IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION	)	
	)	
SWEETMAN TRIAL GROUP	)	
	)	
LIMITED TO:	)	
	)	
WAYNE TISDEL	)	C.A. NO. 04C-03-255-ASB

Date Submitted: September 11, 2006
Date Decided: November 28, 2006

MEMORANDUM OPINION

Upon Consideration of Defendant DaimlerChrysler Corporation's Motion for Summary Judgment.
GRANTED.

Robert Jacobs, Esquire and Thomas C. Crumplar, Esquire, JACOBS & CRUMPLAR, Wilmington, Delaware. Attorneys for Plaintiff.

Somers S. Price, Jr., Esquire, POTTER ANDERSON & CORROON, LLP, Wilmington, Delaware. Attorney for Defendant, DaimlerChrysler Corporation.

SLIGHTS, J.

I.

In this opinion, the Court considers the viability in Delaware of the so-called "sham affidavit doctrine" and then considers the doctrine's applicability in this case. In the asbestos litigation, this Court all too frequently has confronted arguments from defendants that plaintiffs improperly have attempted to defeat well-supported motions for summary judgment by submitting affidavits from witnesses (including plaintiffs) that directly contradict the witness' prior sworn deposition testimony upon which the motions for summary judgment are based. Given the frequency with which defendants have raised the sham affidavit doctrine in this litigation,[1] the Court has determined that it is necessary to address the issue in some detail in order not only to decide this case, but also to provide some definitive guidance to the parties in the asbestos litigation going forward.[2]

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[1] Although the Court has not tracked the data in any systematic way, the Court estimates that between twenty and thirty motions for summary judgment are filed in connection with each monthly trial setting of asbestos cases, perhaps more. Among these motions, the Court will confront the sham affidavit argument, on average, at least twice. For example, the motion *sub judice* was one of three motions heard by the Court on a single calendar where the defendant argued that the plaintiff had submitted a sham affidavit. As discussed below, this trend is not only disturbing to the Court, it is disruptive to the Court's orderly management of this extensive docket.

[2] The sham affidavit issue typically unfolds after a defendant moves for summary judgment based on a fully developed factual record, the plaintiff then submits a new affidavit which creates an issue of fact where none existed before, and the moving defendant then seeks to have the new affidavit stricken by the Court because it is a "sham."

II.

A. Tisdel's Discovery Deposition and Answers to Interrogatories

Plaintiff, Wayne Tisdel ("Tisdel"), filed his complaint against Daimler Chrysler Corporation ("Chrysler") on March 22, 2004.[3] He alleged that he suffers from asbestosis as a result of his exposure to asbestos-containing automobile parts manufactured by Chrysler.[4] On September 8, 2004, Tisdel filed his Answers to Interrogatories. Although his answers to interrogatories identified several vehicle makes and models on which he performed automotive repairs, and several manufacturers of asbestos-containing automotive parts he encountered during his repair work, he did not identify any Chrysler vehicles or any Chrysler parts.[5]

Chrysler deposed Tisdel on January 13, 2006.[6] When addressing his recollection of specific automobiles on which he performed repairs, Tisdel testified that he changed clutches on a 1955 Chevrolet pickup truck and a 1950 two door Ford car.[7] When asked if he remembered the make and model of any other vehicles on which he changed clutches, Tisdel stated "God, there has been so many vehicles I

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[3]T.I. 10974110 at 3.

[4]T.I. 10810468 at 2.

[5]*Id.* at Ex. A.

[6]*Id.*

[7]T.I. 10974110 at A-16-17.

have worked on. I can't honestly come up with another vehicle that I would give you 100 percent answer that, yes, I did it."[8]

With respect to his work on vehicle brakes, Tisdel recalled changing the brakes on a "1969 Dodge Step Van" but could not state whether the brakes he removed were original (i.e. Chrysler) brakes, or whether the new brakes he installed were manufactured by Chrysler.[9] Indeed, his best recollection was that the van was purchased used and not with original brakes, and that the new brakes he installed were manufactured by Raybestos.[10]

He discussed removing exhaust manifold gaskets that may have contained asbestos, but could not identify any particular manufacturer's gaskets with which he worked. He made no further mention of vehicles or vehicle parts manufactured by Chrysler during his lengthy deposition.

