 05/18/05, afternoon session, at 15-16.

Timothy McCurdy also testified regarding recommended inspection intervals:

> Q. Do you know if there are standards from any entity with respect to appropriate or expected intervals between inspection or repair of braking components?
>
> A. Only the recommended maintenance interval and owner's manuals.[66]

Kia's national manager of the consumer affairs department, Michelle Camron, agreed with Mr. McCurdy that minimum customer expectations for pad wear in the United States is 20,000 miles.[67] Plaintiffs' engineering expert, R. Scott King, agreed with Kia, Ms. Cameron, and Mr. McCurdy. He testified that the expected minimum brake life in the United States is between 20,000 and 30,000 miles. Mr. King testified that the normal life of a rotor is in the range of 60,000 miles.

C. Kia Brakes Not Meeting Consumer Expectations

Owners of the Kia Sephia experienced accelerated brake pad and rotor wear requiring replacement parts at well below 20,000 miles. Kia Technical Incident Reports indicated that Sephia brakes required replacement with only 3,000 miles of use.

> "12/01/99: LKM > Customer states the brakes are squeaking. Harold states the vehicle has had the brakes replaced about 3,000 miles ago. He states the pads are worn down to the indicators."[68]

Mr. Lee Sawyer, Kia's Senior Vice President Fixed Operations until June 30, 2001, testified that Sephia brakes were not meeting consumer expectations:

> "[T]ypically you would expect brakes in a normal environment to last 20, 25,000 miles. I mean, we have all owned cars all of our lives, be they Mercedes or Ford

[66] 05/18/05, afternoon session, at 14.
[67] 05/24/05, morning session, at 18.
[68] 05/19/05, morning session, at 82-83, P21.

or whatever; and the brakes typically go that long. Some of the Sephia owners were experiencing brake pad life in the 10-12,000 mile range, not all of them, but some of them. And that's kind of below expectations."[69]

Despite repeated requests to Korea, Sephia brakes continued to fall below American market expectations. Mr. McCurdy testified:

> [A]ll along, in any development of brake pads or trying to increase brake improvement on the Sephia brakes, we've always asked for from the factory who makes the car, not us –they do all the R & D and engineering – we don't have control obviously of brake life, they do – and we have requested that we would like a brake pad life to be 20 – expectation's 20,000 miles. So we're pushing –we push them in that direction at all times in their development of parts to hopefully get close to that number.
>
> Q. Why did you ask Korea to meet that threshold?
>
> A. Because we – ongoing – that's what we're here for today. We've had brake issues and we've tried to improve on the situation over the years by changing pad materials, pad vendors and so on. And the brake issues always had to do with either vibration or wear in trying to push the factory to make corrections to improve on the product. We set this target for them. We would like to see this. We know we're not there, but we would like to see it.
>
> Q. And did you make those requests to the factory in Korea and push that target because you considered the existing performance of the brakes to be unacceptable?
>
> A. We believe that the – depending on what model year it was and what pad and what the complaint was, that improvements had to be made, yes.[70]

D. Kia Knew The Design Of The Sephia Braking System Was Inadequate

Despite the minimum American expected brake pad life of 20,000 miles, Kia's own brake pad wear specifications were only 16,000 miles (25,000 km).[71] Mr.

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[69] 05/23/05, morning session, at 16-17.
[70] 05/18/05, afternoon session, at 16-18.
[71] 05/18/05, afternoon session, at 70-71.

McCurdy testified to his difficulty convincing the Korean engineers that their Korean standard was inadequate for the American market and that the Sephia brakes were not even meeting Kia's 16,000 mile specification:

> Q. This particular document is described as a document involving product concern for the Sephia brake vibration, 1999; is that right?
>
> A. Uh-huh, yes.
>
> Q. At the bottom of the document there appears a request to KMC to investigate the Korea Beram brake pad wear; is that right?
>
> A. Yes, that's right.
>
> Q. And then there are some handwritten entries. Are those in your handwriting?
>
> A. Yes.
>
> Q. Could you read them please?
>
> A. "KMC wear spec is 25,000 kilometers." That's what they told us, so I wrote that down. And my request – this is a note to myself and was presented to them in the meeting -- that we request 32,000 miles, which equates to the 20,000 mile – we talked about earlier pushing for. This is – I remember what this is now. This is 25,000 kilometers, is what they told us during this meeting in response ; that our spec for this pad was 25,000 kilometer or whatever their tests have revealed that that pad, the wear on that pad, and that equates, if you calculate it to, I don't know what it would be.
>
> Q. 16,000?
>
> A. Yeah, right. That's not good enough. So we want –like we said before, we're shooting for that 20,000 mile, and here KMS requests 32,000 – we made it kilograms so they'd understand. So we were just reiterating that that's not good enough; we want what we've talked about, pushed for a target of at least 20,000 miles on pad life.[72]

Mr. McCurdy continued,

> A. We request target of any new brake pad to have a – an expected pad life of 20,000 or more miles.

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[72] 05/18/05, afternoon session, at 70-71.

Q. All right. So I'm clear, you requested that KMC provide Kia America with a brake pad that had an expected pad life of 20,000 or more miles?

A. Yes.

Q. And that was the phrase you used, "expected pad life"?
A. Yes, yes. We always told them that in the U.S. – in the United States customer expectation is 20,000 miles.

Q. Do you recall, incidentally, how KMC responded to your request?

A. They said – they basically said they understood and they would continue attempting to develop new pad materials to reach that objective.

Mr. McCurdy testified that the Sephia brake pads were not even meeting Kia's 16,000 mile pad wear specification:

Q. Did you have any information at or about the time of this meeting as to whether the brake pads being used in the Sephia even met the KMC wear specification?

A. In cases there –that's not a spec again. That's where they found what their brake dyno test indicated, what their projected mileage for the pad was, and it is. And yes, we did experience poorer wear than that, considerably, yes.[73]

Indeed, independent testing revealed that Sephia brakes were not meeting Kia's substandard pad specifications of 16,000 miles. Although the Sephia brakes were not meeting Kia's 16,000 mile pad specification, Timothy McCurdy testified that the 9,400 mile test results were at least an improvement from earlier pads:

Q. Why did you find pad wear of 9,400 miles to be acceptable in any sense?

A. There is a couple of issues here. The – this is a very severe brake pad wear test, so you know, 9,400 miles, sure, we like to see more, but this was a new pad and we were –KMC asked us if this was acceptable or not. If we said no, we would still have been using the other pad which was not as good as this pad. So we said, Please put it in production, let's use it, but a qualifier is "marginally

[73] 05/18/05, afternoon session, at 72-73.

acceptable." We wouldn't say it's not acceptable, so that was the word we had to use.

When you are working – you're dealing with the manufacturers, Korean, and their language some of these words are very important to get things done, so this was worded and approved by the -- my coordinator, but these are words that -- these are the words we should do to make sure that they do go ahead with this pad, and the pad is an improvement; it's not as much as we want, but every little step we can get we want, so –[74]

Kia recognized that the Sephia brake system was defective. Donald Pearce, Kia's Vice President of Parts and Service, testified that brakes and rotors are only covered by warranty if there is a defect in workmanship or material.[75]

Q. [W]hen there's warranty coverage, it's because an item comes within the warranty, correct?

A. Yes, sir.

Q. So if pads and rotors are being replaced under the warranty, it's because they're defective; isn't that true?

A. Yes.[76]

Mr. Pearce testified that Kia reimbursed at least 95 percent of dealer warranty reimbursement requests. There was a 91% claims rates for brake problems on the '97 Sephia.[77] In 1998, Kia sold 45,847 Sephias and had 70,000 claims submitted about the brakes, a 154 percent claims rate.[78] In 1999 Kia sold 57,000 Sephias and 97.9 percent had brake claims. Additionally, Kia mailed out roughly 15,000 brake coupons to

[74] Kia's litigation expert testified at trial that his objective tests showed only 7,000 miles of utility..
[75] 05/24/05, morning session, at 66.
[76] 05/24/05, morning session, at 70.
[77] 05/24/05, morning session, at 63. Q. "[i]f Kia sold 42,713 cars, the number of claims was 90 percent of that number?" A. "In total raw volume, yes sir."
[78] 05/24/05, morning session, at 63.

customers who experienced three or more warranty repairs.[79] Mr. Pearce testified that at least 21 percent of all Sephias sold from 1997 to 2000 had three or more brake warranty repairs.[80]

III. Samuel-Bassett's Experience Was Typical.

Class representative Plaintiff, Shamell Samuel-Bassett, experienced the typical brake problems reported to Defendant from numerous sources. On October 27, 1999, she purchased a year 2000 Kia Sephia from an authorized Kia dealer for personal use. Like every other Sephia sold in the U.S., her vehicle had a three year/36,000 mile warranty. Like every other Sephia sold in the U.S., the maintenance manual that came with her Sephia advised that no inspection of the front and rear disc brakes would be needed until 30 months or 30,000 miles had passed. Ms. Shamell-Bassett's Sephia repeatedly needed brake work. Her car repeatedly demonstrated premature pad and rotor wear out, brake squeaking and grinding, and excessive shuddering and vibration on braking.

