Corrected page

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHAPLAKE HOLDINGS, LTD.,	)	
PORTMAN LAMBORGHINI, LTD.	)	
and **DAVID T. LAKEMAN**,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NUMBER
v.	)	
	)	94C-04-164-JOH
CHRYSLER CORPORATION,	)	
	)	
Defendant.	)	

Submitted: October 23, 2001
Decided: January 10, 2002

MEMORANDUM OPINION

Plaintiffs Chaplake Holdings, Ltd., Portman Lamborghini, Ltd. and David T. Lakeman's Motion for New Trial on their Claims for Fraud and Negligent Misrepresentation - ***DENIED***
Plaintiff Portman Lamborghini, Ltd.'s Motion for Additur on its Promissory Estoppel Damages - ***DENIED***
Defendant Chrysler Corporation's Motion for New Trial on Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s Promissory Estoppel Claims - ***DENIED***
Defendant Chrysler Corporation's Renewed Motion for Judgment as a Matter of Law - ***DENIED***
Plaintiffs Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s Motion for Prejudgment Interest - ***DENIED***
Plaintiffs Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s Motion for Additional Briefing on Prejudgment Interest - ***DENIED***
Defendant Chrysler Corporation's Motion Requesting Hearing Regarding Prejudgment Interest - ***MOOT***

Plaintiffs Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s Motion for Costs - ***GRANTED*** *in part,* ***DENIED*** *in part*
Defendant Chrysler Corporation's Motion for Costs - ***DENIED***
Defendant Chrysler Corporation's Motion for Stay of Execution of Judgment Pending Disposition of Motions - ***MOOT***

Laurence V. Cronin, Esq., Smith, Katzenstein & Furlow, LLP, attorney for plaintiffs

Thomas C. Marconi, Esq., of Losco & Marconi, P.A., attorney for defendant

HERLIHY, Judge

After a three-week trial, the jury in this case awarded damages to plaintiffs Chaplake Holdings, Ltd., in the amount of £462,686.47 and Portman Lamborghini, Ltd. in the amount of £569,321.45.[1] These plaintiffs also seek an award of prejudgment interest on these awards. The jury awarded these damages against defendant Chrysler Corporation on these plaintiffs' claims of promissory estoppel. Portman seeks additur to its award. Portman, Chaplake and plaintiff David Lakeman seek a new trial on their claims against Chrysler of fraudulent and negligent misrepresentation which the jury rejected. All plaintiffs seek an award of costs.

Chrysler has filed two motions concerning the promissory estoppel award against it. One is for a new trial and the other is a renewal of its motion for a judgment as a matter of law on that claim. It, too, seeks costs. For the reasons stated herein, all of the parties' motions are **DENIED**, except Chaplake and Portman are awarded $3,410.65 representing the costs of litigation that are recoverable.

FACTS

David Jolliffe left school in London at the age of sixteen to pursue a passion with cars. One of his first jobs was joining a Formula One race team called Rob Walker Company. He started out as an apprentice and eventually became the gearbox mechanic for the team. After eight years of working for the race team, he transferred to a franchise garage owned by Rob Walker. A "franchise garage" in the UK is essentially the same as a car dealership in the United States.

---

[1] 10 *Del.C.* §5207 states in part, "A judgment or award on a foreign-money claim is payable in that foreign money . . . ." See also §§5201-15.

In 1968, Jolliffe left Walker's franchise garage to start his own business. It was called Portman Close and located in the fashionable West End area of London. In 1970 or 1971, a partner, Alfred Essex, joined him. They sold "high-end" cars, such as Lancia and Alfa Romeo, and in 1972, they began selling Lamborghinis. At that time, there were approximately four other Lamborghini dealers in the UK. Jolliffe and his then partner started out selling the Lamborghini Sparta and Jalpa models until the Countach was introduced sometime in the early 1980s. Jolliffe said that the Countach is best described "as near to a racing car as you could legally put on the road."[2] It was a high performance car with a 4.2 liter engine, approximately 370 horsepower and reached speeds of 175 miles per hour.

Jolliffe and Essex separated their partnership in 1983. In 1984, Jolliffe met Lakeman through mutual friends and decided to form another partnership to sell Lamborghinis. Lakeman brought financial backing to the business. He obtained a trading account with Credit Suisse.

In 1984, Jolliffe and Lakeman formed their first company, Chaplake Holdings, Ltd., which was incorporated in the Channel Islands, Great Britain. They were the sole and equal shareholders. Two other companies at this time were formed under Chaplake; Vehiclise, Ltd. and Lamborghini London, Ltd. Eventually, other companies would also be formed under Chaplake.[3]

---

[2]Jolliffe Transcript Testimony (June 4, 2001) at 77.

[3]Plaintiffs' Exhibit No. 152.

Lamborghini London, Ltd. was the dealership part of the business which bought and sold Lamborghinis. Eventually, it changed its name to Portman Lamborghini, Ltd., one of the plaintiffs in this action. Jolliffe testified that all of the assets from Lamborghini London were transferred to Portman because Lamborghini London was dormant in that it did not sell any cars or file any annual reports for the prior two years. Jolliffe also stated that Credit Suisse was informed of the changes.

On June 1, 1984, Vehiclise, trading as Portman, signed a franchise contract, known as a concession agreement, to become the *sole* agent of Nuova Automobili Ferruccio Lamborghini S.p.A. to sell its cars in the UK and Ireland.[4] The agreement contained no time limit, but could be terminated at any time upon twelve months' notice. Additionally, Jolliffe testified the concession agreement contained a "side letter." This side letter allegedly stated that Lamborghini and Vehiclise would agree to an annual sales target. Jolliffe stated what traditionally happened was that he negotiated with Lamborghini for one year's supply of vehicles and, if he ordered that many vehicles, the contract was automatically renewed for the next year. For example, in 1986, they agreed to thirty units, which were ordered and taken from the factory. Thus, the contract, per Jolliffe, was automatically renewed for the next year. Historically, much of the understandings, dealings and communications between Jolliffe and Lamborghini personnel in Italy were by word of mouth. In large part, this was the way of the world in the rarefied atmosphere surrounding "super cars" such as Lamborghini.

---

[4]Plaintiffs' Exhibit No. 83.

The concession agreement permitted Vehiclise to appoint dealers in the UK. At first, it appointed Lamborghini London as the London dealer, but, then, as stated earlier, its name changed to Portman. From 1984 to 1987 Portman sold approximately twenty-five to thirty new Lamborghinis each year and had a trade-in ratio of three-to-one, in the sense that for every three new Lamborghinis sold, an old one would be traded in against the purchase of a new one. Portman was Lamborghini's single largest dealer in the world, selling approximately ten percent of all Lamborghinis produced each year and virtually all of its right-hand drive cars.

In April 1987, Chrysler purchased 100 percent of Lamborghini's stock.[5] Shortly after Chrysler's purchase of Lamborghini, it publicly announced its plans for it. For instance, in a May 4, 1987 *Automotive News* article headlined, "Chrysler Tells Lamborghini Plans," there are statements such as:

> Chrysler Motors expects to work out a distribution plan for Lamborghini products within six or seven months.
>
> Chrysler also expects to reap benefits in chassis and engine development with its purchase of the Italian exotic-car maker.
>
> * * *
>
> [Chrysler Executive Vice President Robert] Lutz, who is responsible for Chrysler's international operations, indicated that Chrysler expects Lamborghini's annual volume to reach 3,000 units as an "intermediate goal."
>
> Italian sources have said Chrysler has earmarked Lamborghini for substantial expansion during the next five years including annual volume as high as 5,000.
>
> * * *

[5]The actual purchaser was Chrysler International. There was no issue in this case whether it or the parent should be the proper defendant.

> A new dealer network for Lamborghini is currently not contemplated because of the limited volume, Lutz said.
>
> "You're better off with a few highly qualified guys who know how to sell and service that type of car and have access to that type of customer," Lutz said.
>
> "If and when we get to 3,000 a year, then it becomes slightly different. Whatever we do now we want to be sure it's consistent with what we do then.
>
> "Over the next six to seven months, we will work out an optimal distribution scheme," Lutz said.
>
> * * *
>
> At a press conference last week, Chrysler Corp. Chairman Lee Iacocca called Lamborghini "more than an exotic name."
>
> "It's a good little custom company," Iacocca said. "It's customized work. We expect to use that fully for chassis and especially engine developments."
>
> * * *
>
> [Chrysler Motors Chairman Gerald] Greenwald said he expects Lamborghini to "do a lot better" financially under Chrysler's ownership.
>
> Lamborghini is said to have made a small profit last year and has been at about break-even since Patrick, Jean-Claude and Robert Mimran bought the company seven years ago.
>
> "They have more ideas than they have financial resources and people," Greenwald said. "So we're going to try to help them work out priorities regarding new products and in what sequence. At some point, a future Jalpa could be part of all that."[6]

Jolliffe read this article. He also had a friendship with Emile Novaro who was President of Lamborghini before Chrysler's purchase and for several years after it. The two had socialized together around six to ten times per year. He recalls meeting with Novaro at Lamborghini's factory at Sant'Agata in Italy in May 1987. This was around the time Jolliffe said he read the article quoted above.

---

[6]Plaintiffs' Exhibit 89.

Novaro and others at Lamborghini, Jolliffe said, were very happy with Chrysler's purchase. He told Jolliffe of the expansion plans to go from around 250 to 300 cars per year to around 3,000 per year. Novaro discussed how two current models, the Countach and the Jalpa, were to be replaced. The latter would be replaced by a vehicle known then as the P140 and that it would be the "high" volume car selling for about $70,000 to $80,000. The Countach would be replaced by the Diablo which, at that time, he said, would be introduced in early 1990 but available for sale in September 1990. Its price would be $200,000 to $300,000. The P140, or Bravo, would be introduced almost two years after that.

Chrysler, Novaro told Jolliffe, had production figures of 500 for the Diablo and 2,750 for the ultimate P140. He knew Portman had a small showroom which could hold only three to four cars and had only a small staff. Novaro questioned whether Portman could handle ten percent of a 3,000-car production output. He suggested it may be necessary to establish new and additional dealerships in the UK. Jolliffe left it with Novaro that he would see what Portman could do to meet these new demands. He told Novaro he wanted to speak to Lakeman.

Jolliffe returned to the UK and discussed with Lakeman the challenge Novaro had laid down; were they to grow and remain the exclusive UK concessionaire or just keep London and the "home" (immediately surrounding) counties. Lakeman and Jolliffe decided to see if it were feasible to undertake such a broad-based expansion. They went to their bank, Credit Suisse, and met with George Burkhart, a high official in that bank. The three met

several times to develop a feasibility study which ultimately evolved into a business plan [Plan] for Portman.[7]

The Plan contained a number of elements such as increasing staff and facilities to meet the requirements to be able to sell around 300 vehicles per year and provide service for them. The production numbers in the Plan, Jolliffe said, came from Novaro. They were:

Appendix A
Projected UK Sales

	'87	*Year 1* '88	*Year 2* '89	*Year 3* '90	*Year 4* '91	*Year 5* '92
JALPA**	8	6				
COUNTACH**	23	25*				
LM 002**	4	9	5			
DIABLO			50	50	50	50
BRAVO			10	100	100	100
SUPER BRAVO				50	100	100
TO BE ADVISED					150	150
TOTAL	35	40	65	200	400	400
SECOND HAND CARS		20	40	60	100	150

* INCLUDES DIABLO AT TAIL END OF THE YEAR
** EXISTING MODELS[8]

In the Plan, Credit Suisse indicated it had not independently verified those figures. As Jolliffe testified, these figures came from Novaro during their meeting in Italy in May 1987, who, in turn, had said the figures came from Chrysler. Novaro, however, was seriously injured in an automobile accident that July. M. N. Hammes, Chrysler Vice President for International Operations, asked Tony Richards to become temporary Lamborghini president in Novaro's absence. Richards was one of two Chrysler people it appointed to Lamborghini's four-person board of directors. The other was Robert Smith.

[7]Plaintiffs' Exhibit 81.

[8]*Id.* at Appendix A.