B. Chrysler's Motion for Summary Judgment

On March 15, 2006, Chrysler filed its Motion for Summary Judgment arguing, *inter alia*, that the record failed to establish that Tisdel was exposed to any asbestos-

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[8] *Id.* at A-17.

[9] *Id.* at A-24.

[10] *Id.* at A-30.

containing product associated with Chrysler.[11] Specifically. Chrysler pointed to Tisdel's answers to interrogatories and his lengthy discovery deposition and argued that Tisdel had failed in either instance to identify exposure to Chrysler asbestos-containing products. In the absence of any genuine issues of material fact with respect to product exposure, Chrysler argued that it was entitled to judgment as a matter of law.

C. Tisdel's Errata Sheet

On March 16, 2006, the day after Chrysler filed its motion for summary judgment, Tisdel submitted an errata sheet for his January 13, 2006 deposition.[12] In his errata sheet, he stated for the first time that he removed original Chrysler gaskets from his "1969 Dodge Step Van."[13] By way of explanation, he simply stated "correction."[14]

D. Tisdel's Affidavit and Answer to Chrysler's Motion

On April 3, 2006, Tisdel signed an affidavit ('the Affidavit") in which he

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[11]T.I. 10810468 at 5.

[12]T.I. 10974110 at A-34. Pursuant to Del. Super. Ct. Civ. R. 30(e), errata sheets should be completed and the deposition signed by the witness "within 30 days after the date when the reporter notifies the witness and counsel by mail" that the transcript is available for "examination by the witness." It is not clear in the record when such notification was received by plaintiff's counsel in this case. Consequently, it is not clear whether Tisdel's errata sheet was timely filed.

[13]*Id.*

[14]*Id.*

further addressed his work on the Dodge Van.[15] The Affidavit was filed with the Court and served upon Chrysler along with Tisdel's Answering Brief in response to Chrysler's motion for summary judgment. In the Affidavit, Tisdel states for the first time that he purchased the 1969 Dodge Step Van in 1974 or 1975.[16] He then identifies for the first time a "work order" that he received at the time he purchased the van which purportedly set forth the maintenance history of the vehicle.[17] Tisdel states in his Affidavit that the "work order" reveals to him that there were no prior repairs made to the manifold gaskets.[18] From this revelation, Tisdel deduces that he must have removed the original Chrysler (asbestos-containing) gaskets from the 1969 Dodge Step Van the first time he replaced the head gaskets on the vehicle.[19]

In his answer to Chrysler's motion for summary judgment, Tisdel relies exclusively upon his errata sheet and his affidavit to demonstrate that a material issue of fact exists with respect to whether he was exposed to asbestos while working with

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[15] *Id.* at A-35.

[16] *Id.*

[17] The "work order" was not attached to the Affidavit or otherwise included in the Appendix to Tisdel's Answering Brief. Indeed, as best as the Court can discern, the document has yet to be produced in any form in this litigation.

[18] *Id.*

[19] *Id.*

Chrysler's products.[20] And, as stated, all of this factual evidence was produced for the first time after Chrysler filed its motion for summary judgment.

D. Chrysler's Reply Brief and Tisdel's Oral Response

Chrysler filed its Reply Brief on April 12, 2006.[21] There, Chrysler argues that the Court should not consider Tisdel's errata sheet and Affidavit because both were prepared for the purpose of creating a sham issue of fact to defeat summary judgment.[22] The errata sheet and Affidavit were prepared after Chrysler moved for summary judgment and while Tisdel's answering brief was being prepared.[23] According to Chrysler, the Court should strike the Affidavit and errata sheet because both documents contradict Tisdel's sworn deposition testimony, Tisdel has failed to demonstrate that the deposition questions to which he responded were vague or ambiguous, and has failed otherwise to explain the post-deposition "corrections" to his testimony.[24] In the absence of the "sham" evidence, Chrysler argues that the Court must grant summary judgment because there is no other evidence linking

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[20]T.I. 10974110 at 3, 7.

[21]T.I. 11028996.

[22]*Id.* at 4-5.

[23]*Id.* at 4.

[24]*Id.* at 5.