Ms. Shamell-Bassett had to repeatedly replace the brake pads and rotors on her Sephia. Her first problem arose after only 4,000 miles of driving. She had to bring her car into the shop to have her brakes replaced. Despite assurances that the problem had been resolved, her car was back in the shop again for the same brake problem 5,000 miles later (9,196). Only 3,800 miles later the same repairs had to be done again (12,922). These brakes lasted only 4,000 miles before the dealer had to replace the

[79] 05/24/05, morning session, at 59. For a certified minimum of 45,000 prior warranty repairs to brakes.
[80] 05/24/05, morning session, at 60.

them (16,883). The new "improved" brake pads and rotors lasted only 3,400 miles before the car was again in the shop with the same problem (20,297). These pads and rotors lasted only 2,500 miles before being replaced again (22,712). One can presume that Ms. Samuel-Bassett breathed a sigh of relief when the sixth brake pads and rotors worked for more than 5,000 miles—but her relief was short-lived because at 9,500 miles, the brakes again wore out from excessive heat due to poor design (30,125). Finally, for the first time, those pads lasted 10,000 miles (40,000). This eighth replacement lasted only 5,000 miles before needing repair.

Although Kia knew brake pads should last a minimum of 20,000 miles, and their own inadequate brake specifications called for 16,000 miles, Ms. Samuel-Bassett needed five sets of pads and rotors in the first 17,000 miles of driving. Although Kia told her these parts should not even need inspection for 30,000 miles, Ms. Samuel-Bassett needed seven pads and rotor replacements in the first 30,000 miles.[81]

Sometimes Kia charged her, sometimes they covered the repair under warranty, sometimes they acknowledged a systemic defect.[82]

DEFENDANT KIA MOTOR AMERICA, INC.'S CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL'S 1925(B)

Although unclear, confusing and possibly intended to preserve by generalities non-specific "issues" for appeal through vague language, defendant's

[81] And an eighth set 125 miles later.

[82] Ms. Samuel-Bassett testified that the first, second, and third time she took her car in for repairs, the dealer replaced her pads and rotors for free. After that, sometimes replacement rotors was covered under warranty, and she was charged for the pads. Sometimes she was charged for both the pads and rotors. See 05/17/05, afternoon session.

1925(b) Statement does in fact trim the issues presented on appeal from the unreasonably broad Motion and Supplemental Motion for Post Verdict relief.[83] This Court believes it can ascertain five categories of alleged error, many of which have subparts. These will be addressed herein seriatim. Many of the "issues" presented in the 1925(b) statement have not been preserved for appeal because no objection had been raised at trial.

WAIVER

Issues that are not raised by timely and specific objection during trial may not be raised for the first time on appeal. Now thirty years old, in the landmark decision, Dilliplaine v. Lehigh Valley Trust Company, 457 Pa. 255, 322 A.2d 114 (1974), the Pennsylvania Supreme Court clearly ruled that the trial court must be given an opportunity to correct any errors at the time they allegedly occurred. If no timely objection has been made during trial, the issue has not been preserved for appellate review. Subsequent Pennsylvania procedural rules incorporated the Dilliplaine rule: Pennsylvania Rule of Appellate Procedure 302 states: "...[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal." Likewise, Pennsylvania Rule of Civil Procedure 227.1(b)(1) requires litigants to make timely objections at trial in order to preserve issues for post-trial relief and appellate review on the merits. According to the note to Rule 227.1(b)(1), "[i]f no objection is made, error which could have been corrected in pre-trial proceedings or during trial by timely objection may not constitute a ground for post-trial relief."

[83] Post Verdict Motions purported to raise at least 23 distinct points many of which contained multiple subparts.

Likewise, Pennsylvania Rule of Evidence 103(a)(1) states: "...[e]rror may not be predicated upon a ruling which admits or excludes evidence unless (1) In the case the ruling is one admitting evidence, a timely objection, motion to strike or motion *in limine* appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context." Even "plain errors affecting substantial rights although they were not brought to the attention of the court" cannot form the basis of reversible error.[84]

In Dilliplaine, the Supreme Court articulated the policy underlying the requirement for contemporaneous objections. The Supreme Court explained that timely and specific objections advance judicial economy by allowing a trial court to immediately address errors which are subject to correction before the trial ends:

> This opportunity to correct alleged errors at trial advances the orderly and efficient use of our judicial resources. First, appellate courts will not be required to expend time and energy reviewing points on which no trial ruling has been made. Second, the trial court may promptly correct the asserted error. With the issue properly presented, the trial court is more likely to reach a satisfactory result, thus obviating the need for appellate review on this issue. Or if a new trial is necessary, it may be granted by the trial court without subjecting both the litigants and the courts to the expense and delay inherent in appellate review. Third, appellate courts will be free to more expeditiously dispose of issues properly preserved for appeal. Finally, the exception requirement will remove the advantage formerly enjoyed by the unprepared trial lawyer who looked to the appellate court to compensate for his trial omissions.[85]

Following Dilliplaine, in 1993 the Pennsylvania Supreme Court held that a party waived a post-trial challenge to the jury's answers to special interrogatories because

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[84] The official commentary to Pa. R. Evid. 103(a)(1) makes clear that this language fund in Federal Rule of Evidence 103(d) was specifically and intentionally omitted from the Pennsylvania Rule because it was inconsistent with Pennsylvania law as established in Dilliplaine.

[85] Dilliplaine, 322 A.2d at 116-117.

that party did not preserve the challenge by objecting to the verdict when it was rendered.[86] Likewise, Court indicated that the Dilliplaine rule required a party to object to the jury charge and the wording of the jury interrogatories before the case went to the jury.[87] Subsequently, the Pennsylvania Supreme Court squarely held that to preserve any issue for appeal a party must object to the jury charge and the wording of the jury interrogatories before the case goes to the jury.[88] Thus, if a contemporaneous objection is not raised as evidence is received or the jury charge is given or the verdict sheet submitted to the jury, any alleged appellate issues have been waived.

CERTIFICATION

Plaintiff claims error in certifying the class and trying the case on a class wide basis.[89] After a full hearing the Court rendered a detailed Opinion outlining the facts and reasoning for the approval of certification. A copy of the Court's previously issued Opinion is attached hereto and incorporated herein. While the detailed analysis is articulated in the previously issued opinion, the conduct of trial reaffirmed the appropriateness of that class certification decision. Testimony at trial reaffirmed the reasonableness of this litigation being presented on a Class basis, reaffirmed the ability of counsel to reasonably and fully present the issues for jury resolution on a class basis and reaffirmed the ability of the jury to sincerely, productively, appropriately and justly

[86] Philadelphia v. Gray, 537 Pa. 467, 633 A.2d 1090, 1095 (1993).
[87] Id. at 1095.
[88] Straub v. Cherne Industries and Dealers Service, 583 Pa. 608, 880 A.2d 561 (2004).
[89] Although the defendant alleges error in refusing to decertify the class, the Court can find no record of any specific decertification filing prior to trial. Nonetheless, with or without any motion for decertification the exact issues are presented in the question of whether the case had been properly certified initially.

resolve all issues on a class basis.[90] In order for a class to be certified various procedural requirements must be met.[91]

At trial the defendants stipulated that the class numbered 9,402 members. The jury evaluated class damages at $600.00 per class member. Clearly the criteria of numerosity was satisfied. It strains credibility that a party could sincerely suggest that more than 9,402 product defect design warranty cases claiming damages in the amount of only $600.00 each could be individually tried. If not tried as class litigation, individual claims would place an absurd burden on the both Courts, and on each of the 9,402 plaintiffs.