Smith answered to Richards and Richards answered to Hammes who was Executive Vice President of Chrysler.

Lakeman recalled a meeting with Richards and Novaro at Sant'Agata in the summer of 1987. Novaro outlined Chrysler's plan to increase Lamborghini's production from 400 to 3,000 cars. Novaro said for Portman to remain the UK's sole concessionaire, it would have to grow proportionately as a dealer selling ten percent of Lamborghini's output. At that time, Lakeman testified, Portman neither had the facilities nor the staff to handle that increase.

Jolliffe met with Richards in July, again in Italy. Jolliffe recalls him saying he had worked with Lee Iacocca at Ford and had come over to Chrysler when Iacocca did. Iacocca, in 1987, was Chrysler's Chairman. Richards described Iacocca's input into Lamborghini's operations as, "Yes, he was God."[9]

Richards alone, after Novaro's accident, could not handle many of Novaro's day-to-day duties. Chrysler, through Hammes, brought in Carl Levy to be a consultant to Richards. Included in Levy's background was setting up a dealership network in Spain for Ford. Levy testified that when Hammes called him, he told Levy that Chrysler was concerned about its investment and it wanted somebody to be its ears and eyes at Lamborghini. Levy also testified that he did not believe he was in any way to assume Novaro's responsibilities and never told anyone he was. But, he was not on board in July

[9]Richards deposition (July 17, 1998) at 81, which was read at trial. In the transcript the word "gone" appears instead of "God" but the parties agreed "gone" was a misprint.

when Jolliffe met with Richards. When Levy came on board, he signed a "Consultant Agreement"[10] with Chrysler, which provided, in part:

> This letter agreement will confirm the terms and conditions under which you will act as a consultant for [Chrysler] in furtherance of its interests as a shareholder of Nuova Automobili Ferruccio Lamborghini S.p.A. (hereinafter "NAFL").
>
> 1. You will function as a Consultant to the Acting President of NAFL, during the temporary absence of the President (which is expected to last no more than six months), and in such capacity you will perform the following services for Chrysler:
>
> (i) Review the performance of NAFL executives and key plant and office employees, as well as the NAFL operational structure, facilities and equipment, an furnish your opinions and recommendations thereon;
>
> (ii) Review the NAFL operating budget, financial forecasts, reports and statements and furnish your opinions on the adequacy and correctness thereof, as well as any recommendations which you may have;
>
> (iii) Maintain yourself informed on NAFL order, production, supply and inventory status, and notify Chrysler of any problems which you feel require attention;
>
> (iv) Furnish advice on the economic and business climate in Italy as well as any significant developments which may come to your attention;
>
> (v) Provide assistance, as requested, in support of Chrysler or NAFL business discussion in Italy or elsewhere; and
>
> (vi) Special assignments related to the foregoing as requested from time to time.
>
> * * *
>
> 7. In performing services hereunder you will be acting as an independent contractor and not as an employee or agent of Chrysler or NAFL. Neither Chrysler nor NAFL shall have any liability to you except for remuneration and reimbursement as set forth in paragraphs 2., 3. and 5. above. Unless and to the extent that Chrysler shall have granted you a specific power of attorney or otherwise expressly authorized you in writing, you

[10]Defendant's Exhibit 7.

shall have no authority to enter into any commitments, undertakings or agreements purporting to obligate Chrysler or NAFL in any way.

* * *

Very truly yours,
CHRYSLER INTERNATIONAL CORP.

By: /s/
M. N. Hammes
Executive Vice President[11]

Richards and others at Lamborghini acquainted Levy with Chryslers' plans to increase Lamborghini's production of cars. As part of his duties, Levy was assigned to assess the capabilities of the European dealers to handle this significant expansion and whether additional dealers were needed. As Richards also described it,

> Q. Now in connection with its communication to its European dealers in 1987 and 1988, was the notion that those distributors would need to position themselves to accept increased -- greatly increased annual unit production communicated to the dealers at that time?
>
> A. Yes.
>
> Q. Was it communicated in the context of the dealer meetings in '87 and '88?
>
> A. Yes.
>
> Q. Do you know what specifically was communicated on the need for these dealers to position themselves to handle the increased production?
>
> A. No, I don't. Clearly this was within the context of an overall desire to grow the company, which was certainly strongly supported by the dealer body who saw this as a nice lucrative opportunity, but it was also recognized, and I'm not sure how publicly it was stated in these dealer meetings, but that there would be additional dealers involved and so the pie wasn't going to be divided among just the present occupants.

[11] *Id.*

Q. So there was consideration, then, to adding some dealers and then bringing other dealers up to speed to handle the increased production, correct?

A. Yes.

* * *

Q. When Lamborghini looked at the issue of positioning its dealers to accept the increased production, was it anticipated that these European dealers would need to expand their facilities to accommodate that production?

A. Yes.[12]

Levy also testified he was hired to assess Lamborghini's European dealer network to determine its ability to handle the significantly increased production. One of the dealers to be assessed was Portman. Jolliffe said he first met Levy in Italy. Levy told Jolliffe he was acting vice president in Novaro's absence. He was there, according to Jolliffe, to take a day-to-day, hands-on job. He told Jolliffe he had come out of retirement and their conversation continued:

A. Yes, I remember him giving an outline of his career.

Q. Beyond that?

A. Which was quite interesting. That's why I could recall it.

Q. What was interesting about it?

A. That he worked for Ford Motor Company and been [sic] involved in the building of a brand new factory at Valencia in Spain, and got to know Mr. Iacocca when he was a high-up in Ford Motor Company, and was actually looking forward to working with old colleagues, really.

Q. Did you discuss anything about present plans at the factory, then-present plans at the factory?

A. We discussed in outline what we were doing with regard to the future as the distributor for England.

Q. And what specifically did you discuss in that regard, if you recall?

---

[12]Richards Deposition (April 17, 1998) at 95-96.

> A. Of course I do, yes. I told him about the feasibility study we were doing in the UK, the input that had been given already, and it was relatively -- getting on a time scale to bring close to being completed by Credit Suisse.[13]

Jolliffe said Levy came often to the UK, many times to visit his daughter who lived there. Levy testified he visited Portman's sales and repair facilities, describing the sales facility as tiny but in an excellent, upscale area of London. Jolliffe said Levy had input into Portman's feasibility plan and expansion plans even suggesting the location for a new central distribution center in Birmingham, England. Levy denied he had such input.

Lakeman said he met Levy on one of his trips to London. When he first met him, according to Lakeman, Levy said:

> THE WITNESS: I was told by Mr. Levy, when I first met him, that he was an appointment by Lee Iacocca and he was Lee Iacocca's personal representative in this matter in Lamborghini and he had been taken out of retirement -- he had previously worked for Mr. Iacocca when he was with Ford in Spain. And he had been pulled out of retirement to step into the breach, which had occurred when Emile Novaro was hospitalized.
>
> He told us that he was there to implement the Chrysler plan and oversee the situation in the absence of Mr. Novaro.
>
> Q. Did Mr. Levy tell you what he was going to do to implement the Chrysler expansion plan?
>
> A. No, he didn't say that exactly. He just reiterated what the plans were that Chrysler had for Lamborghini.
>
> Q. What did Mr. Levy tell you about Chrysler's plans for Lamborghini?
>
> A. Well, he just reconfirmed what had already been announced by Chrysler in the first. And we had been told by Emile Novaro and by Mr. Richards that the plan was to introduce a range of new models and produce the production up to approximately 3,000 cars a year to compete with Ferrari.

---

[13]Trial Transcript (June 5, 2001) at 38-39.

Q. Did Mr. Levy tell you whom he was employed by?

A. He told me he was Chrysler's representative in Europe and responsible for the Lamborghini factory at that time.[14]

Eventually, Lakeman, Jolliffe and Levy met at a lunch in London in late 1987. The lunch had been requested by Credit Suisse's Burkhart who wanted to hear confirmation of the production expansion plans. Up until that time, a lot of work had been put into the Credit Suisse/Portman feasibility study which was or had evolved into a business plan. Jolliffe described the culmination of the conversations at lunch in this fashion:

Q. This is at the point in time where Mr. Levy is in his role with Lamborghini. You indicated that was late '87. Were there any meetings with the bank that you can recall at or around that time?

A. Yes, Once the plan was printed and distributed, it follows on in this time scale. I believe to the best recollection this has got to be end of October, something like that. We had decided we were going ahead, and we called for a sort of lunch to confirm it all, and we invited Mr. Levy to join us.

Q. Who called for the lunch?

A. Mr. Burkhart of the bank. Because this was a happy event also, it was not doom and gloom, and he wanted to meet somebody from Chrysler.

Q. And who arranged the lunch?

A. Mr. Lakeman.

Q. Who attended the lunch?

A. Mr. Levy, Mr. Burkhart, Mr. Lakeman, myself.

Q. And do you recall that lunch as you sit here today?

A. Yes, I do. In the overview, yes.

Q. And where did the lunch occur?

A. A restaurant called L'Epicure in London.

Q. L'Epicure, is that a French word?

A. I think it is, yes.

Q. And what was discussed in the course of that lunch, if you recall?

---

[14]Trial Transcript (June 11, 2001) at 30-31.

A. It was a lunch that probably lasted about two hours. My best recall is really the dialogue before it, which was that our feasibility plan was going to become our guideline business plan, and that we were all celebrating a commitment to it, which meant that Portman was going to continue as the soloist UK importer and grow its business to handle Lamborghini's business.

* * *

Q. Were comments made by Mr. Levy on the subject of the commitment you just described?

A. Yes. He was pleased that the distribution for the UK was resolved.

Q. Was resolved?

A. Yes.[15]

Lakeman recounted the efforts leading up to the lunch and the events at lunch in this fashion.

Q. Why did you arrange for the lunch?

A. [Jolliffe] told me that he was coming to the UK and was going to discuss part of the distribution of the work in the [UK], and we felt that it would be a very good idea to arrange for Mr. Levy to meet Mr. Burkhart because Mr. Burkhart had put a lot of time -- his people had put a lot of time in preparing the [Plan] for us, and he felt that he would -- it would be -- sorry, excuse me.

He felt that it would be a good idea if he met somebody from Chrysler to confirm the plans and the information that we had inputted to the [Plan].

Q. Do you recall what was discussed at lunch?

A. Yes. We talked about Chrysler's plans for Lamborghini and where they were going with Lamborghini.

And he confirmed to Mr. Burkhart that they indeed were going to increase production of the Lamborghini cars and with new models. And they would adhere to the plan, which was initially a five-year plan which subsequently became a six-year plan, but at that point in time it was still a five-year plan. And he said that they were going to implement the plan.

Q. Now, when you say they were going to implement the plan, whom are you referring to?

---

[15]Trial Transcript (June 5, 2001) at 42-43, 44.

A. I'm referring to Chrysler. I mean, Lamborghini had no ability to implement the plan without Chrysler's money and management.

Q. So as best you can recall, Mr. Lakeman, what did Mr. Levy say at that lunch in England?

A. Well, we discussed the plans in general for a couple of hours over lunch. And it finally culminated in the end of the lunch, I, basically, as chairing the lunch said to Mr. Burkhart, I said, are you satisfied, Mr. Burkhart? And he said I am. He said if Mr. Levy will confirm that you are going to build the cars. Mr. Levy said yes, we will build these cars and we do want Portman Lamborghini to be our sole Concessionaire.

And I said does that satisfy you, Mr. Burkhart? Words to that effect. And he said yes. And I said well, in that case, will you support us financially? And he said yes, we will. And with that, we shook hands.

Q. Did you have an understanding that something was accomplished at that lunch?

A. I felt everything had bee accomplished as far as I was concerned. There had been a commitment from Chrysler to our bankers, and they had confirmed absolutely the terms of the information we had inputted into the [Plan].

Q. Did you feel that you had a commitment from Chrysler at that lunch?

A. Total commitment.[16]

Levy testified he never mentioned Iacocca's name during lunch. He described the lunch as social in nature and the first time he met Lakeman. Jolliffe, he said, introduced Lakeman as his "chairman." He denied making any commitment or agreement to Portman at that lunch. Levy also recalled there was no discussion of Portman's expansion or any mention of a new central distribution facility. Specifically, he denied ever mentioning Birmingham as a potential site for the central distribution center. He felt the lunch was to impress him that Portman had financial backing.

