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Two-time victims in Chrysler's bankruptcy

By Jeff Gelles

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Susan Kline wasn't even supposed to work that Saturday in February 2007. But a fellow employee had a conflict, so Kline offered to help. She left her husband and teen children at home in Morris County, N.J., and headed down Interstate 287 toward her office.

She never made it. Kline, 49, burned to death on the highway, moments after her Jeep Grand Cherokee was rear-ended by a minivan.

Tom Kline's voice still trembles when he recounts the parade of horrors that followed.

First there was word of the crash from his small town's mayor and police chief. Then their request for dental records "because there's really nothing left to identify," as one of them put it. Then having to share his sudden grief with the couple's children: Kim, then 16, and her brother, Chris, 13.

In the two years since Susan's death, Tom Kline has been trying to rebuild his life. But last week, he suddenly faced a new source of anguish: word that a federal Bankruptcy Court had decided to wipe out his product-liability lawsuit against Chrysler, manufacturer of the 1996 Grand Cherokee that Kline and his attorney blame for Susan's death.

In his ruling last Sunday, U.S. Bankruptcy Court Judge Arthur Gonzalez said public policy was served in a bankruptcy sale - such as the sale of the old Chrysler's assets to Italy's Fiat - by allowing "a purchaser to assume only the liabilities that promote its commercial interests."

Not all consumer protections were wiped away. Under terms of the deal Gonzalez approved, "New Chrysler" agreed to honor certain consumers' rights, such as warranty and lemon-law claims. But the new company will have no further responsibility for injury and wrongful-death claims linked to defects in cars sold by "Old Chrysler."

Consumer advocates and product-liability lawyers, who warned against the plan before Gonzalez's ruling, are continuing to fight. They say the decision undercuts a key element in a highly imperfect regulatory system: that consumers most harmed by vehicles' design defects, or survivors such as Tom Kline, should at least be compensated for their losses.

In an interview last week, Kline said he felt as if defect victims were being treated as "collateral damage," especially given the heavy hand of the federal government in the bankruptcy and sale.

Kline said he knows Chrysler's collapse has harmed millions of others, including workers, dealers, and investors. But he said most of those losses pale beside the severe injuries and deaths suffered by defect victims.

"I'm a little aggravated that they're using taxpayer money to bail out companies that are essentially shirking any and all responsibilities to those people who lost the most," said Kline, vice president of a printing firm in Parsippany, N.J.

If Gonzalez's decision stands, Kline will not get the chance to prove his claim - that Chrysler manufactured and sold a vehicle prone to catastrophic fires in rear-end collisions. In its initial reply to Kline's suit, the automaker denied the allegation.

Chrysler spokesman Michael Palese said Friday that the 1996 Jeep Grand Cherokee "meets or exceeds all federal safety standards and has an outstanding safety record." He said its fuel-tank placement or design had never been the target of a recall or investigation by regulators.

But Kline's attorney, Angel DeFilippo, said Chrysler was aware of risks associated with the vehicle's design, in which the gas tank is behind the rear axle.

DeFilippo said Susan Kline's horrific accident illustrated the risk.

She said the vehicle that hit Kline's rode underneath the rear of Kline's Jeep, or "submarined" into it, in a crash that wasn't severe enough to cause other injuries. Both other drivers walked away, DeFilippo said, and an autopsy of Kline's remains showed no signs of severe injury beyond her burns.

The attorney said that Kline, trying to escape flames that first raged to her left, was found on the passenger seat, on top of her purse. She had apparently climbed over the center console,

only to find that the crash had jammed the passenger door.

"She burned to death trying to get out," DeFilippo said.

Paul Sheridan, a former Chrysler product manager who expected to testify in Kline's case, said federal safety standards "are not adequate for the real world, and the industry knows it."

"With that vehicle, just backing up into a high curb can split the tank open," Sheridan said. "It has a plastic, unshielded tank that was known to be defective the moment it left the factory."

How many fires have there been? Sheridan cannot say, in part because automakers know how to work the system. He said they agreed to settle cases, but only if the details are kept private - and from other car owners.

Bankruptcy experts say it is not uncommon for companies to try to escape future product-defect liabilities in search of a "fresh start." But courts do not necessarily go along. At the least, they sometimes require that a pot of money be set aside for future claims.

The amount would have to be large to be meaningful. By one estimate, Chrysler currently faces about \$600 million in liability claims.

David Skeel, a law professor at the University of Pennsylvania, said the strongest claims would come from those who have no idea today that they might someday have a claim, such as people who may one day be in accidents caused by other drivers' defective Chryslers.

Skeel said the government's involvement in the bankruptcy bolsters the victims' case.

"If you're going to pick and choose who gets paid, there's a pretty strong argument that the victims of Chrysler cars have a moral claim," he said.

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