In this case counsel sought, justified and were awarded fees and costs in the amount of Four Million One Hundred and Twenty-Five Thousand Dollars. Although this trial was longer and more complicated, because it was presented on a class basis,[92] expert testimony to prove that each vehicle had the same common defect would be required in each individual case. Proof that Kia knew of this defect and therefore breached its warranty and expert testimony that brakes and brake linings should last more than 5,000 miles would have been required in each of the 9,402 cases. In fact, in the instant class trial the defendant attempted to show that the systemic problems experienced by Kia owners were due to individual driving variation. The jury rejected this defense. However, if remanded for 9,402 trials each individual plaintiff will be required to retain

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[90] The sagacity of the jury determination is demonstrated by their individualized evaluation of every claim. While the jury found a breach of the express warranty and determined that each class member suffered damage in the amount of $600.00, it also determined that no implied warranty had been breached and that no difference in value of these old cars had been proven at trial. The Court notes that the jury did not blindly accept the representative plaintiff's damages as precisely those sustained by every class member but rather rendered an evaluative verdict on a class basis in the amount of $600.00, significantly less than the named representative plaintiff's individual experience.

[91] See Rules of Civil Procedure 1708, 1709, 1710.

[92] As individual cases there would be no need for any certification process.

and present expert testimony that their individual driving habits did not cause the systemic problems experienced by Sephia drivers. This would be necessary in 9,402 trials even through Kia knew the same problem were being experienced by all Sephia owners.

The Constitution of Pennsylvania at Article 1 Section 11 states: "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law...." Clearly requiring each of the 9,402 class members to individually litigate damages in the amount of $600.00[93] amounts to sealing shut our Courtroom doors in violation of the Pennsylvania Constitution. Failure to certify this class in reality creates a now proven valid claim without remedy for 9,402 citizens of the Commonwealth . This is precisely why Pennsylvania law permits class action litigation and has adopted specific Rules of Procedure for its conduct. This case presents the perfect claim for class resolution. Either there is class litigation or defendant Kia receives a $5,640,600 windfall because everyone knows that no other individual cases will ever be tried .[94]

Commonality was clearly demonstrated at trial. Plaintiff's expert witnesses, and the defendant's own actions and records, and the testimony of key defendant corporate executives proved that the brake system was the same for all class vehicles and that Kia was aware that the braking system of the Kia Sephia had a systemic problem and that Kia America worked hard to find the design defect and attempt to correct the problem. Kia made repeated unsuccessful design changes to parts in an effort

[93] Whether a $600 claim began in Municipal Court in Philadelphia County (or at the District Justice level in other counties) or before a panel of arbitrators, each case could result in a jury trial in Common Pleas Court.

[94] Presumably the named representative's verdict would be paid.

to resolve these problems on a systematic basis. The testimony at trial clearly demonstrated the commonality decision described in the Certification Opinion was appropriate and properly made.

Typicality was clearly demonstrated throughout the trial both in the testimony of Ms. Samuel-Bassett and the supporting testimony including the defendant's own documents and executive testimony that her problems were representative of class issues. The decision on Typicality as more fully set forth in the Class Certification Opinion was proper.

Adequacy of representation is not an issue and has never been questioned. The "adequacy" of the class counsel can be appreciated simply by reading the trial testimony. The trial testimony clearly demonstrated superior preparation and effective presentation by Plaintiff's counsel team. The only issue which could possibly be raised concerning counsel's representation was the question of why they entered into negotiations for a 50 state settlement significantly lower than the true value of the case as reflected in the Pennsylvania state verdict. Interestingly, although this is the only possible criticism of class counsel, the defense claims the opposite. On this issue, it is difficult to fault counsel's sincere efforts to settle a case rather than run the risks of trial and the risks of reversal on appeal.[95] Nonetheless the adequacy of counsel's representation is

[95] Although defendants are pursuing the claim that this proper verdict after a full trial should be reversed because the Court refused to continue the trial to allow counsel to negotiate a 50 state settlement, subsequent events have rendered this claim moot. A procedural and substantive quagmire not dissimilar to the problems encountered by our military in Viet Nam and their current difficulties would result if the Court's refusal to grant a continuance is found to be reversible error. The California 47 state settlement has now advanced significantly including notice sent to all class members. The Federal Court has rejected the proposed settlement because it is clearly inadequate.

demonstrated in a trial verdict for Pennsylvania residents alone which is dramatically better than the best settlement offers ever made by the defendant.[96]

Clearly, the results of this trial which required fine discriminations by the jury and precise count by count evaluations demonstrates that the class action procedure was a fair and efficient method of adjudication. Clearly common questions of law and fact predominated over the individualized issues that Ms. Samuel-Bassett presented. Clearly, the jury was able to differentiate between the common issues and the individualized proof.[97]

Although every trial has management difficulties and class actions must be intensely managed the trial of this case demonstrates that there were no insurmountable difficulties encountered in the management of this trial as a class action. The Court greatly appreciates the "ingenuity of counsel"[98] which was relied upon in resolving these management issues as they arose. Trial counsel for both sides worked diligently in representing their clients zealously and presenting the issues so the jury could understand and resolve them rationally, trying this class action to verdict in a serious, significant, and just way.

The possibility of inconsistent adjudications of 9,402 individually tried cases is another factor in evaluating a certification decision. In the event that the possibility of 9,402 individual trials of a defective product could be seriously considered it should be noted that inconsistent verdicts would be a virtual certainty.

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[96] The Pennsylvania 9,402 class member verdict of $600 per claimant a total of $5,641,200 translates into a value of $120 million nationally.

[97] The Court notes that the defendant did settle, 47 state class actions on a common basis and offered to settle 50 state claims on a class basis.

[98] Janick v. Prudential Ins. Co. of America, 305 Pa. Super 120, 451 A.2d 451 (1982).

The Philadelphia Court of Common Pleas is a most appropriate forum for the trial of this Pennsylvania class action. Philadelphia has a long history of the prompt and just resolution of complex cases and is justifiably proud of its complex litigation center which is nationally recognized as the premier mass tort, asbestos, and complex litigation center in the Country.[99]

The claims of individual class members are clearly insufficient in amount to support separate claims. The separate claim of the representative plaintiff under the UTCPL which could not be certified on a class wide basis was tried contemporaneously with this class action. Clearly the case was properly certified as more fully detailed in the Order and Memorandum of September 17, 2004.

WEIGHT OF EVIDENCE

The defendant claims that the jury verdict was against the weight of the evidence. While such a generalized statement of error has in the past been considered waived by the Superior Court[100] the verdict as demonstrated by the most perfunctory review of the evidence in this case clearly supported the verdict. Expert testimony, the testimony of defendant executives including Mr. Pierce, Vice President of Service, Mr. McCurdy, defendant's Director of Technical Operations and Corporate Designee and significant documentary evidence created by defendant contemporaneously with the brake problem detailing defendant's knowledge and efforts to rectify the class wide

[99] Philadelphia is a national forum of choice. In excess of 15,000 Fen-Phen cases were filed in Philadelphia County and resolved within ABA time standards for resolution within 2 years. The vast majority of these cases were filed by out of state attorneys some from as far away as Texas which concerned cases of Fen-Phen ingestion across the country including many plaintiffs from the State of Utah. In excess of 8,000 Baycol cases were likewise resolved within appropriate time limits as counsel representing plaintiffs from across the country chose to file in Philadelphia. This Court itself has handled close to one hundred class action matters and has tried four class action cases to verdict.

[100] See for example Jackson v. Spagnola, 1985 Pa. Super. Lexis 8742.

problem on a systematic basis clearly demonstrates the sufficiency of the evidence. Indeed, one need only review the efforts of the American subsidiary to find the cause of the problem and convince its superiors in Korea to rectify the systemic problems and the difficulties the automotive engineers had in resolving the problem to recognize that the verdict was fully supported by the weight of the evidence.[101]

BIFURCATION

The defendant claims error in denying defendant's motion to bifurcate the trial. The trial transcript clearly demonstrates that bifurcation was not needed. The trial was most reasonably tried with damages and liability together. In no way did the testimony concerning damages impact on the liability aspect of the verdict. The jury was clearly capable of and in fact did differentiate between the different claims rendering a defense verdict on some of the claims and rejecting some of plaintiff's damages proof. This is not a case where catastrophic personal injuries are involved. The $600.00 in financial damages sustained by each class member could not possibly evoke such horror or sympathy as to have any influence on the liability verdict. Although everyone who owns a car may sympathize with the aggravation of every Sephia owner facing the same brake problem over and over again, this does not compare with the horror of permanent lifelong neurological damage at birth.[102]

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[101] In evaluating a weight of the evidence claim the Court must conclude that plaintiff's expert testimony was found credible. Primarily plaintiff's expert explained defendants own knowledge, conclusions and efforts. Defendant's own litigation expert's objective test results confirmed the systemic brake pad and rotor deficiencies. N.T. May 24, 2005 afternoon session pgs. 65-67.