---

[16]Trial Transcript (June 11, 2001) at 33-36.

Despite these differing recollections, discussions and events at this lunch, Jolliffe, Lakeman and Credit Suisse believed they had the "green light" to start expansion. The basis of that process was contained in the Plan developed by Credit Suisse, Jolliffe, Lakeman and accountants.[17]

> In April 1987, it was announced that Nuova Automobili Ferruccio Lamborghini SPA was to be acquired by the Chrysler Corporation of the United States.
>
> In July, Chrysler has stated that it intends to substantially expand the output and model range of Lamborghini Cars; only outline details have been made available to concessionaires.
>
> In the light of this material development, it has been necessary for Portman Lamborghini to revise its operational and financial needs for the next five years.
>
> * * *
>
> In 1987, car production will total 460 units: 220 Countach, 80 Jalpa and 160 LM-002, (over 50% turnover is in the United States). Approx. 10% of the cars are right-hand drive and demand in the UK is such that delivery is currently 6 months forward.
>
> Output in 1988 is expected to rise above 500 cars (1984 400) with a total sales value in excess of 47 billion lira (£23m).
>
> * * *
>
> Replacements for the Countach and Jalpa are planed to be introduced in September 1988 (the Diablo and Bravo). A preliminary model is on the drawing board, with commercial production anticipated by 1991:
>
> Proposed RHD production: 1987 : 35
> 1988 : 40
> 1989 : 65 [See Appendix A]
> 1990 : 200
> 1991 : 400
> 1992 : 400
>
> * * *
>
> In order to achieve sales targets proposed for the next 5 years and at the behest of Lamborghini Italy, the concessionaire

[17]Plaintiff's Exhibit 81 - While this exhibit is marked "draft," it is in all likelihood no different form the "final" plan.

will establish additional showrooms and service centres in key UK cities - Birmingham, Bristol, Manchester and Glasgow.

All pre-delivery inspections will be carried out in Birmingham which will act as a full importation centre, and central store for stocks of spares and cars.

No decision has been made on the administrative centre for the company, but in all likelihood additional space will be acquired in London. Consideration is being given to the need to relocate the London showrooms/office facilities, which are expected to be inadequate to service the needs of a growing business.

Timescale [sic] for the provincial sites will be commensurate with increased production levels and the introduction of new models. Birmingham will probably be the first to open in 1989 with the others to follow over the next 18 months at most.

* * *

Summary

This plan projects the growth of Portman Lamborghini in two distinct stages, each requiring a different degree of funding.

The plan has been constructed for such a way that the business is liable at each stage, so that in the event of additional funding being delayed, the shareholder's funds would not be jeopardized.

The two stages are:-

(1) Setting-up new premises

(2) Increased sales and stock level in year 3.

* * *

Appendix A

Projected UK Sales

	'87	*Year 1* '88	*Year 2* '89	*Year 3* '90	*Year 4* '91	*Year 5* '92
JALPA**	8	6				
COUNTACH**	23	25*				
LU 002**	4	9	5			
DIABLO			50	50	50	50
BRAVO			10	100	100	100
SUPER BRAVO				50	100	100
TO BE ADVISED					150	150
TOTAL	35	40	65	200	400	400
SECOND HAND CARS		20	40	60	100	150

* INCLUDES DIABLO AT TAIL END OF THE YEAR

** EXISTING MODELS

Appendix B

Personnel Plan

Year	*1*	*2*	*3*	*4*	*5*
	1988	*1989*	*1990*	*1991*	*1992*
Directors	2	2	2	2	2
Office Manager	1	1	1	1	1
Sales Manager	1	2	2	2	2
Service Manager	1	2	2	2	2
Sales Staff		1	3	6	6
Accounts Staff	2	3	3	3	3
Clerical	1	2	3	5	5
Mechanics	2	4	7	13	13
	10	17	23	34	34[18]

One element in the expansion was that Credit Suisse wanted Portman to engage a chartered accounting firm (equivalent to a CPA in the United States), which was done. Also, the bank wanted a full-time financial manager to be part of Portman's staff. That position was filled by Howard Mitchinson in late 1988. Mitchinson was a chartered accountant who had worked with several dealers in the "exotic car" business. Immediately preceding his employment with Portman, he had worked for a dealer who had an annual sales volume of 250 to 300 cars. He was given full responsibility to oversee and implement Portman's expansion. He was shown the Credit Suisse/Portman Business Plan.

Another document Jolliffe showed Mitchinson was a report he prepared concerning a meeting of Lamborghini dealers in Sant'Agata in September 1988. The meeting was part of a three-day celebration of Lamborghini's 25th anniversary. Jolliffe reported that:

> Accordingly, we refer to the Credit Suisse [Plan] 1987, which was adopted following approval by Chrysler and is the

[18]Plan at 2, 3, 7, 10, 13, 14, 15.

> basis of Portman's strategies for the next five years and is retained as the overall guide.
>
> In September 1988, Lamborghini held a full concessionaires's [sic] meeting at the factory, this meeting was chaired by Lee Iacocca, President of the Chrysler Corporation.
>
> At the meeting Iacocca stressed Chrysler's commitment to Lamborghini and the five year plan.
>
> It was conceded that Chrysler had underestimated the development time needed to introduce new models, particularly 200mph super cars and therefore Diablo would not now be marketed until Spring 1990.
>
> Bravo was presented to the concessionaires but also needed a two year development programme [sic] and would therefore not be marketed until September 1990.
>
> In conclusion the intent is still for Lamborghini to manufacture 3000 units a year of the original mix however the five year plan has had to be extended to six years.
>
> We have therefore reviewed our position in the light of the change of models and allocations, and made adjustments to the [Plan] as per the attached schedules.[19]

When he testified, Jolliffe provided more details. He stated Iacocca was the source of the concession about the Diablo and Bravo delays. Iacocca also mentioned stretching the five-year plan to a six-year plan. These comments were made to the dealers. According to Jolliffe, he had an individual conversation with Iacocca which he described to the jury:

> A. This was the 25th anniversary of the factory Automobile Lamborghini. And it was a big, big occasion. Dealers, owners, from all over the world were in attendance.
>
> I happened to be staying -- the arrangements for the hotels were made by Audetto. But I was staying in the same hotel at [sic] Mr. Richards and Mr. Iacocca. I had never met Mr. Iacocca before, but obviously was in awe and knew the name. And in the foyer, Mr. Richards introduced me to Mr. Iacocca.
>
> Q. Did you have a conversation with him?

[19]Plaintiffs Exhibit 100 at 2.

A. Yes.
Q. Do you recall the conversation?
A. A little, insofar as he said he had heard good things of Portman, and asked if we were with Chrysler and what they were doing for Lamborghini. And my response was something, sort of something like, Yes, sir, all the way.[20]

Jolliffe's recitation of Iacocca's comment was echoed in Richards' deposition testimony read at trial. In communicating with its European dealers in various meetings in 1987 and 1988, Lamborghini/Chrysler said it expected them to expand to handle the increased expansion. It was expected that the dealers would want to expand. But, in response to Iacocca's statements about the delays with the Bravo and Diablo, Portman slowed down its expansion plans. The 1987 Plan was revised in late 1988 to reflect this stretching out.[21]

What were Chrysler's original plans for Lamborghini which had become stretched out? So far, in broad terms, it has been mentioned that Chrysler intended to have Lamborghini introduce new models and, most especially, increase production. In a limited edition Lamborghini book printed in 1988, Iacocca stated:

Lamborghini. The name stands for engineering excellence, powerful engines, fantastic performance, and a unique styling philosophy. It's respected throughout the auto world. And its milestones in performance car design speak for themselves. The cars are literally classics in their own time.
Is that why Chrysler bought Lamborghini in 1987? Well, partly.
Chrysler bought Lamborghini for several reasons. Clearly, one reason was to add the Lamborghini jewel to the

[20]Trial Transcript (June 5, 2001) at 70.

[21]*See* Plaintiffs' Exhibit 98.

Chrysler family. But it was more than that. Lamborghini is a one-of-a-kind company that has enormous potential. We felt that with our resources, both financial and technical, the two companies could combine to help Lamborghini grow into a significant force in the worldwide auto industry.

Today, the company produces around 350 vehicles per year. With the right additional products, improved distribution, continued high quality and a strong service network, we believe Lamborghini can grow into a 2,000-3,000 units-per-year company. That's an ambitious goal, and it will take some time, but the people at Sant'Agata are ready.

To achieve that goal requires mainly one thing: product. Product that is different enough to make people come to us instead of the other guys, and product that has engineering excitement as well as integrity and quality. But in this class of cars, what's under the hood is at least as important as what's on the shell.

That's why we're going racing with Lamborghini. Ferrari has been proving itself in every Grand Prix race for the past 40 years. It's time for Lamborghini to stand up and be counted. Lamborghini has build [sic] a V-12 Formula 1 engine targeted for the 1989 racing season. We have signed agreements for a test program this year, and if the engine looks good, I will give the final go ahead later in the fall. To create the engine, we set up Lamborghini Engineering, complete with their own facilities in Modena, Italy. This new team will soon become the spearhead of advanced engineering for Lamborghini.

Replacing the Countach one day will be quite a challenge. But the Lamborghini tradition will continue, and that's a promise! The Lamborghini team, under its new management, is determined to build on its heritage and create many more exciting products worthy of the name. I can't give any details of the future products, but you can be sure that they will be, well, pure Lamborghini!

/s/ Lee A. Iacocca[22]

[22]Plaintiffs' Exhibit 84.

Richards described Lamborghini as giving a "halo effect" to Chrysler. In a presentation Richards made to Chrysler International personnel in August 1987, he also stated:

> Why did Chrysler buy Lamborghini? This question is often asked both inside and outside the company. The answers range from -- "Because the Chairman likes all things Italian" to "Because Ferrari wasn't for sale". Obviously, like the cars, the company is also surrounded by a lot of emotion. Pragmatically we bought it for prestige, the opportunity to enhance Chrysler's status as an international auto company and the chance to make something of an operation which clearly has considerable untapped potential. Emotionally we bought it because we all love the cars; and who could resist the jewel of a company that makes the Countach. As David E. Davis said, you just have to own a V12 car before you die -- so we brought [sic] the company![23]

Chrysler's 1987 Business Plan for Lamborghini identified other potential benefits for Chrysler, such as the development of an engine to be placed in Chrysler products. That and the expansion were outlined as follows:

Cars	*1987*	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*
Countach	204	110	-	-	-	-	-	-
Diablo	-	50	300	400	450	500	550	150
Diablo Replacement	-	-	-	-	-	-	-	250
2 + 2 Cabriolet	-	-	-	-	-	80	150	250
Miura II	-	-	-	-	500	1000	1500	2250
Jalpa	44	20	-	-	-	-	-	-
LM	76	90	100	100	100	100	100	100
Total Cars	324	270	400	500	1050	1580	2300	3050
Engines								
Marine--N.A./Can	9	68	90	140	160	190	220	250
Europe	34	22	30	40	50	50	50	50
V-8 for Chrysler						500	3000	5000[24]

Richards also noted other potential Chrysler benefits:

---

[23]Plaintiffs' Exhibit 10.

[24]Plaintiffs' Exhibit 1.