Tisdel's illness to Chrysler's products.[25]

Tisdel did not have an opportunity in his answering brief to address whether the Court should consider the errata sheet and Affidavit because Chrysler first raised the "sham affidavit" issue in its Reply.[26] Nevertheless, at oral argument, Tisdel argued that his errata sheet and Affidavit do not contradict his prior deposition testimony because he was not pressed to give definitive answers at deposition. Moreover, even if there is a contradiction, the Affidavit adequately explains the discrepancy by describing how a document (the "work order") located after the deposition refreshed his memory regarding the scope and nature of his work on the Dodge Van.

III.

According to our Supreme Court, the first reported reference to the sham affidavit doctrine appeared in the Second Circuit's opinion in *Perma Research & Development Co. v. Singer Co.*[27] There, the Court noted that "[i]f a party who has been examined at length on deposition could raise an issue of fact simply by

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[25] *Id.* at 5.

[26] Obviously, this was Chrysler's first opportunity to raise the issue since the affidavit and errata sheet were first presented in the Appendix to plaintiff's answering brief.

[27] *See Cain v. Green Tweed & Co., Inc.*, 832 A.2d 737, 740 (Del. 2003)(citing *Perma*, 410 F.2d 572 (2d Cir. 1969)).

submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact."[28] To address this concern, the Court gave no weight to the conflicting affidavit of the non-moving party noting that the circumstances surrounding its creation rendered it incapable of "rais[ing] any issue which we can call genuine."[29] The Delaware Supreme Court in *Green Tweed* noted that it had yet to pass on whether the sham affidavit doctrine was viable in Delaware. Although this Court has recognized the doctrine for years, it is appropriate in light of *Green Tweed* to consider the issue anew before turning to the merits of Chrysler's argument.[30]

A. The Sham Affidavit Doctrine Is Consistent With Settled Summary Judgment Law and Delaware Summary Judgment Practice

While the sham affidavit doctrine appears to be firmly embedded in the federal summary judgment jurisprudence, the United States Supreme Court has yet specifically to address whether the doctrine has a place within its now-settled summary judgment standards.[31] Nevertheless, Justice White, in his majority opinion

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[28] *Perma*, 410 F.2d at 578 (citations omitted).

[29] *Id.*

[30] *See e.g. Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690 (Del. Super. 1986)(first recognizing the sham affidavit doctrine in Delaware).

[31] It should be noted that since *Perma*, all of the Federal circuits and most state jurisdictions have adopted the sham affidavit doctrine in some form or another. *See Green Tweed*, 832 A.2d at 740 (listing citations).

in *Anderson v. Liberty Lobby*, a seminal summary judgment case, articulated a summary judgment standard that clearly is consistent with the essence of the sham affidavit doctrine.[32] Specifically, the Court held:

> Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is a need for a trial - whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may *reasonably* be resolved in favor of either party.[33]

According to *Anderson*, on a motion for summary judgment, the trial court does not "weigh the evidence [or] determine the truth of the matter," but rather determines from the summary judgment record whether the evidence is such that "the jury could reasonably find for the plaintiff."[34] As one commentator has noted, in the course of the summary judgment analysis prescribed by *Anderson*, "if a court believes an offsetting affidavit was offered specifically to defeat a motion for summary judgment and that no jury could 'properly proceed to find a verdict' for the affiant,[35] summary

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[32] *See Anderson v. Liberty Lobby*, 477 U.S. 242 (1986).

[33] *Id.* at 248-50 (emphasis supplied).

[34] *Id.* at 248, 252.

[35] *Citing Anderson,* 477 U.S. at 251.

judgment is proper."[36] In such instances, if the Court was to allow the sham affidavit, it would, in essence, render the summary judgment process a meaningless exercise.[37]

Delaware summary judgment law is likewise consistent with the sham affidavit doctrine. It has long been recognized in Delaware that the purpose of summary judgment is to provide "a method by which issues of law involved in proceedings may be speedily brought before the Court and disposed of without unnecessary delay."[38] Although it is clear that the Court must view the evidence on summary judgment in a light most favorable to the non-moving party,[39] when the non-moving party attempts to create an issue of fact with an affidavit, the affidavit must be based on personal knowledge and must set forth such facts as would be admissible in evidence at trial.[40] And, "[i]f [a] plaintiff ha[s] evidence showing a genuine issue of material fact, he [is] obliged to produce such evidence in order to forestall summary

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[36] Cox, *Reconsidering the Sham Affidavit Doctrine*, 50 Duke L.J. 261, 278 (October 2000)(analyzing the sham affidavit doctrine against the standards set forth in *Anderson* and concluding that the doctrine is consistent with those standards).