[102] The Court notes that whatever compassion or sympathy the aggravation of repeat visits to the car dealer does occasion, all such testimony would have been needed in the liability portion of even a bifurcated trial.

The decision on Bifurcation is entrusted to the sound discretion of the trial Court.[103] Bifurcation is not encouraged.[104] The purpose of bifurcation is to avoid prejudice. The jury was able to make fine distinctions, finding for the defense on two separate issues. There was absolutely no prejudice and no abuse of discretion in refusing to bifurcate. It was a reasonable decision.

EXPERT TESTIMONY OF DR. JOHN MATTHEWS

The defendant claims reversible error in allowing plaintiffs' experts R. Scott King and Dr. John Matthews to testify. The claim that there was reversible error in allowing Dr. Matthews to testify is incomprehensible. Dr. Matthews' testimony related only to the claim that the old cars still on the road suffered a reduction is residual value because of the defective brake system. In question 4 of the jury interrogatories this damages claim was rejected. The jury found $0 damages. There was certainly nothing prejudicial in Dr. Matthews' testimony that could have in any way affected the other verdicts. Indeed Dr. Matthews' theory having been rejected, it is impossible to determine how the defense possibly claims reversible error in allowing him to testify, even if incorrectly permitted, which it was not.

EXPERT TESTIMONY OF R. SCOTT KING

After a full hearing, the plaintiff's expert R. Scott King was found in fact to be qualified and did in fact render appropriate opinions. The Court notes initially that the bases of expert King's testimony derived primarily from the contemporary records and internally documented activity of Defendant Kia trying to correct the systemic brake

[103] See, Sacco v. City of Scranton, 540 A.2d 1370 (Pa. Commonwealth 1988).
[104] Coleman v. Philadelphia Newspapers, Inc., 391 Pa. Super. 140, 570 A.2d 552 (Pa. Super. 1990).

problem and testimony from defendant's own employees. Defendant's Motions in Limine to Exclude the Testimony of Plaintiff's Expert R. Scott King was properly decided

Plaintiff's expert Raymond Scott King is a mechanical engineer. He is employed by D.J.S. Associates consulting in automotive investigation and automotive failure analysis. After attending the Automotive Training Center, Mr. King worked as a mechanic for ten years. As an automobile mechanic he diagnosed and repaired brake problems and was a certified State Inspector. He has performed more than 10,000 Pennsylvania State Inspections each of which required an evaluation of the brakes and a specific notation of the mileage at time of inspection. In 1997 he received a degree in Mechanical Engineering from Drexel University. After graduating from Drexel University he became the chief designer in the flight controls design group for Boeing Helicopter Company. He has received additional training from the Society of Automotive Engineers, and certification from the Automotive Service Excellence Group including certification in brake systems. Expert King was clearly qualified to testify to the expected brake pad life, the causes of brake deterioration and the costs of replacement and repair in motor vehicles in the United States.

Mr. King explained how a brake system works. He showed the jury brake pads, rotors, and brake calibers from the Kia Sephia and demonstrated how they work together. As required by Pa. R.E. 705, he fully explained the basis of his opinion, including his extensive experience with automotive brakes and braking systems, the recommended mileage interval contained in the Kia Sephia warranty manual[105] which stated that the brakes should not even need to inspection until thirty thousand miles, and

[105] P-26.

the Memo dated February 3, 1999 from Mr. McCurdy to James Lee[106] in which Mr. McCurdy said the expected brake pad life in the United States market is a minimum of 20,000 miles. He reviewed and agreed with the testimony of Kia's technical director and corporate designee Mr. McCurdy. He reviewed the LA brake tests performed on Kia's behalf, the technical service reports, technical service bulletins, warranty claim data, and testimony from Kia executives.

Mr. King also inspected the Sephia vehicle in question together with the car's repair records and found unreasonably short intervals between brake lining and brake pad replacement. Mr. King's inspection of Ms. Bassett's car in September 2001 ruled out any possibility that any cause other than brake design defect had caused these brake repair problems. He found no evidence of damage, component failure or abnormal driving which may have caused or even contributed to her unreasonably frequent need for brake replacement.

Mr. King reviewed Kia's own Quality Assurance Records the Quality Assurance Field Product Reports. These field reports prepared by district parts and service manager employees of Kia revealed that the generalized customer issues: "...echoed the complaints of the Plaintiff's vehicle." He reviewed "Technical Assistance Center Incident Reports" and warranty claims data whose purpose was to track failure rates and failure trends in Kia vehicles for Kia's internal business purposes. Mr. King reviewed for the jury that the Sephia's own records showed a warranty claims rates for brakes which was huge when compared to a different Kia vehicle, the Sportage. Mr. King's told the jury that the only difference between the two vehicles was the design of braking systems and that such a significant difference in claims rate demonstrated a

[106] Offered into evidence as P-7

vehicle-wide problem with the design of the Sephia braking system. Such a dramatically different brake claims rate "to me it was significant and it was indicative of a systematic and model wide defect with the brake system." He agreed with Mr. McCurdy's testimony that this data clearly demonstrated excessive brake repair.

Mr. King explained the results of Kia's own internal investigations into the braking problem. These documents demonstrated that for model year 1997 the Sephia braking system had a warranty claims rate of 91.8 percent. For the model year 1998 braking system warranty claims rate in the Sephia was 154.1 percent. For 1999 the braking system warranty claim rate was 97.9 percent.

Mr. King reviewed the technical service bulletins for the Kia Sephia braking system. He explained that technical service bulletins were sent to dealers to describe new components or new procedures to be used. Mr. King agreed with the testimony of Mr. McCurdy that technical service bulletin were issued in connection with "significant repair problems" and that numerous bulletins had been issued concerning the Sephia braking system. He testified that Kia had tried repeated but unsuccessfully to remedy the problems with the brakes, explained in detail the technical service bulletins and explained that they were issued to address vibration, noise, and premature wear problems in the Sephia brakes. Based on his review of all the Kia reports, data and analysis he noted that changes made to parts did not significantly reduce the problem, and that finally, in January of 2002 two new components, a different brake pad and a different brake rotor were introduced.

Mr. King reviewed the testimony of Kia executives and corporate designees and agreed with it. Mr. McCurdy testified the documents and testimony

established that Kia was well aware of the problem with the brakes and that the technical service bulletins were an effort to address the systematic brake problems. Mr. McCurdy testified that even Kia's internal targets for expected brake wear of 9,400 miles was less than half that expected by the U.S. market. Mr. King reviewed complete test results by KETT Engineering which produced studies for Kia. These studies evaluated the pad life performance of the brake design for Kia.

Indeed, although it may not have been necessary, Dr. King testified to the specific problem that caused Sephia brakes to wear out prematurely, make noise and vibrate. "Heat is a natural consequence of applying the brakes. When we apply the brakes and the brake pad squeeze against the rotor, heat is generated and it's normal. Heat is normal. It just like rubbing your hands together very rapidly, heat is built up and that's normal. There is a normal level of heat that you should expect from braking. But in this particular case with the particular rotor and this particular design vehicle there is too much of it and the heat is destructive and it begins to break down components....excessive heat causes excessive wear." He testified that he agreed with Kia executive and corporate designee. McCurdy that the old rotor design problems were associated with the failure to dissipate heat and that there was "an improvement, absolutely" with the finally installed new design. He testified that when there was finally an improved design heat was better carried away from the surface. He demonstrated the differences between the repaired brake system and the earlier defective design. He concurred with McCurdy's testimony that the best pad life achieved with the earlier design had been 9,400 miles and that the new design succeeded in achieving a pad brake life of 22,000 miles. Dr. King testified in detail as to how he derived his opinion for the costs associated with repair and there is

no question that he was qualified to testify upon to the costs of brake jobs and the information on which he relied upon was totally reasonable and permissible under the law of Pennsylvania.[107]

Mr. King did not disagree with the sworn testimony of Kia executives, adopted the findings of the engineering testing performed on Kia's behalf and accepted Kia's own findings as to excessive brake warranty claims. He interpreted these facts to the jury and concluded that the Sephia breaking system had been defectively designed. Mr. King expressed his opinions to a reasonable engineering certainty.[108]

> Q. Mr. King based upon your review of all that data that you have described to the jury, your review of the invoice of Shamell Samuel-Bassett and your inspection of the vehicle did you draw a conclusion as to whether or not the braking system of the Kia Sephia model years 1997 through 2000 suffered from a systematic defect that caused brake pads and routers to prematurely wear and cause noise and vibration in the braking system?
>
> A. I did. In my opinion the data was clear that there was a systematic or vehicle wide problem with the braking system resulting in premature wear."