Chrysler Rub-off
Two basic directions:

Sports Car	*J Body Special*
. New Platform	. "Powered by Lamborghini"
. Front engine/RWD	. Lamborghini DOHC 24 valve head on Chrysler/MMC V6
. Chrysler V8 or V10	. Shelby suspension
. Lamborghini heads	. 4WD Manual
. Steel or composite body	. $10-15,000 Option ($25-30,000 MSRP)
. MSRP $35-40,000	. Volume 3-5000 units
. Volume 8-10,000 units	. Investment $30-35 million
. Investment $150-200 million	. 1991/1991 ½ intro
. 1992 MY introduction	

Recommendation

The J. Body Special direction appears preferable because it does not require a substantial reallocation of resources.[25]

To handle Lamborghini's own increased volume, Richards noted the need for an expanded dealer network.[26]

Late in 1987 or very early in 1988, Chrysler realized it needed to slow down the growth plans. When the 1987 plan was reviewed with Iacocca in 1987, the projected spending over five years was to be $85 million. In January 1988, there was an agreement to reduce the spending to $50 million.[27] As Richards testified, Lamborghini could not expand at all without the infusion of Chrysler's cash. Hammes wrote Greenwald on January 28, 1988 about the change:

> Subject: *Lamborghini Business Plan*
>
> In response to *your request* and in concert with the rest of the organization as it responds to present business conditions,

---

[25]Plaintiffs' Exhibit 13.

[26]Plaintiffs' Exhibit 11.

[27]Plaintiffs' Exhibit 22.

> we have re-visited the Lamborghini Business Plan. The primary purpose of this reevaluation was to reduce capital spending over the business plan period.
>
> The basic elements of the Lamborghini Product Plan has been retained, with the Countach replacement in 1989 and an all-new Ferrari 328 beater in 1991. We have, however, reduced our near-term volume expectations somewhat and now plan that the growth towards Ferrari-like volumes will take place over a longer period.
>
> With this plan revision, capital expenditures for the 1988-92 period, which were at $85 million when the plan was reviewed with LAI in October 1987, have now been reduced to $50 million. It is essentially the same plan, but with revised timing. The flexibility to revert to a higher growth rate if conditions improve is still retained with this plan.
>
> We are quite comfortable with this plan and although it took Tony Richards some time to convince the people at Sant'Agata that the direction was good and not just Chrysler changing its mind, we are now over that hurdle and the new plan is viewed as very positive.
>
> We will now proceed to flesh out the details and will review the revised plan with you in the June/July time frame.[28]

In May 1988, Chrysler updated Lamborghini's Business Plan. In addressing Chrysler's Board of Directors in October 1988, Novaro said he expected the Diablo production to start in the fourth quarter of 1989.[29] The Bravo/P140 he expected to be introduced in 1991.

Numerous other internal Chrysler documents outline Chrysler's plans for Lamborghini, the constant review of the status of product development, capital investment, production delays, etc. Those documents mirror what Iacocca told Lamborghini dealers in Sant'Agata in September 1988. In response to his announced delays, as noted, Portman

---

[28]Plaintiffs' Exhibit 23.

[29]Plaintiffs' Exhibit 34.

slowed down its expansion plans. One reflection of that change is the reviewed Portman Plan cited above.[30] The chartered accountant firm it hired at Credit Suisse's suggestion, Buzzacott & Co., commented on the reviewed plan and the delay in introduction of new models and their increased rate of introduction.[31]

While announcing this delay, the announcement nonetheless reaffirmed Chrysler's intention to introduce new models and increase production. As noted previously, the plaintiffs, at Credit Suisse's suggestion, hired a full-time chartered accountant to replace their part-time accountant. Mitchinson was that accountant and he was to oversee Portman's expansion.

One of the needs Mitchinson saw was people, particularly mechanics to service and repair Lamborghinis. This could not happen overnight. To retrain to do such service on exotic vehicles like Lamborghini took two years and to start at the apprenticeship level took five. The sales staff would have to be increased, too. A sales manager was eventually hired, Peter Leonard-Morgan.

But, such personnel were not all that plaintiffs needed. While Levy denied suggesting it, Jolliffe and Lakeman said he mentioned locating plaintiffs' new central distribution center in Birmingham, England. The plaintiffs felt otherwise. The site which Jolliffe eventually found and which they selected was in Brooklands. This site and name was evocative of British auto racing since prior to World War II.

---

[30] *Supra* at 21.

[31] Plaintiff's Exhibit 98.

Credit Suisse declined to finance the Brooklands property purchase. Plaintiffs turned to another bank, Gamlestaden. Their loan application was approved on June 26, 1989. The actual borrower was Chaplake, the 100 percent owner of Portman. Several key provisions in the loan agreement included:

> 3. *Review*
>
> The Company shall be entitled to terminate the Facility either at the end of a period nine months from the Advance date, if, in its view, [Portman] has failed to achieve or maintain the level of profitability projected in the "Business Plan Update" prepared by [Portman] as approved on 16 November 1988 by Messrs Buzzacott & Co, or before drawdown under clause 4(b) whichever event is earlier.
>
> * * *
>
> 5. *Security*
>
> As security for the Loan and for all monies owing or due to the Company in connection with this Facility the Borrower will:-
>
> * * *
>
> (c) Procure the creation of Debentures in favour of the Company in the form required by the Company over [Portman], Lamborghini Holdings Ltd and Vehiclise Ltd ("the Subsidiary Companies') in consideration of the Borrower making the Property available for the use of the Subsidiary Companies.[32]

Another provision was that Lakeman had to put up a personal guarantee of £100,000. Lakeman signed the agreement on his own behalf and on behalf of Chaplake. Jolliffe signed on behalf of Portman and the other Lamborghini subsidiaries of Chaplake and on his own behalf.

Originally Portman was to have been the purchaser. But, the accountants suggested Chaplake be the purchaser to avoid that infamous European phenomenon known

---

[32]Plaintiffs' Exhibit 220.

as the value added tax [VAT] of seventeen percent. Chaplake is a corporation chartered in the Channel Islands. So, Chaplake became the borrower and later the purchaser. It bought Brooklands on September 29, 1989 for £1,100,000.[33]

Portman had around 6,500 square feet of space available in its current service facility and three-car showroom. Mitchinson believed this building to be built on the Brooklands site needed to be about 30,000 square feet. Because to build such a facility would require various governmental approvals, and, necessarily, take time, he hired the architectural firm of AP Blenkensop. That firm submitted plans which were used to obtain initial planning approval, which was one of the steps.[34] When Blenkensop came in with plans which were over budget, the plaintiffs engaged another firm, Deepsure, which picked up where Blenkensop had left off. It developed even more detailed plans needed for this new building and the myriad of other governmental approvals. One unique expense, besides the development of these architectural plans, was for the removal of an unexploded WWII bomb discovered on the site.

Jolliffe said he showed some of the Brooklands plans to Dario Molaschi. Molaschi had been hired to evaluate and be responsible for the Lamborghini European dealer network.[35] In a January 3, 1989 letter to those dealers, he described his duties as follows:

To All Lamborghini Dealers in Europe

---

[33]Plaintiffs' Exhibit 109.

[34]Plaintiffs' Exhibit 241.

[35]Richards testified Molaschi was hired as the European dealer manager. Molaschi reported to Novaro who reported to Richards who reported to Hammes.

> As you have been told by the Management in Sant'Agata, as from January 1990 I shall be responsible for the Lamborghini European network.
>
> My task will mainly consist in gradually preparing the European organisation [sic] for the arrival of the P140, which, as you know, will allow production to reach over 2000 cars a year. As a first step, I have planned to thoroughly examine the present network and shall therefore contact you before the end of January in order to set up a date for a first meeting. I take the liberty of submitting a list of items to you, which I would like to review with you:
>
> (1) history of your cooperation with Lamborghini,
> (2) sales statistics per year and model,
> (3) Ferarri's presence and results in your territory,
> (4) relations with customers, both sales and service,
> (5) potential and characteristics of your market segment,
> (6) sales forecast, mainly in view of the P140,
> (7) promotional activities in advertising, PR and shows,
> (8) relations with the press [sic]
> (9) second hand market [sic]
> (10) brand image [sic]
>
> Considering my 20 years of European experience with Iso Rivolta, Alfa Romeo and Rolls-Royce, for which my name is familiar to some of you, I am certain that we shall work on the same wave length and find the right form of cooperation to raise the prestige of Lamborghini in Europe as high as possible.[36]

One of those dealers he evaluated was Portman and which he visited in early 1990. After visiting Portman and seeing some plans, he wrote Jolliffe on February 12, 1990:

> My first visit to your organisation [sic] has been most interesting. I was impressed by the availability and professionalism of your team. Your plans at Brooklands and the refurnishing of the London showroom shall give you all the amunitions [sic] to do a great job for Lamborghini.
>
> Please extend to your team, and to Peter Leonard-Morgan in particular, my sincere thanks for having made my visit so constructive and enjoyable.

[36]Plaintiffs' Exhibit 101.

With my best regards [sic][37]

Mitchinson described Molaschi as excited by Portman's plans. In addition to Molaschi, Mitchinson said he showed the architectural drawings to Richards. One occasion was at an auto race at Silverstone, England, in 1990. Lamborghini had four cars with its engines in them at these races. There was a Lamborghini trailer there. Mitchinson described Richards as supportive and enthusiastic. Another of Chaplake's subsidiaries, Lamborghini Leisure, coincidentally, sold over £40,000 of Lamborghini logo items at these races.

Richards either did not recall or denied seeing the specific Brooklands plans. But, while testifying, he acknowledged that he was aware Portman's current facilities were too small and it would need another facility. This was consistent with his testimony that Chrysler authorized Novaro to control the European dealers. Novaro, in turn, was authorized to tell Portman that for it to remain the exclusive UK distributor, it needed to expand its current facilities which were too small.

In the meantime, of course, Portman was selling cars. In 1989, that was the anniversary Countach, which was a transition vehicle to the Diablo introduction. Over a period of eighteen months, Portman sold 76 American Countachs.

The Diablo was unveiled with great fanfare in Monte Carlo in January 1990. Iacocca and Novaro presided over the unavailing. Iacocca had participated in the design review for the Diablo. One model had been taken in a tractor trailer truck to his Italian villa

[37]Plaintiffs' Exhibit 119.

for review and comment. A Chrysler design team had participated in the competition for ultimate design.

Present at the Monte Carlo event were Lamborghini dealers, owners and VIPs. A brochure depicting the events was prepared later. The cover is a photograph of Iacocca sitting on a Diablo and Novaro standing next to him. Both have a hand raised with a thumb up. Portions of the brochure describe the event and remarks:

> Lee Iacocca and Emile Novaro beaming and contended alongside their latest creation.
>
> "... Diablo takes us into the 21st century. Admiring it we are looking at the future, and ten years from now Diablo will still look like it's the future. Diablo is the star tonight, but we are also celebrating something else: a fine marriage between Chrysler and Lamborghini", [sic] said Chrysler Chairman Lee Iacocca.
>
> Emile Novaro also added: "... the Diablo is the handsomest Lamborghini ever built, the fastest, the car that many would love to have. It possesses a balance of technology and craftsmanship that only those with a history behind them can boast...".
>
> * * *
>
> A thunderous applause broke out in the hall when Marmiroli officially announced the car's top speed 325 km/h! Ubaldo Sgarzi spoke of commercial policy. He will have to cope with one pleasant difficulty: not everyone seeing a Diablo can be satisfied.
>
> * * *
>
> The remarks of Chrysler Vice-Chairman Gerald Greenwald were significant: "... Diablo is the result of a process that started when Chrysler asked Lamborghini to realize the dream of every car-lover in the world. Chrysler's excited about how successfully Lamborghini has delivered that dream, and we think Diablo says a lot about our future together. Our slogan for the past five years has been simply: 'to be the best'.

> Well, Lamborghini is the best, the jewel in the super-car crown."[38]

In January 1990, Jolliffe and Lakeman met with Novaro in Italy. On January 31, 1990, they executed an agreement:

> *AGREEMENT*
>
> The following agreement is entered today between [Lamborghini] by its President [Novaro] and [Portman], represented by its President and Managing Director [Jolliffe] and one of its share-holders [Lakeman]:
>
> [Portman] shall remain Sole Lamborghini U.K. Importer and Distributor until December 31st, 1993. After that date [Portman] shall become a concessionaire for the London area and [Lamborghini] shall be free to appoint dealers in other areas of the U.K.
>
> [Lamborghini] shall supply to [Portman] by December 31st, 1993 150 DIABLO units to be approximately delivered as follows:
>
> 10 in 1990
> 40 in 1991
> 50 in 1992
> 50 in 1993
> and a P140 allocation to be agreed later.
>
> Should [Lamborghini] not be in a position to supply the totality of the 160 Diablo units by 31st December 1993, this agreement will be extended accordingly for some months and no other U.K. concessionaire will be appointed by [Lamborghini] before all 150 units are supplied to [Portman].
>
> This agreement will be replaced by a final agreement within two months and replaces meanwhile any other previous agreement. [sic]
>
> This agreement cannot be transferred by [Portman] to third parties.[39]

---

[38]Plaintiffs' Exhibit 244.