[37] *See Nutt*, 517 A.2d at 693 ("to allow such a tardy affidavit without explanation to be effective would make a summary judgment motion a meaningless gesture.").

[38] *State ex rel Mitchell v. Wolcott*, 83 A.2d 759, 760 (Del. 1951); *Aeroglobal Cap. Mgt., LLC v. Cirrus Indus., Inc.,* 871 A.2d 428, 443 (Del. 2006)(same). *See also Davis v. University of Delaware*, 240 A.2d 583, 584 (Del. 1968)("The disposition of litigation by motion for summary judgment should, when possible, be encouraged for it should result in a prompt, expeditious and economical ending of lawsuits.").

[39] *Matas v. Green,* 171 A.2d 916 (Del. 1961).

[40] *Woodcock v. Udell*, 97 A.2d 878 (Del. 1953).

judgment."[41] In this regard, the timing of production is important. When adequate time for discovery has been provided by the Court, the parties are entitled to rely upon the evidentiary record created in discovery and may seek summary judgment on that record with confidence that the Court, absent extraordinary circumstances, will not allow the non-moving party to delay disposition by arguing that more time is needed.[42]

As this Court recently stated:

> Summary judgment is not meant to be an exercise in which the defendant must put all of his cards on the table in order to allow a plaintiff to determine if his hand is adequate or if he needs to open a new pack of cards to re-stack the deck. Rather, the Court's rules of civil procedure provide the plaintiff with an opportunity in discovery to develop the factual evidence needed to support his legal claim(s) and to identify that evidence in response to properly propounded discovery requests. Once the period for discovery is closed, the defendant is then entitled to test the sufficiency of the plaintiff's evidence with confidence that the record is fixed.[43]

The sham affidavit doctrine fits squarely within this notion of summary judgment practice. A tactic, the sole purpose of which is to subvert a procedural

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[41] *Martin v. Nealis Motors, Inc.*, 247 A.2d 831, 833 (Del. 1968).

[42] *See Burkhart v. Davies*, 602 A.2d 56, 60 (Del. 1991)("when, after adequate time for discovery, the nonmoving party has failed to make a sufficient showing on an essential element of its case," summary judgment is appropriate.).

[43] *Stigliano v. Nosroc Corp.,* C.A. No. 05C-06-263-ASB, Slights, J. (Del. Super. Ct. Nov. 21, 2006)(Letter Op. at 2).

device prescribed by the Court's rules of civil procedure, simply cannot be countenanced. This is particularly so in the context of a mass tort docket where parties are defending several actions at once with strict litigation deadlines, including discovery deadlines. Both the parties and the Court must be able to rely upon the factual record developed during discovery to determine which cases involve genuine issues of fact for trial, and which cases should be resolved through dispositive motion practice. On predicate issues, like product nexus, it is not too much to expect of a plaintiff that he will be prepared to offer definitive testimony in interrogatories or at deposition regarding the factual bases for his claims against specific defendants. Absent extraordinary circumstances, a plaintiff should be bound by his sworn testimony. To allow otherwise would cause product nexus to become a "moving target" and would, by consequence, turn the asbestos docket on its head.

B. The Elements of the Sham Affidavit Doctrine

Although not expressly endorsing the rule, the Supreme Court of Delaware has succinctly stated the rule in a manner that provides clear criteria for its consistent application: "the core of the doctrine is that where a witness *at a deposition* has previously responded to *unambiguous questions* with *clear answers* that negate the existence of a genuine issue of material fact, that witness cannot thereafter create a fact issue by submitting an affidavit which *contradicts* the earlier deposition

testimony, without an *adequate explanation.*"[44] In *Donald M. Durkin Contracting, Inc. v. City of Newark,*[45] the United States District Court for the District of Delaware extended the sham affidavit doctrine to an errata sheet that was prepared in an effort to defeat an otherwise properly supported motion for summary judgment. In doing so, the court noted that the deponent's corrections to her deposition testimony "concerned documents and actions about which she was obviously well acquainted" at the time of her deposition.[46] The court further noted that the deposition transcript revealed no indication of confusion on the part of the deponent, and no effort on the part of the deponent's attorney to object to the form of the questions or to rehabilitate or clarify the testimony with direct questions.[47] The extension of the sham affidavit doctrine to sham errata sheet corrections is entirely consistent with the purpose of the doctrine, if limited to appropriate cases, and will be adopted here. Moreover, the Court's reasoning in *Durkin* provides additional criteria by which the Court can assess the *bona fides* of an affidavit or errata sheet submitted in response to a well-founded motion for summary judgment.