Mr. King further testified that there was a common underlying common design of the braking system for all class Sephia models and agreed with Mr. McCurdy's testimony that all brake system components in all the Sephia were interchangeable. Mr. King's opinion also agreed with Kia that the reasonable range for pad life was between 20,000 and 30,000 miles. He expected rotors to last 60,000 miles. He testified: "My conclusion was that the brake system was defective in that the brake rotor on that Sephia cannot adequately dissipate the heat that is generated during normal braking."

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[107] The Court notes that no objection was raised by defense counsel about his testimony on costs for replacing pads and rotor either at trial or in limine. Although this testimony occurred over five recorded pages of testimony an objection was raised only to the one question which asked him to do a mathematical calculation of extra expenses over the life of a car. Additionally, the Court notes that the jury had before it the actual charges to repair Ms. Bassett's vehicle.

[108] N.T. May 19, 2005, pg. 107.

Defendant challenges this testimony because Mr. King is not a licensed engineer or a certified mechanic. They claim he should not have been permitted to testify because he has neither authored publications or taught courses on automobile brakes, or worked for a car company designing brakes.

The standard for qualification of an expert witness is a liberal one. In determining whether a witness is qualified to testify as an expert, the trial judge determines whether the witness "has any reasonable pretension to specialized knowledge on the subject under investigation."[109] Any individual with a "reasonable pretension to specialized knowledge on the subject under investigation" is qualified to give expert opinion testimony except in a medical malpractice case governed by Statute.[110] Experience, formal education, informal training, or any combination can qualify a witness as an expert, so long as the area of expertise fits the question at issue in the trial. An expert does not have to be a specialist. An expert does not have be preeminent in the field or know everything there is to know in the area of expertise. "To qualify one to testify it is not necessary that he possess all the knowledge in his special field of activity or that his opinions coincide with the opinions of all others skilled in the same department."[111] There is no requirement that an expert have personally performed independent research or teach or publish on the issue about which she is to offer opinion evidence.[112]

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[109] Miller v. Brass Rail Tavern, Inc., 541 Pa. 474, 480-481, 664 A.2d 525, 528 (1995).
[110] The MCare Act sets forth additional requirements for expert testimony in medical malpractice litigation.

[111] Follansbee Bros. Co. v. Garrett-Cromwell Engineering Co., 48 Pa. Super. 183, 188 (1911). See also, Pratt v. Stein, 298 Pa. Super. 92, 444 A.2d 674 (1982).
[112] See, Carroll v. Avallone, 869 A.2d 522 (Pa. Super. 2005).

Expert witnesses may gain specific expertise through experience separate and apart from or even instead of formal training. In Commonwealth v. Puksar,[113] a witness with general medical qualifications testified to "blood stain pattern interpretation" because he had experience, having reviewed blood spattering at hundreds of crime scenes.

Even formal education is not required to testify as an expert witness. The managing partner of an employment agency with thirty-two years of experience was permitted to testify to the employability and earning capacity of an injured plaintiff, in Ruzzi v. Butler Petroleum Company.[114] A football coach with only experiential knowledge of the "customs and safety standards utilized by coaches of high school teams" was qualified to testify about safety practices and procedures appropriate for high school football practice, in Rutter v. Northeastern Beaver County School District.[115] A police officer was permitted to testify that an illustration of a crime scene was an accurate scale diagram based upon physical evidence found throughout the room, and measurements even though the officer's formal education had been exclusively in vehicular collision reconstruction. His experience in forensic investigation and applied physics alone gave him sufficient experience to testify. Commonwealth v. Serge.[116] A real estate agent with 18 years of experience selling houses in a specific community could testify to the value of a house even though she was neither a broker nor a certified real estate appraiser, in Hein v. Hein.[117] A police officer with 14 years of practical experience

[113] 559 Pa. 358, 740 A.2d 219 (1999), cert. denied, 531 U.S. 829 (2000).
[114] 527 Pa. 1, 588 A.2d 1 (1991).
[115] 496 Pa. 590, 437 A.2d 1198 (1981).
[116] 837 A.2d 1255 (Pa. Super. 2003), aff'd on other grds., 586 Pa. 671, 896 A.2d 1170 (2006).
[117] 717 A.2d 1053 (Pa. Super. 1998).

as a police chemical laboratory technician was qualified to identify drugs, in Commonwealth v. Bulling.[118]

No specific credentials or qualifications, or academic degrees or experience is required for an expert to present opinion testimony. It is beyond question that experience alone can be sufficient to provide expert opinion testimony. The standard for the presentation of expert opinion testimony in Pennsylvania is the nationally remarkably lax standard of "reasonable pretension" to specialized knowledge. Mr. King is a licensed safety inspection mechanic for the Commonwealth of Pennsylvania. He is certified by the National Association for Automotive Excellence in Braking. He is a member of the Society of Automotive Engineers. He is a member of the American Society of Mechanical Engineers. He spent a decade as an automotive technician and has diagnosed and repaired braking systems on hundreds of occasions. He holds an engineering degree from Drexel University.

Mr. King's testimony was primarily grounded in his agreement with the admissions contained in Kia's own records and in the testimony of Kia's own executives. Kia's own records and the testimony of Kia designees and executives document that Kia knew for an extended period of time that Sephia brake problem existed. Kia documents and testimony also show that Kia was aware of consumer expectations in the U.S. automotive market. Indeed, defendant Kia's own records document that they tried to repair the brake problem but could not succeed because of the systematic design problems. Primarily Mr. King explained Kia's own records and admissions in testimony.

There can be no question that Mr. King was qualified to review, understand and explain to the jury the deposition testimony of Kia's own personnel, Kia's

[118] 331 Pa. Super. 84, 480 A.2d 254 (1984).

own records and to offer the opinion that there was a systematic problem. Likewise there can be no question that the expert was qualified to offer an opinion as to the reasonable charges for common automotive maintenance tasks such as a repair of the brakes.

Defendant also sought to disqualify expert King on the basis of a Frye challenge. The Frye rule applies only when a party seeks to introduce novel scientific evidence.[119] When technical expert opinion evidence has not been developed through a novel methodology, it cannot be precluded by Frye. For example, a computer-generated animation is merely a graphic illustration demonstrative of an expert's opinion. Since it is not a simulation that asserts facts it cannot be the subject of a Frye challenge.[120]

The Frye rule is not applied every time expert opinion evidence enters the courtroom. "[T]he methodology of an expert testifying to a patient's medical record, which information was used by the patient's doctors to treat the patient was not subject to challenge. These are methods used by medical professionals every day and are not a proper subject for a Frye analysis."[121] DNA analysis has become commonplace and there can be no Frye challenge to such evidence.[122] The microscopic comparative examination of shell and bullet markings, a methodology in use since the 1930s and accepted by the Association of Firearms and Toolmark Examiners, is not subject to a Frye challenge.[123] Reliance on general population studies to determine the cause of a syndrome is not a novel methodology, and therefore the Frye rule is not applicable to this

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[119] Grady v. Frito-Lay, Inc., 576 Pa. 546, 839 A.2d 1038 (2003); Commonwealth v. Blasioli, 552 Pa. 149, 713 A.2d 1117 (1998).
[120] Commonwealth v. Serge, 586 Pa. 671, 681 n.3; 896 A.2d 1170, 1176 n.3 (2006).
[121] Folger ex rel. Folger v. Dugan, 876 A.2d 1049, 1058 (Pa. Super. 2005) holding that a standard spinal fluid test for herpes and the interpretation of its result were neither junk nor novel science.
[122] Commonwealth v. Hall, 867 A.2d 619, 633 (Pa. Super. 2005), app. denied 895 A.2d 549 (Pa. 2006).
[123] Commonwealth v. Whitacre, 878 A.2d 96 (Pa. Super.), app. denied 892 A.2d 823 (Pa. 2005).

expert testimony.[124] Simply disputing an experts conclusions does not justify a Frye challenge. An attack on the expert's inferences or conclusions is merely an attack on the weight of the testimony.[125]

The Frye test is applicable only to novel science. It is entirely inapplicable to routine opinion testimony as has been given in the Courts of Pennsylvania for decades. Testimony about product liability design defects have been commonly received in Pennsylvania for decades and may not be challenged under Frye.