[39]Plaintiffs' Exhibit 222.

Jolliffe and Lakeman's understanding, as the language of the agreement strongly infers, was that after 1993, if Lamborghini was not satisfied, Portman would be the concessionaire for the London area only. Jolliffe told Novaro that no construction had started on Brooklands but it would be built by sometime in 1993. He understood that if built, Portman would remain the sole UK cessionaire but, if not, Lamborghini would get other dealers. Lakeman testified that Novaro agreed the plaintiffs' expansion plans to date were being implemented. Jolliffe and Lakeman were led to believe the P140/Bravo was still to be produced but now sometime in 1992.

On March 22, 1990, as a follow up to this agreement. Ubaldo Sgarzi, the new sales manager for Lamborghini, sent a letter to Portman regarding accepting orders for the Diablo.

> We wish to confirm that on receipt of this letter it will be possible to accept orders for the Diablo.
>
> * * *

DIABLO ALLOCATION-PORTMAN LTD

		Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
1990	R										3	4	3	10
	L													
1991	R	3	3	3	3	4	4	3		3	3	3	2	34
	L													
Total														44

[40]

The 1991 allocation was later increased to 40. The new total of 50 was exclusively for right-hand drive cars. At the Diablo unavailing in Monte Carlo in January, the dealers were told they were to obtain substantial deposits on Diablo orders. Portman

[40]Plaintiffs' Exhibit 122.

forwarded payment of deposits for 44 cars in June 1990. Portman had collected £25,000 deposits from each purchaser but, as required, forwarded £15,000 of each deposit to Lamborghini. Additional deposits were sent in December 1990. The payments made to Lamborghini were non-refundable.

In July 1990, Jolliffe had faxed Sgarsi a letter about the deliveries and deposits.

> Thank you for your fax. I confirm that the allocation was agreed at 50 plus the 2 LHD for Taeffi and Sotra.
>
> I now have a better idea as to deliveries although I am still worried as to when RHD will be started.
>
> I will now finalize our client listing and forward you a copy together with the balancing deposit.[41]

Sgarzi wrote to Jolliffe on December 18, 1990 concerning Portman's allocations and the delay in Diablo deliveries:

> thank [sic] you for your fax of December 11.
>
> We hope to be able to catch up your 1990 allocations for now 8 units by the end of 1991.
>
> Some left-hand drive units will be supplied early in 1991, provided that the situation does not again develop as for Sotra.
>
> Regarding allocations for 92 and 93, we do not expect to have more units available also because our agreement with you is for a total of 150 units. All the above is conditional upon fulfilling your promises to Mr. Novaro.[42]

The "promises to Novaro" referenced in this communication involved the construction of Brooklands and Portman's expansion and remaining the exclusive UK concessionaire. Also, indeed, there had been a delay in sending Diablos to Portman. None were received from October 1990 through May 1991. The first right-hand drive vehicle was

---

[41]Plaintiffs' Exhibit 137.

[42]Plaintiffs' Exhibit 219.

received in June 1991, but due to the need for extensive UK government inspections, could not be sold.

According to Smith, one of the two people Chrysler appointed to Lamborghini's four-person board, it was the plan to introduce left-hand drive Diablos first. This was to get more to the United States market. Right-hand drive automobiles would come later. Richards acknowledged the delivery schedule for right-hand drive vehicles had been delayed. Smith said United States dealers complained for a year about the delay in left-hand drive vehicles. Portman complained, too. Purchasers who had made deposits but not yet received their Diablos started to complain in July 1991.

By this time, a lot of money had been spent on the Brooklands plans and related matters and on staff expansion at Portman. It had spent £569,321 from the Credit Suisse loan facility and another loan with Barclay's Bank.[43] Jolliffe sold sixty percent of his stock in Chaplake. The buyer was Sheik Mohammed Fakhry with a sales price of £500,000. Of this, £462,686.47 of the proceeds went to Chaplake which, in turn, loaned the money to Portman.[44] Chaplake's loan was put in the Portman Credit Suisse account to reduce the significant outstanding balance on the loan facility.[45] The background of this was explained in a September 1991 letter from Jolliffe to a bank official.

> Further, to our telephone conversation this morning and recent discussions, I would confirm that [Portman] would like

---

[43]Plaintiffs' Exhibit 260.

[44]Plaintiffs' Exhibit 172.

[45]Plaintiffs' Exhibit 226.

> the bank to continue the temporary facility that expires today the 30th September, for a further 30 days.
>
> As stated to you, [Portman] have [sic] arranged a shareholders loan from [Chaplake] and it is expected that the paperwork for this will be completed this week to enable an injection of the first £500,000 to the account.
>
> Sheik M. Fakhry has been out of the UK for a large amount of September and is currently in Saudi, returning Friday.
>
> The Directors of [Portman] are travelling with him to [Lamborghini] on the 9/10 October for him to see the factory, including their investment into new plant and product, and to understand Lamborghini's plans for the 90's.
>
> It is suggested that Mr. Paul McDonald might like to accompany us to also meet the management and see the investment being made at St Agata [sic].
>
> Given the UK product being completed at St Agata [sic] for the period ending 31st December 91 we are totally convinced our worst period is now behind us.[46]

Jolliffe and Fakhry visited the Lamborghini factory in the fall of 1991. They were accompanied by a Credit Suisse representative. Fakhry and that representative particularly wanted to be sure Diablos were being built especially because of the delivery delays and Portman's increasing account at the bank. Since Fakhry had loaned, or offered to loan, £1 million to Chaplake in connection with Brooklands, he had an additional personal interest in being assured Lamborghini was upholding its end.

Around the time of this trip, Portman was having some financial difficulties. It had purchased a new facility in Heston to refurbish Lamborghinis and hired staff to work on them. It had also increased its other staff, had expenses in connection with the Brooklands purchase (no construction yet) but had received only a trickle of Diablos. Requests from

[46]Plaintiffs' Exhibit 178.

prospective purchasers started to come in to Portman in late summer and fall of 1991.[47] Lamborghini gave assurances of prompt delivery but there were not enough.[48] Lawsuits were threatened in early 1992.[49]

Few cars were delivered into 1992. The exact number was disputed at trial but it was below the numbers to which Lamborghini had committed. Portman's financial woes continued. It was unable to refund deposits to customers seeking such refunds. Finally, on March 30, 1992, Credit Suisse called its loan facility seeking payment in full of the then balance due of £2,105,183.62. Payment was due the next day.[50]

Portman could not make that payment. It immediately ceased doing business. Credit Suisse, when payment was not made, called Lakeman's personal guarantee on the Portman credit line. He lost £420,000 when that call was made. Lakeman also had a personal guaranty with Gamelstaden which was called on May 5, 1992.[51] That cost Lakeman £110,000.

Credit Suisse did not put Portman into receivership. Lakeman asked Gamelstaden to do so but it was in its own receivership and declined. Lakeman "bought" Gamelstaden's debenture with Chaplake and ultimately had Portman put into receivership.

---

[47]*See, e.g.*, Plaintiffs' Exhibits 183, 212.

[48]*See, e.g.*, Plaintiffs' Exhibits 184, 185.

[49]*See, e.g.*, Plaintiffs' Exhibit 193.

[50]Plaintiffs' Exhibit 171.

[51]Plaintiffs' Exhibit 162.

The plaintiffs' plans and financial undertakings were not centered exclusively around selling more Diablos, which was the sales focus until business ceased in March 1992. Chrysler had made it clear for a period of years that it planned to introduce a new, less expensive vehicle, the P140. It was to be a Ferarri F348 competitor. Chrysler invested millions to increase the size of the Lamborghini factory at Sant'Agata, along with other obligations, including producing the Diablo.

As noted earlier, Chrysler had made its P140 plans public. Those plans were discussed with plaintiffs both just to them and along with other dealers.[52] The record at trial

---

[52]As an example of that information and planning is Plaintiffs' Exhibit 126. It is a draft report prepared by a chartered accountant firm for presentation to a potential third-party purchaser of Portman. The sale never occurred but much of the information reflects the plaintiffs' reaction to Chrysler's plans for Lamborghini. The sale never occurred, however, Pertinent excerpts state:

> 2.2 The company has entered into a concession agreement with Chrysler corporation of America (acquirors of Lamborghini in 1987) regarding the importation and sale of Lamborghini cars in the UK and Erie. This agreement expires at the end of 1992, but guarantees a supply of 50 cars p.a. to Portman (150 in 1993 with the introduction of the new P140 model). This agreement is held by a related company "Vehiclise Limited" and is subject to Portman achieving certain sales targets and opening new satellite showrooms. In the event of non-performance, the concession is terminable by either party on 12 months notice.
>
> 2.3 In order to protect the UK concession, Portman will be required to establish a full importation centre to act as the central stores, pre-delivery inspection centre and administration control centre. To this end a 1 acre freehold site at the Brooklands race circuit has been acquired for £1m. The estimated cost of building showroom and service facilities is £1.8m. The property is currently owned by one of the company's shareholders.
>
> * * *

(continued...)

showed, however, that for various reasons, major delays occurred in the development and introduction of the P140/Bravo. While originally expecting to see it earlier, Jolliffe testified he still thought, as late as the winter of 1991, it would be built. As a matter of fact, in the fall

---

[52](...continued)

> 3.2 The improvement in operating performance in 1990 has arisen from the change of direction of the company's activities. The company presently acts as exclusive agents for Lamborghini cars. Problems regarding car deliveries from Italy have now been resolved and the company has been guaranteed deliver of 50 new vehicles a year (150 in 1993) under the terms of its concession agreement with Chrysler.
>
> * * *
>
> 4.1 The company has prepared a preliminary profit forecast for 4 years up to and including the year ending 31st December, 1993. The forecast is at a draft stage and has not been reconciled to opening and closing balance sheets.
>
> 4.2 The forecast has been generated from assumptions concerning the future sales levels achievable in respect to the two new Lamborghini models, the Diablo and the P140. We have not studied the forecast in detail at this stage however, in discussion with Mr. Mitchinson we have made certain adjustments (outlined below) to reflect matters relevant to the retention of the concessionaire agreement which were not previously incorporated into the forecast.
>
> * * *
>
> 4.5.1 It is assumed that Portman will receive and on-sell 50 Diablo's in each of the years 1991-1993 and 25 and 100 P140's in the years 1992 and 1993, at gross margins of £25,000 and £15,000 per unit respectively.
>
> * * *
>
> 4.10 **It is important to note however that the revised forecast profits outlined above are heavily dependent on the ability of Lamborghini Italy to design, produce and deliver the new models on time. Any delays will have significant profit and cash flow implications.** [Emphasis added]

The last statement is particularly prescient.

of 1991, he was provided with a P140 prototype. He took it to the UK for crash testing. Why else, he said, build a prototype and crash it?

But, unbeknownst to plaintiffs, Chrysler was already slowing down its investment in Lamborghini, particularly involving the P140.[53] Many internal documents were prepared discussing various problems with the P140 program and even suggesting, as an alternative to a delay, canceling it.[54] Many of the documents were prepared in anticipation of a Chrysler executive committee meeting scheduled for January 7, 1991:

> LAMBORGHINI P-140 PROGRAM DISCUSSION
> PROBLEM: Chrysler Management not willing to present to the Chrysler BOD the additional P-140 funding requirements.
>
> Initial P-140 BOD approval completed 10/88 $33.4 mil (excl $56 mil in tooling amortized in costs); present plan requires $81.1 mil (excl $18.4 mil in tooling amortized in costs) due to inability to find a supplier willing to take all-aluminum car technology risk *and* finance the body. (reference attached Lamborghini Strategy Review) [sic]
>
> If it is assumed that the P-140 program is not presented to the Chrysler BOD for review than only 2 options exist regarding this program, cancellation or complete refinancing of the project.
>
> CANCELLATION
>
> ○ Could place Lamborghini in a self destruct mode since the entire operation would see a dismal future and correctly perceive their shareholder as "not interested" with the next step the action block.
>
> ○ Chrysler analysts would say "Even though I did not really understand why Chrysler tied up with Lamborghini, why are they deserting them? Is something really wrong at Chrysler? I thought Lamborghini was turning into a solid success." This

---

[53]*See, e.g.*, Plaintiffs' Exhibits 43, 48, 49, 52, 53, 54, 55, 57, 59 and 60.