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[44] *Green Tweed*, 832 A.2d at 740 (emphasis supplied).

[45] C.A. No. 04-163 GMS, Sleet, J. (D. Del. Sept. 22, 2006)(Mem. Op.).

[46] *Id.* Mem. Op. at 9.

[47] *Id.*

The sham affidavit rule, as stated in *Green Tweed,* requires the trial court to find the following elements before striking an affidavit or deposition errata sheet as a sham: (1) prior sworn deposition testimony; (2) given in response to unambiguous questions; (3) yielding clear answers; (4) later contradicted by sworn affidavit statements or sworn errata corrections; (5) without adequate explanation; and (6) submitted to the court in order to defeat an otherwise properly supported motion for summary judgment.[48] In evaluating these factors, the court should consider: (a) "whether the affiant was cross-examined during [the] earlier testimony;" (b) "whether the affiant had access to the pertinent evidence at the time of [the] earlier testimony or whether the affidavit was based on newly discovered evidence;" and (c) "whether the earlier testimony reflects confusion which the affidavit attempts to explain."[49] *Vel non* an affidavit or an errata sheet is a sham is a "preliminary question" to be "determined by the court" in keeping with the court's role as the evidentiary gatekeeper of the courtroom.[50]

C. The Tisdel Errata Sheet and Affidavit Must Be Stricken as Shams

The Court's inquiry in this case necessarily starts with Tisdel's first disclosure

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[48] *Id.*

[49] *See Durkin*, *supra*, Mem. Op. at 8-9.

[50] D.R.E. 104 (a).

of verified factual information: his interrogatory answers. There, under oath, Tisdel gave no indication that he was ever exposed to an asbestos-containing product manufactured, distributed or sold by Chrysler.[51] At his deposition he was asked direct, unambiguous questions about his exposure to asbestos-containing automotive products. Here again, he did not identify Chrysler despite several opportunities to do so. For instance, with respect to work on clutches he was asked:

> Q. As you sit here today, can you specifically recall any vehicles wherein you changed the clutch?
>
> A. Yeah.
>
> Q. Tell me what you recall.
>
> A. 1955 Chevy Pickup
>
> Q. Okay. Any others?
>
> A. A 1950 Ford.
>
> Q. 1950 Ford?
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> A. '50 Ford.
>
> Q. Truck?
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> A. Two-door car. That's a car, not a truck.

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[51] *See* Ex. C to Opening Brief in Support of DaimlerChrysler Corporation's Motion for Summary Judgment, at Answer to Int. 10 (T.I. 10810468). It should be noted that Tisdel did mention other auto manufacturers in his interrogatory responses, but not Chrysler. *Id.*

> Q. Keep going. Any other vehicles where you recall changing the clutch personally?
>
> A. God, there has been so many vehicles I have worked on. I can't honestly come up with another vehicle that I would give you 100 percent answer that, yes, I did it.[52]

He was given at least two further opportunities to supplement this testimony during the deposition and, in response to counsel's final invitation to supplement his testimony, he stated:

> Q. And if you think of any more, let me know.
>
> A. I will.[53]

He never did.

With respect to his work on gaskets - - the only Chrysler product he now claims to have worked with - - Tisdel was asked at his deposition:

> Q. Did any of the engine repair work on any of your vehicles, and I am now lumping in your personal vehicles and your business vehicles, involve the use of gaskets?
>
> A. Yes, all.
>
> Q. Did any of them involve the use of any gaskets that you believe may have contained asbestos?
>
> A. Yes.

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[52] T.I. 10974110, at A-16-17.

[53] *Id.* at A-17.