In Pennsylvania a Frye challenge goes to the methodology only. A Frye challenge cannot be grounded in the contention that other experts reached different conclusions. Mr. King's methodology consisted of an evaluation of Kia's own documents, engineering tests, efforts to correct the problem, admissions, field reports, technical service reports, and other information from defendant dealers. Mr. King evaluated and digested the testimony of defendant's own executives and corporate designee which revealed that they clearly knew about the ongoing Sephia brake problem, and tried desperately to correct it. Opinions derived from defendant's own tests, studies, technical analysis, field reports, and the sworn testimony of the defendant itself to which a qualified expert witness applies his own experience and knowledge is obviously a permissible methodology. There is no question that the decision of the Court to deny defendant's Motion in Limine was correct.

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[124] Ford ex rel. Pringle v. Philadelphia Housing Auth., 848 A.2d 1038, 1053-1054 (Pa. Commw. 2004), app. dism., 583 Pa. 439, 879 A.2d 162 (2005).

[125] See, Commonwealth v. Hall, 867 A.2d at 633; Cummins v. Rosa, 846 A.2d 148, 151 (Pa. Super. 2004); see also, Carroll v. Avallone, 869 A.2d 522, 525, 526 (Pa. Super. 2005), app. granted, 897 A.2d 1183 (Pa. 2006).

JURY CHARGE

The Pennsylvania Supreme Court has repeatedly stated that the trial court has broad discretion in phrasing its instructions to the jury. The trial court may choose any appropriate wording if the law is clearly, adequately, and accurately presented for jury consideration. The entirety of the charge must be examined to determine whether this standard has been met. "It is axiomatic that a jury charge must be read as a whole to determine whether it is fair or prejudicial and that the trial court has broad discretion in phrasing its instructions so long as the law is clearly, adequately and accurately presented to the jury."[126] Error cannot be found by focusing on isolated words taken out of the context of the entire jury instruction.[127] The charge must be read as a whole to determine whether it was fair and accurate or not.

Even where the claim of error is rejecting a proposed points for charge, the rejection must be viewed within the context of the charge as a whole, and against the background of the evidence in the case. The trial judge is not required to use the exact language of any requested point. The Court may use any appropriate language which adequately and clearly covers the subject in question.[128] Even if a jury charge is to any degree inaccurate, the appealing party must demonstrate prejudicial error, and an objection must be raised.[129]

No objection was raised by counsel following the charge. At the conclusion of the charge the Court said:

> Court: Can I see counsel at side bar before I give final, noncontroversial standard closing instructions.

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[126] Commonwealth v. Miller, 560 Pa. 500, 746 A.2d 592 (2000).
[127] Commonwealth v. Smith, 548 Pa. 65, 694 A.2d 1086 (1997).
[128] Dietrich v. J.I. Case Co., 390 Pa. Super. 475, 568 A.2d 1272, 1276 (1990).
[129] Dietrich v. J.I. Case Co., 390 Pa. Super. 475, 568 A.2d 1272, 1276 (1990).

At side bar the Court asked: "Are there any objections to the charge?"

Mr. McClure, [for the defense]: None, Your Honor.

Kia claims reversible error because the Court explained a class action trial to the jury. The description of the nature of class action litigation was totally accurate. A jury is entitled to an explanation of the case so that they can understand the nature of the task before them. In Kimmel v. Yellow Cab Company,[130] the Supreme Court said: "[t]he duty of a trial Judge in charging a jury is twofold: [1] he must make an accurate statement in plain language of the applicable principles of law, and [2] he must accurately, impartially, without prejudice to any litigant and without usurping the jury's functions assist the jury in applying these principles to the facts of the case before them."

In accordance with the Court's obligation, the Court explained the nature of the case to the jury. The Court said:

> But the other thing I think you need to know preliminarily is that this is a class action. I think we didn't hide it from you, but we didn't exactly discuss it until really towards the end of the case. The caption of the case is Shamell Samuel-Bassett on behalf of herself and all others similarly situated.
>
> I am going to tell you what the claims are...and the number of class members, although counsel talked about 10,000 and that's right, the number of class members is 9,402.
>
> So the law provides where there is a large number of similarly situated class members, and a small recovery so that one, it just doesn't pay, you can image the cost that are involved for both sides in bring this lawsuit that you have heard for these two weeks and paying these people who are experts and these demonstrations and everything that goes into a lawsuit.
>
> So where there are many claims that are alleged to be similarly situated, and too small to warrant each individual suing on their behalf, the law provides that they can be brought as a class action, and you the jury decide the case for every

[130] 201 A.2d 417 (Pa. 1964).

> member of the class. Whatever you decide today, tomorrow, next week, whenever you reach a verdict, will be binding on all 9,402 members of the class. On the one hand, the class members can't bring individual lawsuits because of the costs involved a lawsuit, and on the other hand, the Court can't handle 9,400 cases. Now, I am very proud of what our court has done in handling thousands and thousands of cases, but were we to take 9,400 separate cases, it would be 5, 7 years before the last of them had a jury trial. So the law provides that class actions can be brought under those circumstances.
>
> The Class in this case is all resident in the Commonwealth of Pennsylvania who purchased or leased model years 1997, 1998, 1999, and 2000 Kia Sephia automobiles for personal, family or household purposes. Now I haven't given you the whole definition but that certainly the only part of the definition that you need to know."

This instruction about class actions is totally accurate both generally and as applied to this case.

The defendant claims error in the specific words used during the jury charge. Initially, it must be noted that specific words taken out of the context of the entire charge cannot be a basis for reversible error.[131] The charge must be viewed in its entirety and in context and must be affirmed if it reasonably and accurately describes the law in a way that the jury can determine the issues and understand the law.[132] The conduct of the trial, the totality of the jury instruction and the fact that the jury was able to make fine distinctions rendering a plaintiff's verdict on some counts and a defense verdict on others clearly demonstrates that the charge was understood. The charge accurately described the law.

It is hard to understand why defendant claims error in the Court's use of the specific phrases: "market price" and "fair market value." The defense contends there was reversible error in not using the exact words they requested namely: "contract price."

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[131] Commonwealth v. Smith, 548 Pa. 65, 694 A.2d 1086 (1997).
[132] Dietrich v. J.I. Case Co., 390 Pa. Super. 475, 568 A.2d 1272, 1276 (1990).

The choice of words cannot possibly constitute reversible error since the jury found for the defense on the interrogatory which these words explained.

The Court fully and accurately described warranty and breach of warranty:

> Now, by the words of that warranty, defendant's written warranty is limited to the repair or replacement of defective parts or components. That means if the defendant repaired the brake system so that it was in a nondefective condition, and the defendant did that without charge, then the defendant met its obligation under the written warranty.
>
> And I think that's all the instruction that you need as to warranty law to answer the first question. Did defendant breach its expressed warranty on the cars purchased by the Class? Yes or no. If you find yes, they did breach their warranty, that's a verdict as to the plaintiff Class. If you find no, they did not breach their warranty, that's a verdict for the defendant on that aspect of the case.
>
> The third question reads: Did the defendant fail to remedy the common defect without charge after being given an opportunity to cure the problem? Now, this comes from a federal statute which uses the word cure. So it's in the question, but it really means to fix the problem. The question is, has the defendant failed to remedy a defect after reasonable opportunity to cure without charge? That's Question 3. Did the defendant fail to remedy the common defect without charge after being given an opportunity to cure the problem? If the answer is yes, you've reached a verdict for the plaintiff. Because the question is, did the defendant fail to do something. If you answer no, you've reached a verdict for the defendant because it's a double negative. I'm sure we could have come up with a better way of saying it.