[54]Plaintiffs' Exhibit 62; Richards memorandum to J.E. Cappy, then Vice President of Chrysler International.

effect would likely get enormous press coverage and Chrysler could end up spending $50 mil to try to offset it.

o From a financial perceptive Lamborghini's "value" would sink considerably (maybe as much as 100%) and the sunk costs on the P-140 program are wasted.[55]

Another said:

J. E. Cappy
Subject: *Lamborghini*

Attached is a draft of the CEC paper for January 7.

Some additional aspects that you might consider are:

· Delaying/dropping the P140 program at Lamborghini could be likened to dropping the LH at Chrysler. The Diablo provides the high profits like the minivan and Jeep, but the mainstay and future of the company, as well as the focus of the product development organization, rests with the P140 as it does with the LH at Chrysler.

· If the P140 is delayed or dropped, the third car (P143) should be accelerated to provide the company and the engineering resource with a focus for the future. This could be a very important factor in keep [sic] the Lamborghini team together. Acceleration of the P143 would require spending approval of $3.5-5.0 million during 1991.

· The inability of Chrysler to allow Lamborghini to borrow the additional $48 million required to compete [sic] the P140 program sends a signal to the banking community, the press, dealers and customers regarding Chrysler's health and financial stability. This impact will be especially strong in Europe.

· Although the positive financial effect on Chrysler of delaying the P140 program is small -- aside from the larger political problem of going to the Board -- the negative effect on Lamborghini will be devastating.

· The P140 is not just a car program for Lamborghini, it is the middle phase of a growth plan that has been at the center of everything the company has done since the acquisition in 1987. It includes capacity for Diablo (plus 150 units/year) as well as the 1500 units/year growth implicit in the P140. The investment covers a broad spectrum of spending not normally

[55]Plaintiffs' Exhibit 60.

> included in a new car program, aside from the actual capacity investment.[56]

Still another stated:

> *P140 ISSUES*
>
> In October 1988, the P140 Program was presented and approved by Chrysler Board.
>
> While Lamborghini planned to sell up to 2,000 P140's per year, the investment required to reach that capacity ($30 Million), was not included in the 1988 BOD presentation and the 1989-03 LRP. It would have required Board approval in a 2nd phase.
>
> The program as presented to the Board subsequently proved infeasible:
>
> - Unable to find vendor to take all-aluminum car technology risk and finance the body.
>
> - Vehma, the selected vendor, was unwilling to accept the business unless volume was 1,500-2,000 per year.
>
> - Variable cost and investment higher than Board approval.
>
> - Despite higher volume and pricing assumptions, P.I. is .7. (When additional capacity for Diablo production is considered, a P.I. of 1.1. can be realized).
>
> Chrysler must determine its plan of action for Lamborghini considering the following:
>
> - Lamborghini has increased its staff and competition efforts in accordance with its growth strategy.
>
> - $18-20 Million already sunk on P140.
>
> - Chrysler Board of Directors' approval of the additional investment would be required. It may be difficult to obtain that approval for a non-core, low profitability program.[57]

The Chrysler corporate executive committee made a decision about the P140 program at its meeting on January 7th. Its decision is reflected in the following communication from Cappy to Novaro.

---

[56]Plaintiffs' Exhibit 62.

[57]Plaintiffs' Exhibit 64.

January 8, 1991
E. J. Novaro
Subject: *P140 Program*

At the Corporate Executive Committee meeting on Monday, January 7 it was decided to delay the P140 launch date from September, 1992 to March, 1994.

Although this decision was made largely for financial reasons and as a result of the present economic environment, there are some significant benefits that will be derived from the delay. Most importantly Lamborghini will have the opportunity to demonstrate that it can run smoothly at planned Diablo levels with solid profits and excellent quality. The growth plan for Lamborghini is quite aggressive, and in view of the Diablo launch problems, it seems prudent to confirm a solid base before committing to the massive step implicit in the P140 program.

The CEC expressed no interest in bringing new investors into Lamborghini. While it is possible that Chrysler would entertain an unsolicited offer to purchase Lamborghini, I consider the probability of such an event to be very low and my recommendation to you is that we forget about this course of action. Rather we should focus our efforts on getting the company to run smoothly at the 650 unit level and use this delay to generate internal funding and work on ways of making the P140 program more profitable in order to meet corporate guidelines.

In the interim, you will have to resubmit Lamborghini's Business Plan to reflect the delay of the P140 program. We will also need to write projects to support Diablo capacity expansion to 650 per year and regulatory requirements at Sant'Agata. In order to obtain the benefits of the decision made, your resubmission should include for the next eighteen months *only the Capital Spending and ER&D which is absolutely essential.*

The Vehma contract will require renegotiation in order to reflect the delay in the P140 launch. I would appreciate being informed of that negotiation before it is finalized.

Although the decision to delay the P140 is disappointing for everybody at Lamborghini, it should not be viewed as negative or as a particularly unusual event. It is in fact a quite normal course of action in this very cyclical automotive industry and in view of delays already experienced in the program (especially on the interior), it may only be a real delay of less than twelve months.

> Emile, we are relying on your strong support and leadership to present this decision in a positive manner in order to maintain the commitment of everyone at Sant'Agata to the task ahead of us. Your approach to this decision with your people is key to keeping everyone's dream in place.
>
> We do not expect this downturn to be too long in duration, so in twelve to eighteen months time we should be able to start getting back on track with the P140 program and the planned expansion for Lamborghini.
>
> /s/J. E. Cappy
> cc: L. A. Iacocca
> R. S. Miller[58]

None of this was communicated to the outside world. As mentioned earlier, Jolliffe believed that the P140 was still going to be produced. Why else get the prototype to crash test? Mitchinson said if he had known in late 1990 that this was Chrysler's thinking, he would have tried to sell Brooklands and take other cost savings steps. An article in the July 1991 *Car and Driver* reported the P140 delay from 1992 to 1993 at the earliest.[59] Richards testified this news would have been known in the automotive community for six to eight weeks prior to the article.

Even after the January Chrysler executive committee decision, Richards and Smith exchanged thoughts about slowing or canceling this P140 program.[60] Part of this

---

[58]Plaintiffs' Exhibit 65.

[59]Defendant's Exhibit 228.

[60]Plaintiffs' Exhibits 71, 72, June 1991 memoranda from Smith to Richards and Richards to Novaro:

> Lamborghini should begin now to consider (1) any changes in the P140 projected capacity and product spending, especially those which improve the P.I.; (2) updated timing and cost estimates of other new products, including changes to

(continued...)

exchange was in the context of Chrysler's efforts begun in late 1990 to find a buyer for Lamborghini.[61] On November 17, 1993, Chrysler announced its sale of Lamborghini. The announcement also quoted Chrysler's Vice President for International Relations as saying Chrysler and Lamborghini would continue to work together on projects.[62]

After Portman's cessation of business on March 31, 1992, Jolliffe and Lakeman formed a successor company to Portman in an effort to salvage their business and reputation. Some cars were sold through that successor in the year or so after Portman ceased operating in March 1992. Also, as part of unraveling the mess, in a deal with Gamblestaden's receiver, Lakeman paid a non-refundable deposit on Brooklands in hopes of finding a buyer, but had a limited time to sell it. He did not find a buyer within the allotted

---

[60](...continued)

> Diablo for the VT model, the P143 and any others you are currently thinking of; (3) adding 1996 spending to the plan, including the remaining capacity increase for 1,500 P140 volume.
>
> * * *
>
> For the P140 Program, as you know, we need to be prepared to resubmit the total program, based upon the deferred launch date and revised Vehma payments. This revised program should be prepared for internal (up to Joe Cappy) review in October or early November so that we can meet the February Board of Directors meeting schedule. In the meantime, as you know, there should be no commitments or expenditures for P140 except the E.R. & D. which is going on at Vehma and Sant'Agata, as Joe Cappy agreed in January/February. Plaintiffs' Exhibit 74.

[61]Plaintiffs' Exhibit 70, 78.

[62]Plaintiffs' Exhibit 79.

time and lost his deposit. Brooklands was eventually sold and the proceeds paid to Gamblestaden's receiver.

The plaintiffs sought recovery on several grounds: breach of contract, fraud, negligent misrepresentation and promissory estoppel. The jury awarded Chaplake and Portman damages only as to their claims for promissory estoppel. As to that claim and the others, Chrysler had raised the defense of statute of limitation. The jury was instructed about that[63] but, by their verdict, rejected it.

---

[63]

> Defendant Chrysler has raised the defense that plaintiffs' promissory estoppel claim is barred because it was filed too late. Under Delaware law, a promissory estoppel claim must be brought within three years of the time of injury. If not done so, it is barred. However, the filing of a complaint may be postponed until the plaintiff's rights are or could have been discovered by the exercise of reasonable diligence. Here, the plaintiffs filed their complaint on April 22, 1994. Chrysler must prove this defense by a preponderance of the evidence. Before considering whether Chrysler is liable for promissory estoppel, you must answer this question:
>
> Do you find by a preponderance of the evidence that the plaintiffs discovered, or could have discovered through reasonable diligence, that they suffered an injury as a result of their reliance on Chrysler's alleged promissory estoppel before April 22, 1991? If the answer is "no," you must then decide whether plaintiffs have met their burden of proof on all of the elements of their promissory estoppel claim. If the answer is "yes," plaintiffs may not recover on their promissory estoppel claim and you must enter a verdict for Chrysler.

Jury Instructions (June 21, 2001) at 26.

PARTIES' MOTIONS

Portman has moved for additur. It claims £181,321 for costs of expansion and £262,500 for lost profits on 21 Diablos should be added to its award. The costs portion of this request is for the extra employees Portman added to meet its expanded sales and service requirements. Portman contends twenty-one Diablos were to be delivered in 1990-91, but were not. This failure resulted in a net profit loss per car of £12,500.

All plaintiffs seek a new trial on their claims of fraud and negligent misrepresentation. Chaplake and Portman also seek an award of prejudgment interest on the awards to them. They also seek an award for certain costs.

Chrysler seeks a new trial on promissory estoppel. It claims the Court erred in its instructions to the jury on the elements of this claim. It also contends many statements attributed to it are not statements which should bind it, and the Court made no preliminary finding of agency before these statements could be attributed to it. Further, it asserts that the jury's verdict was against the great weight of the evidence that actions and statements could be attributed to it under an agency theory. Its motion raises a myriad of other grounds for new trial.

In addition to this more specific motion, Chrysler has renewed its motion for judgment as a matter of law. It argues Chaplake is not a real party in interest. In addition, it attacks the sufficiency of the evidence as to each element of the claim of promissory estoppel. It also contends the Statute of Frauds bars Portman and Chaplake's claims and

renews its claim that their claim is barred by the statute of limitations. It, too, seeks costs of litigation.

APPLICABLE STANDARDS

The parties' motions for a new trial under Rule 59 implicate standards different from those applicable to Chrysler's motions under Rule 50(b) for judgment as a matter of law.

When considering a motion for a new trial, the Court starts with the fundamental principle that the jury's verdict is presumed to be correct.[64] The Court must determine whether the jury's verdict is against the great weight of the evidence.[65] The jury's verdict should not be disturbed unless it is so clear as to show that it was a result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.[66] An award which is grossly inadequate or where it is so out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice will be set aside.[67]

The jury serves an essential position in the judicial system.[68] It is the fact finder and the amount of damages is a question of fact. The jury's verdict expresses the view

---

[64] *Young v. Frase*, Del.Supr., 702 A.2d 1234, 1236-37 (1997).