Q. What kind of automotive gaskets may have contained asbestos?

A. Exhaust manifold gaskets.

* * *

Q. Can you, on any vehicle ever, identify by brand name, trade name, or manufacturer the gasket that you took out?

A. No.

Q. How about the gasket that you put back in?

A. You mean the brand name?

Q. Yes.

A. No.

Q. Or trade name, any way you can tell me?

A. Let me see. No.[54]

Tisdel's errata sheet, prepared after Chrysler's motion for summary judgment was served on him, contradicts the deposition testimony by identifying his work with "original gaskets" on a Dodge step van (manufactured by Chrysler). His scant explanation, "correction," does nothing to explain why at deposition he unequivocally

[54] *Id.* at A-21-23. Thus, at the time his deposition closed, Tisdel had not demonstrated that he was ever in proximity to a Chrysler asbestos containing product such that he could establish product nexus. *See In Re: Asbestos Litigation*, 509 A.2d 1116 (Del. Super. Ct. 1986)(articulating the product nexus standard).

denied any knowledge of the brand or trade name of the gaskets with which he worked, nor does the explanation describe the means by which he acquired the "corrected" information.[55] In apparent recognition that his errata sheet was lacking, Tisdel later offered an affidavit as an attachment to his answering brief in which he mentions a "work order" relating to the Dodge van and explains that this document reflects all of the work performed on the van before he purchased it. From this "work order," he now surmises that he was exposed to original asbestos-containing gaskets manufactured by Chrysler when he replaced the gaskets because no prior replacement of the gaskets is reflected in the documented repair history of the vehicle.[56]

Against the standards articulated above by which the Court will test whether an affidavit is a sham, several conclusions can readily be drawn with respect to Tisdel's errata sheet and Affidavit. First, Tisdel's deposition testimony was unambiguous and given in response to clear questions. He gave no indication that he was confused, and his attorney likewise saw no need to clarify the form of the questions or to clarify Tisdel's answers with further questions. Based on the issues that regularly are litigated in asbestos cases, Tisdel and his counsel knew that among the issues to be addressed at his deposition, he would be asked to identify specifically

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[55] *Id.* at A-34.

[56] *Id.* at A-35.

the asbestos-containing products to which he was exposed over his lifetime. Given that he sued Chrysler, it was reasonable for Chrysler to expect that Tisdel would be prepared at deposition to offer definitive testimony regarding his exposure to Chrysler products. Despite several chances, he did not do so.

Tisdel's errata sheet clearly contradicts his deposition testimony. At deposition, he recalled no exposure to Chrysler products; in his errata sheet, for the first time in the two year history of the litigation, he identified his exposure to asbestos products connected to Chrysler. Moreover, he made no effort whatsoever to explain his suddenly-refreshed memory. Simply stating "correction" is not an adequate explanation to avoid application of the sham affidavit doctrine.

The Affidavit also contradicts Tisdel's deposition testimony. And, again, the purported "explanation" of the change misses the mark. Tisdel refers to a "work order" but doesn't produce it or explain why it wasn't available to him at the time of his deposition.[57] Indeed, it appears from the Affidavit that Tisdel acquired the "work order" at the time he purchased the Dodge van in 1974 or 1975. Accordingly, he presumably had access to this document during his preparations for his deposition.

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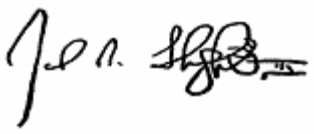
[57] *Id. See Donald M. Durkin Contracting, Inc.,* supra, Mem. Op. at 8-9 (the court should consider whether the change "was based on newly discovered evidence" or based on evidence with which the deponent was already "acquainted.").

Based on the foregoing, the Court must conclude that Tisdel prepared his errata sheet and the Affidavit for the sole purpose of defeating Chrysler's properly supported motion for summary judgment. His efforts to create an issue of fact after the close of discovery and initiation of dispositive motion practice where none existed before have not been justified by adequate explanations. The errata sheet and the Affidavit must be stricken.

IV.

In the absence of the errata sheet and Affidavit, Tisdel has failed to answer Chrysler's properly-supported motion for summary judgment by demonstrating the existence of a genuine issue of material fact regarding product nexus. Consequently, Chrysler's motion for summary judgment must be **GRANTED**.

IT IS SO ORDERED.



Judge Joseph R. Slights, III

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