The defendant also claims generally that by not using the words "actually incurred and paid" somehow the jury was mislead or the law was not fully explained. The Court fully and accurately explained the damages which could be awarded. The Court actually used what defense apparently considers a "magic word" and said: "That's the out of pocket, paid repair costs." The Court said:

> And the second question of damages asks you to find-state the amount of damages, if any, sustained by each Class member for repair, expenses reasonably incurred as a result of defendant's breach of warranty. That's the cost to repair or replace the affected parts. That's the out of pocket paid repair costs.

> Second, repair expenses. The evidence supported the verdict which could be supported by the evidence is any figure between zero and $1,249. That's the most that the evidence can support as a verdict for the out-of-pocket repair costs."

Kia specifically objects that their proposed charge number 26 and 37 were not given. Because multiple "amended" and "supplemental" requests were submitted by the defense during the closing days of trial, the Court recently requested clarity as to which specific charges had been refused. Copies of defense charges 26 and 37 as identified for appeal are attached hereto.

The Defendant objects that proposed jury instruction number 26 was not given. This instruction relates only to the implied warranty of merchantability upon which a defense verdict was rendered by the jury. No reversible error could possibly have occurred by refusing to give a defense proposed jury charge on a claim upon which the defense succeeded. The Court does not believe a new trial is being requested concerning the implied warranty of merchantability count.

The defense claims error in not giving their proposed charge number 37. Charge Number 37 requested that damages be reasonable compensation for loss or injury suffered and that "The plaintiff bears the burden of proving damages by a reasonable certainty." The Court properly instructed the jury that damages were compensation for injury suffered and the proper burden of proof namely, "by a preponderance of the evidence." The Court said:

> This is a civil case. In a civil case it is the plaintiff who has the burden of proving those claims that entitle the Class to relief. When a party has the burden of proof on a particular issue, that claim must be established by a fair preponderance of the evidence. The evidence establishes a claim or contention by a fair preponderance of the evidence if you are persuaded it is more probably accurate and true than not.

[b]ut I brought into the courtroom the scales of a balance beam scale because that's the classic example of the burden of proof. Into one pan you put all the evidence and factors and considerations that support the proposition, into the other pan you put all the evidence and factors and consideration that go against the proposition. If the pans tip ever so slightly or a lot to the side of the plaintiff, they've met their burden of proof. If the pans tip ever so slightly or a lot to the side of the defense, or if the pans remain equally balanced and don't tip in either direction, then the plaintiff has failed to meet the burden of proof on whatever you're evaluating.

The Court specifically went over the charge on express warranty[133] at the Charging Conference.

The Court said: "So now we are up to warranty. If I understand it the defense agrees that there is an express warranty: Right?

Mr. McClure: Yes Your Honor.

The Court: So we really don't need a whole lot of instruction on express warranty, because they are not going to have to decide whether or not there is one. So really, the only general thing they need to know is that a warranty is a promise, either expressed or implied made by a seller of goods that the goods he or she possess will posses certain characteristics. The plaintiff claims a breach of an express warranty, claiming that the Kia Sephia for the model years 1997 to 2000 did not conform to an affirmation of fact or promise made by Kia Motors, Inc. to plaintiff about the vehicle. In this case the affirmation of fact or promise was in the warranty manual. Up to that point does anybody have any objections?

Mr. McClure: No Your Honor.

The Court: Why should I go any further than that? ....You can argue from it whatever is important.
Mr. McClure: That's acceptable to the defendant, Your Honor.

The Court: Now what I read was a little stilted and formal. I am sure I'm not going to read it as I read it to you, so don't count on those words, but you can count on those concepts. Actually, 9.01 of the Standard Jury Charge which is entitled "Creation of an Express Warranty" really uses the same concepts in better words. That is all I think that the jury needs to know about an express warranty other than damages which we will get into....

[133] N.T., May 25, 2005, pg. 43.

This is substantially the jury charge as given on warranty of merchantability to which no objection was taken.

With respect to damages the defense agreed to the charge for the only damages the jury found applicable.[134]

> The Court said: "So now we are up to damages. Standard Charge on damages will be explained the jury, and they will be explained that their obligation is to award damages for each class member and that the testimony they heard as to Ms. Samuel-Bassett's damages were presented only as representative of each class member.... one damage is the cost to replace or repair the defective parts. Correct Mr. Donovan?
>
> Mr. Donovan [on behalf of plaintiff]: Yes.
>
> The Court: Correct, Mr. McClure?
>
> Mr. McClure [on behalf of the defendant]: Correct Your Honor.

The defense claims that the Court improperly explained damages. The jury charge conference demonstrates substantial agreement between counsel in the explanation the Court gave on damages:[135]

> The Court: "In the out of pocket repair costs, what I had told you before was that I would say one, a measure of damages, the costs to repair or replace the affected parts, which is the out of pocket repair costs. I think I am saying the same thing in two difference ways. Does anyone have any objection to this formulation?
>
> Mr. Donovan, No.
>
> Mr. McClure: We would have an objection to that, Your Honor.
>
> The Court: What do you object to?
>
> Mr. McClure: The objection would be that under the limitation of remedies in the warranty that would not be recoverable. They could only recover the costs—Kia's objections under the warranty was to repair or replace any defective parts, if there were any.

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[134] N.T., May 25, 2005, pg. 56.
[135] N.T., May 25, 2005, pg. 60.

The Court: So let me understand. Maybe I can just go with you and – you don't want me to tell the jury that the amount they award has to have been something that the class members spent. That's what the words "out of pocket" mean.

Mr. McClure: That part I can appreciate.

The Court: That's OK?

Mr. McClure: That's OK.

The Court: The part you don't want is the cost to repair or replace the affected part. Is that what you don't want?

Mr.McClure: That's is fine. But I guess—

The Court: So the one phrase is fine, the other phrase is fine but the two phrases together are objectable. Can you explain that to the Superior Court for us on the record.

Mr. McClure: Maybe we just view it differently in terms of –my take on repair/replace the defective part would be, what would it cost to put the new rotor on the vehicle.

The Court: I am not going to deal with your take I'm going to the deal with the words I used to charge the jury. You can take however you take. I am going to assume that the jury will take it in the right way. That's the assumption we do all our jury trial on. Now do you object to the measure –that the plaintiffs are entitled to the costs to repair or replace the affected parts?

Mr. McClure: I would object to that charge Your Honor.

The Court: That's your charge no. 34. You have waived your objection to that language when you asked me to charge.

Mr. McClure: Number 34, is that the one that we gave your honor today?
The Court: I have no idea. [what day this charge number 34 was given to the Court] Does it matter? You can't on day one ask me to do something and on day four object when I say I will do it.

Mr. McClure: If Your Honor's question is, Is there an objection to that. Those two questions as far as it goes, the answer is there is an objection.

The Court: Fine. "As far as it goes" What does that mean?

Mr. McClure: Again, I don't know if that was part of a sequence as you are going down getting agreement on each sentence.

The Court: the plaintiff's are entitled to recover, should they prove a warranty claim, the costs to repair or replace the affected parts, which is the out of pocket repair costs. Any objection, Mr. Donovan?

Mr. Donovan: No.

The Court: Any objection Mr. McClure?

Mr. McClure: No, Your Honor.

The defense cannot request a specific charge, agree that each sentence of a two sentence jury instruction correctly states the law and may be used but still object to both sentences being given together. The defense cannot purport to have preserved an objection while specifically affirming no objection.[136]

The jury verdict interrogatories were also clearly, painstaking and specifically reviewed at the charging conference.[137] After going over the verdict sheet the court said:

> The Court: Do you object to these three being the interrogatories as to liability Mr. Donovan? [138]

Mr. Donovan: No. No, we do not object as to that.

The Court: As to liability Mr. McClure?

Mr. McClure: A couple of things.... With respect to the express warranty, I believe that they are required to show that –I think the jury would have to find that there was a common defect and that there were---and the plaintiff has proven that there were no alternative secondary causes. I am trying to remember the exact language.

The Court: I have defined express warranty in the charge; right?

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[136] N.T., May 25, 2005, pg.Page 64. The instruction was as given to the jury was substantively correct, factually agreed to by defense counsel and not preserved by objection.
[137] Notes of Testimony May 25, 2005 page 66 through 73.
[138] N.T., May 25, 2005, pg.At Page 67.

Mr. McClure: Correct, Your Honor.

The Court: Why should the question they are asked be anything other than, do you find there was a violation of the expressed warranty?