[65] *Storey v. Camper*, Del.Supr., 401 A.2d 458, 464 (1979).

[66] *Storey v. Castner*, Del.Supr., 314 A.2d 187, 193 (1973).

[67] *Riegel v. Aastad*, Del.Supr., 272 A.2d 715, 717-18 (1970).

[68] *DiGioia v. Schetrompf*, Del.Super., 251 A.2d 569, 570 (1969).

of twelve persons who heard and saw the evidence.[69] As to additur, in addition to these long-established principles, the Court must grant Chrysler all reasonable factual inferences and determine what verdict the record justifies as an absolute minimum.[70]

When, however, the Court considers a motion for judgment as a matter of law, there are different principles at work. First, the Court does not weigh the evidence.[71] Nor does it pass on the credibility of the witnesses.[72] The Court is required to view the evidence in the light most favorable to the non-moving party.[73] Applying these rules, the question then becomes whether the facts and inferences would permit reasonable persons to reach but one conclusion, that the moving party is entitled to judgment. Only then should the motion be granted.[74]

DISCUSSION

I

A

Plaintiffs' Motion for Additur on Portman's Damages

The jury found that Chrysler was liable to Portman under the doctrine of promissory estoppel. It awarded £569,321.45 to Portman which represented the amount

---

[69]*Lacey v. Beck*, Del.Super., 161 A.2d 579, 580 (1960).

[70]*Carney v. Preston*, Del.Super., 683 A.2d 47, 58 (1996).

[71]*McCloskey v. McKelvey*, Del.Super., 174 A.2d 691, 693 (1961).

[72]9 Wright and Miller, *Federal Practice and Procedure*, §2524.

[73]*Rumble v. Lingo*, Del.Super., 147 A.2d 511, 513 (1958).

[74]*Gannett Co., Inc. v. Re*, Del.Supr., 496 A.2d 553, 557 (1985).

spent in connection with Brooklands. That amount is found in plaintiffs' Exhibit 260 which itemizes the Brooklands expenses. Mitchinson also testified extensively about those figures. Portman contends it is entitled to all of the damages it suffered as a result of relying on Chrysler's promises, not just the money spent on acquiring and developing plans for Brooklands. In addition to Brooklands' expenses, it asserts that it is entitled to recover the salaries of the employees who were hired as part of Portman's expansion to meet Chrysler's expansion plans and needs for Lamborghini and its dealers (a total of £181,183, per Mitchinson). Also, Portman argues, at a minimum, it is entitled to recover the lost profits on undelivered twenty-one Diablos because Chrysler contended at trial that twenty-nine Diablos were delivered leaving twenty-one Diablos undelivered.

Chrysler responds that there was sufficient evidence for the jury to deny awarding employee salaries or lost profits on the twenty-one Diablos. It contends that the evidence shows that the employees were hired pursuant to Jolliffe and Mitchinson's expansion efforts who said their plan was more aggressive than what was recommended by Portman's advisors, especially Credit Suisse. This aggressive expansion, it contends, led to an adverse impact on Portman's financial situation; the additional employees provided some benefit to Portman regardless of any expansion, therefore, it suffered no damages; and the employees were hired due to the expanding business opportunities, such as the restoration business in Heston.

Chrysler also opposes any recovery of lost profits on the twenty-one Diablos. It argues that evidence was presented that in January 1992, there were seventeen or eighteen

Diablos waiting at the Lamborghini factory for Portman to pick up. Jolliffe admitted in his deposition that all the cars that were ordered for 1990 and 1991 were delivered to Portman or Portman concessionaires (the successor to Portman after it ceased doing business), but refuted that statement at trial. Finally, it asserts the agreement to deliver the Diablos was between Lamborghini and Portman, not Chrysler. The Court will not dwell on this last argument here. It is addressed in greater detail later.[75]

Mitchinson calculated that Portman spent £181,832 on additional employees hired in the several years preceding Portman's collapse, for instance, increasing its employees to fifteen in 1990 and twenty in 1991. Jolliffe testified these employees were needed to run the day-to-day operations so that he could implement the expansion plan. However, Mitchinson also testified on cross-examination that he and Jolliffe adopted and implemented an expansion approach that was more aggressive than what was recommended by Portman's advisors. Also, Chrysler presented evidence that Portman was both expanding old operations and creating new businesses, which were not necessarily related to or even part of a need to expand.

Based on the evidence, the jury was free to conclude that the newly-hired employees were hired as a result of the new or expanding businesses, or were hired pursuant to the more, possibly overly, aggressive plan implemented by Jolliffe and Mitchinson and may not have been necessary expenses for the coming expansion. The jury acted reasonably

[75] *Infra* at 64-76.

in its award of damages. It was free to assess the credibility of the witnesses[76] and make a determination as to damages.[77]

The number of cars that were delivered to Portman by the end of 1991 was disputed at trial. During their case, several times the plaintiffs changed the undelivered number when confronted with documents. They alleged at trial that only seventeen cars were delivered. Chrysler contended during trial that twenty-nine cars were delivered and other cars were waiting at Lamborghini to be picked up by Portman. Chrysler introduced the deposition testimony of Jolliffe who stated that all the cars were delivered. Chrysler also submitted evidence showing that Jolliffe and Lakeman formed a new business selling Lamborghinis. The jury could have inferred from the evidence that the undelivered cars were eventually delivered and sold by the two entrepreneurs. Now, after trial, the plaintiffs contend that since Chrysler stated only twenty-nine cars were delivered by the end of 1991, they are owed profits on the twenty-one undelivered cars.

The jury determined that plaintiffs were not entitled to damages for the alleged lost profits for allegedly undelivered Lamborghinis. The jury could have determined that (1) the cars were produced and ready, but Portman failed to pick them up because of its financial situation resulting from effects of Jolliffe and Mitchinson's more aggressive expansion plan, (2) the cars were all delivered, or (3) Jolliffe and Lakeman's new business picked up the undelivered cars and sold them. The jury could have chosen any one of these three choices

---

[76] *Williams v. State*, Del.Supr., 539 A.2d 164, 168 (1988).

[77] *Young*, 720 A.2d at 1237-38.

and especially with the first two options, the Court cannot find that its verdict is against the great weight of the evidence. It may have also decided that Portman failed to meet its burden of proof as to lost profits. Whatever the reason, this Court cannot overturn the jury's finding of fact under these circumstances and award a new trial on damages.

Nor can the Court award additur. As a start, many of the tests used to analyze damage awards, when a motion for new trial is made, are also used on a motion for additur.[78] In addition, Chrysler is to be afforded all reasonable factual inferences and the Court is to determine what verdict the record justifies as an absolute minimum.[79]

Plaintiffs' own evidence showed it expanded more aggressively - expensively - than the Plan. Lakeman and Jolliffe even acknowledged an element of risk in that Plan. The unclear, if not contradictory evidence, concerning the number of Diablos delivered, when delivered, or not delivered created problems of proof on the lost profits' claim. The jury could have found that Mitchinson's testimony about hiring and/or training mechanics so far in advance of actual need or in advance of being more assured of the promised delivery dates and/or volumes was either not credible or not reasonable. In any event, additur is not warranted.

---

[78] *Carney*, 683 A.2d at 56.

[79] *Garrett v. Virges*, Del.Super., C.A.No. 97C-02-249, Herlihy, J. (January 21, 2000).

B

Plaintiffs' Motion for New Trial on Claims of Negligent and Fraudulent Misrepresentation

This motion rests on the alleged facts that Chrysler made promises to the plaintiffs and then secretly abandoned any commitment it had to the expansion plan without informing the plaintiffs of such abandonment. Plaintiffs contend that the evidence is sufficient to find Chrysler liable to all of them for negligent misrepresentation and fraud. For example, plaintiffs assert that Novaro's assurances at the Lamborghini factory in 1991 constituted statements of fact upon which they relied.

They also contend the Court erred in declining to answer in the affirmative one of the jury's questions which arose during deliberations. The Court instructed the jury on the elements of negligent misrepresentation which the plaintiffs needed to prove:

> NEGLIGENT MISREPRESENTATION
>
> Plaintiffs claim that Chrysler committed negligent misrepresentation in its dealings with them and that they have suffered losses as a result of those misrepresentations. It claims that Chrysler negligently misrepresented certain facts to them and that they relied upon these facts to their detriment.
>
> In order to sustain a claim for negligent misrepresentation, plaintiffs must prove by a preponderance of the evidence:
>
> 1. That Chrysler had a duty to provide accurate information to plaintiffs;
>
> 2. That Chrysler supplied false information to plaintiffs;
>
> 3. That Chrysler failed to exercise reasonable care in obtaining or communicating the information that they provided to plaintiffs; and

> 4. That plaintiffs suffered a loss caused as a result of justifiably relying upon the false information provided by Chrysler.[80]

While deliberating, the jury posed two questions to the Court:

> 1. Do we have to find *All* 4 elements to be true? [Emphasis in original.]
> 2. Can False be defined as "lack of" information in these elements?[81]

After discussion with counsel, the Court answered Question No. 1 "Yes." Plaintiffs wanted the Court to give the same answer to Question No. 2, which it declined to do. The Court's answer was to instruct the jury to refer to the instructions and that it could not answer the question as asked. In making their request for an affirmative answer to Question No. 2, the plaintiffs relied upon *Norton v. Poplos*.[82]

Chrysler opposes the plaintiffs' motion for a new trial on the negligent and fraudulent misrepresentation claims. It contends the plaintiffs' did not identify any evidence supporting the contention that the alleged statements the plaintiffs relied on were representations of fact or statements of future contention that Chrysler knew were untrue at the time. Chrysler contends that Novaro was not Chrysler's agent and that his statements were not false.[83] Chrysler also contends the P140/Bravo was actually delayed and not

---

[80]Jury Instructions (June 21, 2001) at 23.

[81]Jury Note.

[82]Del.Supr., 443 A.2d 1 (1982).

[83]Again, this contention is dealt with in broader terms later in this opinion. *Infra* at 64-76.

abandoned at the time Novaro allegedly made the statements. And, the jury could have determined from the evidence that Portman was informed or should have been aware about the situation of the P140/Bravo.

As to the plaintiffs' claim of negligent misrepresentation, Chrysler contends that it was under no duty to supply accurate information and the plaintiffs' reliance on the *Norton* case is misplaced. Chrysler points to the fact that *Norton* was an appeal to the Supreme Court from the Court of Chancery dealing with innocent misrepresentations and argues the law is different when an action is asserted at law rather than in equity. Chrysler also relies on *Gaffin v. Teledyne, Inc.*,[84] a Chancery decision for this proposition. In sum, Chrysler states that the plaintiffs are seeking an equitable remedy that is unavailable in this Court.

The Supreme Court in *Norton* outlined the elements of an actionable misrepresentation:

> A misrepresentation need not be in the form of written or spoken words. Stated simply, a misrepresentation is merely an "assertion not in accordance with the facts," and such an assertion may be made by conduct as well as words. And although a statement or assertion may be facially true, it may constitute an actionable misrepresentation if it causes a false impression as to the true state of affairs, and the actor fails to provide qualifying information to cure the mistaken belief.[85]

In *Gaffin*, the Court of Chancery distinguished the elements for fraud when an action is brought in Chancery rather than in this Court.

---

[84]Del.Ch., C.A.No. 5786, Hartnett, V.C. (October 9, 1987).

[85]*Norton, supra,* at 5 [citations omitted].

> In order to state a claim for fraud, either at law or in equity, a plaintiff must allege a false misrepresentation made by the defendant; that the defendant intended to induce the plaintiff to act or to refrain from acting; that the plaintiff acted in justifiable reliance upon the representation and that the plaintiff has suffered damage.
>
> * * *
>
> In addition, the plaintiff must allege a culpable mental state of the defendant. Delaware courts, however, have imposed a different standard as to the mental state required to be shown as to a defendant accused of fraud, depending upon whether the action is cognizable at law or in equity:[86]

The *Gaffin* court concluded that an additional element is not necessary in an equitable action for fraud. "By contrast, in an action at equity for relief from fraud, there is no requirement that the defendant have known or believed his or her statement to be false or to have made the statement in reckless disregard of the truth."[87] The Court in *Gaffin* was distinguishing an action for fraud, not negligent misrepresentation.