Mr. McClure: I think I understand. Then, finally –

The Court: I understand" Does that mean it is OK?

Mr. McClure: That one, Your Honor, Yes."

Clearly Mr. McClure concurred in the jury verdict interrogatories as to liability. As the Court continued reviewing each verdict interrogatory Mr. McClure did not object, did not take exception and in fact agreed.[139] After a conference off the record concerning the final interrogatory form the Court said:

The Court: So, is that alright now?

Mr. McClure: Yes, Your Honor.

The Court: Those are really the only three charges, the only three questions, we need as to liability; correct?

Mr. Donovan: Agreed.

The Court: Mr. McClure, isn't that correct? You can look at them again....But if the charge is correct, aren't those the only three questions we need on liability?

Mr. McClure: Yes Your Honor."

After agreement as to liability was reached, the conference continued as to questions about damages:

The Court: "With respect to damages, I think the question should be couched as: State the amount of damages, if any, sustained by each class member. Then we go on in three different questions. So the first question would read: State the amount of damages, if any, sustained by each class member which is the difference in value of the Sephia as warranted and the Sephia as delivered. Any objections—

[139] N.T., May 25, 2005, pg. 69.

Mr. McClure No Your Honor."[140]

The Court: And then the second question would be: State the amount of damages if any, if any sustained by each class member for additional repair, for repair expenses as a result of defendant's breach of warranty.

Mr. Donovan: No Objection.

The Court: Do you have any objection to that.

Mr. Donovan: No, Your Honor.

Mr. McClure: No, Your Honor. All brake systems components in all the Sephia's were interchangeable.

Finally Mr. Donovan asked that the words "per class member" be added at the bottom of the verdict sheet after the space for the verdict amount. Mr. McClure objected because it was redundant and the Court agreed with defense counsel that it was redundant because it was clearly and specifically understood that the verdict would be per class member and that the verdict would be molded by the Court to a class verdict.

Counsel also specifically agreed on May 26th to a jury instruction and verdict interrogatory that if defendant repaired the brake system to a non defective condition without charge the defendant was not liable. Mr. McClure agreed[141] requesting only that the words without "without charge" be eliminated. Mr. McClure stated: "I think it's redundant." After further discussion the defense withdrew even this request.[142] The Court said: So given that discussion do you object to the words without charge being added.

Mr. McClure: Not at all."

To avoid any possibility of misapprehension the Court restated the charge.

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[140] The Court notes that this was the question on which the jury found no damages.
[141] N.T., May 26, 2005, Page 10, Line 11.
[142] N.T., May 26, at Page 11.

The Court: If Defendant repaired the brake system to a non-defective condition without charge, then the defendant has met its obligation under the written warranty, correct Mr. Donovan?

Mr. Donovan: That is correct, Your Honor.

The Court: Correct Mr. McClure?

Mr. McClure: Correct.

The defense agreed to the language of the express warranty charge.

On May 26th upon final review of the jury interrogatory Mr. McClure objected to the change in terms from actually incurred to reasonably incurred. This however is a distinction without any difference and cannot constitute reversible error.

Finally, the defense somehow claims error in not specifically telling the jury that plaintiff's claims were limited "solely to the repair or replacement of parts defective in Kia-supplied material or workmanship by an authorized Kia dealer at its place of business" and excluded "brake and clutch lines." This is quite simply inaccurate. Plaintiff's claim was limited to an amount of money that compensates the class for the breach of warranty. The law of the warranty of merchantability and the explicit warranties stated and the damages claim had been clearly, appropriately and accurately explicated to the jury and the defense agreed that the measure of damage is "...the cost to repair or replace the affected parts."[143] There was no error in the instructions to the jury.

JURY VERDICT INTERROGATORY

Defendant claims non-specific error in the jury verdict form but does claim error in not using defendant's proposed special verdict form. Defendant's "First Amended Special Verdict Form" consists of five pages asking 12 detailed questions. These

[143] N.T., May 25, 2005, pg. 64.

suggested interrogatories included unnecessary and repetitive questions which complicated and would only confuse the jury. The purpose of a jury verdict form is to fairly and properly require the jury to answer those questions which are needed for the verdict and are not to be a substitute for clear and correct jury instructions. The verdict interrogatory fairly and properly stated the questions needed for a proper jury verdict to be rendered. As more fully outlined above, the defense agreed to the questions.

CONTINUANCE

And finally, defendant claims that the proposed settlement which itself was eventually rejected by the United States District for Southern District of Florida by Opinion of the Honorable Judge Zloch of the United States District Court, Southern District of Florida required a continuance of the trial. Even though all counsel were ready and prepared to proceed to trial and all witnesses were available, a continuance was requested to give the parties more time to: (1) void the California settlement, (2) amend the class definition, (3) resolve all issues concerning the "stipulation and agreement of settlement" (4) resolve all issues concerning the "form of mailed notice" to class members (5) resolve all issues concerning the "form of claim form" for class members to make any recovery and (6) resolve any issues arising during negotiations about alternative proofs required of class members for recovery, including form of proof, documentation required, recovery without documentation, (7) a Florida Federal Court Judge agreeing to certification of the national class for settlement, and (8) approval of a national settlement by a Federal District Court Judge for the Southern District of Florida. Even those issues actually negotiated would have resolved the claims of an entire

national class members in a sum which was only three time the total verdict awarded on behalf of a mere 9,402 plaintiffs in the Pennsylvania Class.[144]

In his opinion dated October 18, 2005 denying defendants' request to enjoin further proceedings in this action Judge Zloch agreed with this Court's analysis and affirmed the decision to proceed to trial:

> "The Court notes, however, that the agreement articulated in the MOU could not, by its terms, be either "accepted" or "rejected" by Judge Bernstein in any manner that passed on the inherent legitimacy of the same. Judge Bernstein was simply able to decide whether the MOU presented him with an occasion to stop the proceedings before him."

Judge Zloch concluded that no federal intervention had ever been warranted because the actions in 48 states had substantially progressed beyond the Federal Action.

> Kia represents that the classes have been certified in the California, Pennsylvania, New Jersey, and Florida state actions, and Plaintiffs do not contest this. The Pennsylvania action has produced a jury verdict after a trial on the merits. The California state court has given at least preliminary consideration to a settlement presented to it. The above-styled cause, on the other hand, has not been certified as a class action, and features only a possible settlement that has not been granted preliminary approval. The primary actions Kia seeks to enjoin, therefore, are at stages of litigation well beyond the above-styled cause, which takes this case outside the ambit of the aforementioned causes.

In his final opinion dated November 4, 2006, Judge Zloch concluded that:

> Pursuant to the findings of Judge Bauer [in California] at a preliminary approval hearing on October 3, 2005, notice of the California action and the settlement thereof was sent out to class members on October 10, 2005. Pursuant to Judge Bauer's aforementioned Order (DE 56), class members were to file objections or requests for exclusion by November 18, 2005 and claim forms by December 19, 2005, and a Final Fairness Hearing is scheduled for January 23, 2006.
>
> To sum up the status of the state actions, the Court notes that numerous actions have been filed making factual allegations and stating claims against Kia similar to those made in the above-styled cause. The California action has seen the certification of a 47-state class of Sephia owners, preliminary approval of a settlement, and notice being sent to the class members. Of the states not included

[144] The value of the National Class as determined by Judge Zloch exceeds 120 Million dollars. Opinion of November 4, 2006.

in the California settlement, namely, Pennsylvania, New Jersey, and Florida, all have certified classes of Sephia owners and the Pennsylvania action has a Final Judgment which was entered in favor of the Plaintiff class.

A review of the cases detailed above, however, reveals that every Sephia owner in the United States has already been certified as a member of a Plaintiff class. There is, therefore, no owner of a Sephia in the United States without a remedy currently being pursued. Furthermore, all of the aforementioned actions have proceeded to a stage beyond the above-styled action.

Sephia owners in forty seven states have received notice of a settlement through the California action, and a final judgment has been entered in favor of Pennsylvania class members.

There was no error in denying a continuance.[145]

CONCLUSION

For the reasons set forth above there was no error. While this was a complex and difficult trial, the case was admirably tried by all counsel and the justice of the jury system in America clearly reaffirmed. The verdict and Judgment of the Court below should be affirmed.

BY THE COURT:

12/28/06
DATE

MARK I. BERNSTEIN, J.,

[145] And the proposed "understandings" cannot now possibly be implemented.