The jury was provided with a correct statement of the law regarding an action for negligent misrepresentation as it stands now. The issue is this: in *Norton* the Supreme Court determined that a negligent misrepresentation claim is actionable "if it causes a false impression as to the true state of affairs, and the actor fails to provide qualifying information to cure the mistaken belief."[88] In *Norton*, however, the action was one in equity and not one at law. In *Gaffin*, the Court noted the differences between a fraud action in equity and a

---

[86] *Gaffin, supra,* at 3.

[87] *Id. citing Stephenson v. Capano Development, Inc.*, Del.Supr., 462 A.2d 1069 (1983).

[88] *Norton, supra*, at 5.

fraud action at law. Therefore, since the Supreme Court has not adopted a concealment or "lack of information" requirement to a negligent misrepresentation claim at law, this Court will refrain from expanding a negligent misrepresentation claim until the Supreme Court states it is an element of such a claim in a action at law. A new trial is not warranted for choosing not to answer affirmatively the jury's question which would have expanded or erroneously stated the elements of a negligent misrepresentation claim at law.

Plaintiffs also claim that a new trial is warranted because of the overwhelming testimony on the negligent misrepresentation claim. Jolliffe testified that in the fall of 1991, he took a Bravo to the UK to be crash tested and in October of 1991 he traveled with a Credit Suisse representative and Fakhry to the Lamborghini factory to meet Novaro, who reassured him that the Bravo was still in development. Plaintiffs allege that Chrysler "had completely abandoned [the expansion plan]. The [p]laintiffs continued to rely upon Chrysler's misrepresentations right through to their financial devise."[89]

The jury's decision is not against the great weight of the evidence presented. The jury was presented with evidence that production of the P140/Bravo was delayed as stated in the July 1991 *Car & Driver* article. Richards also testified this information was known in the automobile community for six to eight weeks before this article appeared. Therefore, the jury had to decide between this evidence and the plaintiffs' testimony which is, of course, its function.[90] The jury needed to determine when the statements were made

---

[89]Plaintiffs Motion at 11, (Docket No. 261).

[90]*Tyre v. State*, Del.Supr., 412 A.2d 326, 330 (1980).

and if those statements were actually false. At the time Novaro made the alleged statements to Jolliffe, they may have been true statements; *i.e.*, Chrysler at this time could have actually been committed to the expansion plan. It secretly shopped Lamborghini on the market in early 1991 through J. P. Morgan, but the jury could have viewed this as a confidential undertaking that would have caused an uproar in the car market if made public or that it was information that was unnecessary to disclose to the plaintiffs. The jury rendered a decision that was not against the weight of the evidence. The evidence from the parties was contradictory. The jury weighed the evidence and credibility of the witnesses and determined that the plaintiffs were not entitled to recover under the negligent misrepresentation claim.

In addition to that contention for a new trial, plaintiffs also seek a new trial on their claim of fraud, which the jury also rejected.[91] The elements of fraud differ, in some

---

[91]

FRAUD

Plaintiffs claim that Chrysler committed fraud. To recover for fraud, plaintiffs must prove the following five elements by a preponderance of the evidence:

1. That Chrysler made a false representation of a fact that is important to them.

2. That Chrysler knew or believed that this representation was false, or was made with reckless indifference to the truth;

3. That Chrysler intended to induce plaintiffs to act on the false representation, or to decline to act;

4. That plaintiffs acted, or declined to act, in justifiable reliance on the false representations; and

5. That plaintiffs suffered damages as a result of this reliance.

A false representation may be asserted by words or by conduct. A fact is important if it would cause a reasonable person to decide to act in a particular way, or if the maker of the misrepresentation knew another person would regard it as

(continued...)

respects, from those of negligent misrepresentation. But, there is also some overlap in elements. The discussion above, therefore, regarding negligent misrepresentation applies to the determination whether plaintiffs should get a new trial on the issue of fraud.

Because the jury found Chrysler liable on the promissory estoppel claim, it is likely it accepted the plaintiffs' evidence about statements made to them. More than likely, the jury found that the statements from Iacocca, Richards, Levy, Novaro and Molaschi were made. But, just as likely, the jury's verdict represents a finding that when made, they were not false or made with reckless indifference to the truth. If so, there was no false representation upon which Chrysler intended plaintiffs to act.

The evidence is replete that Chrysler intended "to grow" Lamborghini and expected its dealers to grow commensurately, and particularly expected Portman to grow.[92] Plaintiffs point to the secret efforts begun by Chrysler in late 1990 to sell Lamborghini. They claim this was an intentional concealment of a material fact. Such an act can constitute

---

[91](...continued)

> important. An opinion may constitute fraud if the speaker knows that it is false. An expression of an opinion or a speculation about future events, when clearly made as such, is not considered fraud or misrepresentation, even if the opinion or speculation turns out to be untrue. But, if an opinion or speculation is false and made with the intent to deceive, it is fraudulent just as a misstatement of fact is fraudulent.

Jury Instructions (June 21, 2001) at 20.

[92]So much so, Chrysler's motion for a new trial on the verdict of promissory estoppel must be denied. *Infra* at Section II.

fraud.[93] But, just as Chrysler was secret about marketing Lamborghini, in 1990 plaintiffs explored efforts to sell Portman to a third party. Chrysler was never informed of these efforts. They jury most likely accepted Richards' explanation that such confidential efforts are the norm and premature disclosure would be harmful.

In sum, there is no basis to award a new trial to plaintiffs on their claim of fraud.

II

Chrysler's Motion for New Trial on Promissory Estoppel

Chrysler argues it is entitled to a new trial on the verdict against it on the plaintiffs' claim of promissory estoppel. It raises a laundry list of reasons why: (1) the verdict is against the great weight of the evidence, (2) the damage award was against the great weight of the evidence, (3) the plaintiffs' claim is barred by the statute of frauds, (4) the Court erred in not instructing the jury on the defense of the statute of frauds, (5) the plaintiffs' action was barred by the statute of limitations, (6) the Court failed to instruct the jury on its waiver defense, (7) the Court erred in its instructions to the jury on the nature of the case, corporate acts, agency and apparent authority, (8) the Court erred in its instructions to the jury on the elements of promissory estoppel, and (9) the Court erred by not using Chrysler's proposed special verdict form.

[93] *See* Jury Instructions (June 21, 2001) at 20.

Many of these same grounds duplicate those Chrysler raises in its separate motion for judgment as a matter of law on the promissory estoppel claim.[94] Since, however, this motion is for a new trial, different principles apply. When considering this motion, the Court must determine whether the verdict is against the great weight of the evidence.[95] A verdict should not be set aside unless it is the product of passion, prejudice or partiality or it is clear the jury disregarded the evidence or the rules of law.[96]

A

As a threshold to the attack on the verdict, Chrysler raises two arguments concerning agency. One, the Court erred in admitting alleged hearsay statements against it without first requiring the plaintiffs to meet an evidentiary threshold. Two, the Court erred in its instructions on agency and the verdict is against the great weight of the evidence even with those instructions.

Chrysler's first agency argument is that the plaintiffs must first prove by a preponderance of the independent evidence, and the Court must so find, the existence and scope of the Chrysler/Lamborghini agency before admitting otherwise alleged hearsay statements under D.R.E. 801(d)(2)(D). That section of the Rules of Evidence provides:

> (d) Statements which are not hearsay. A statement is not hearsay if:
>
> * * *

---

[94] *Infra* at Section III.

[95] *Burgos v. Hickok*, Del.Supr., 695 A.2d 1141, 1145 (1997).

[96] *Lacey*, 161 A.2d at 580.

> (2) Admission by party-opponent. The statement is offered against a party and is . . . (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship.[97]

Chrysler cites no language in the Rules of Evidence supporting its argument. Subpart (D), for instance, should be compared to Subpart (E) which has the requirement for which Chrysler argues. But, that subpart applies to co-conspirator statements:

> (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy; provided that the conspiracy has first been established by the preponderance of the evidence to the satisfaction of the court.[98]

In making its current argument, Chrysler refers back to its pretrial motion *in limine* seeking to bar the same statements about which it is now arguing. It cited then the case of *Hickman v. Parag*[99] which spoke *in dicta* of the admissibility of agency statements premised upon proof of agency by independent testimony. The efficacy of *Hickman's dicta* is arguably questionable, however, in light of the wording of D.R.E. 801(d)(2)(D) adopted nineteen years later.

But, the Court need not decide that. The record in this case of agency, including and especially "independent" evidence is so overwhelming as to cause this Court not only bewilderment but chagrin that Chrysler continues this argument. Its argument

---

[97]D.R.E. 801.

[98]D.R.E. 801(d)(2).

[99]Del.Supr., 167 A.2d 225, 231 (1961).

directly contradicts its own documents and the undisputed testimony of its own people, Iacocca, Levy, Richards and Smith.

The documentary evidence starts at the very top with Iacocca's own statements appearing in print.[100] His statements were in the media in 1987, in public comments to dealers, in documents picturing him alone or with Novaro, in documents giving statements by him, etc.[101] Documents in evidence generated by Chrysler officials speak of his visits to the Lamborghini factory. He was involved in the design, along with a design team at Chrysler, of the Diablo and participated in the January 1991 decision to slow down the P140/Bravo development.

Chrysler's argument also flies in the face of its various business plans for Lamborghini and the relationship it had with it. After purchasing one hundred percent of its stock, half of the Lamborghini board was composed of high-level Chrysler employees. One of them, Richards, spoke of the "halo" effect coming from the purchase of Lamborghini. Chrysler's documents also speak of the more specific benefits to Chrysler, such as use in *its* products of Lamborghini-developed engines. Richards also made it clear that Lamborghini could not have done anything without Chrysler's funding. To accomplish the goals of producing more cars and the P140, all the money came from Chrysler. The Chrysler board

---

[100]Chrysler infers the Court's views on him are colored by what happened earlier in this case. The Court authorized a commission for Iacocca's deposition in California. Chrysler opposed that in California and for reasons never made know to this Court, a judge in that state blocked the deposition. So much for comity! While distressed with this, the Court has not based any ruling on Chrysler's actions.

[101]*See, e.g.*, Plaintiffs' Exhibit 84; *supra*, at 22.

had to approve major expenditures and its executive committee slowed the P140 program. Chrysler exclusively controlled Lamborghini's fiscal spigot.

When Novaro was injured in 1987, his "replacement," Levy, was not hired or paid for by Lamborghini. His "Consultant Agreement" was drafted by Chrysler's headquarters in Highland Park, Michigan, and on its stationery.[102] The contract to hire him was executed by a senior level Chrysler official, Hammes. Levy was assigned duties relating to the European dealers by Richards, a Chrysler employee. His duties, that agreement showed, flowed to Chrysler.

The Court could go on. The statement of facts cites to a number of documents showing Lamborghini was Chrysler's agent. Many of them were put in evidence before plaintiffs' witnesses testified about verbal statements Chrysler people or Novaro made to them. The Court again rejects this part of Chrysler's argument about agency. Even assuming there was a threshold need, it was satisfied with an avalanche of "independent evidence." In short, the written and verbal statements were not hearsay as they squarely fit within the wording of D.R.E. 801(d)(2)(D).

B

The second part of Chrysler's argument about agency is a corollary to the first and is also echoed in its motion for judgment as a matter of law. It is that the Court erroneously instructed the jury on agency[103] and that the verdict, which clearly infers the jury

---

[102]Defendant's Exhibit 7.

[103]Chrysler also now contends that the plaintiffs failed to establish an agency (continued...)

found agency, is against the great weight of the evidence. The Court's instructions on the nature of the case, the parties, corporate acts, agency, apparent authority and independent contractor were as follows:

> NATURE OF THE CASE
>
> A word about the parties before I turn to the claims and issues. This is a civil case and in a civil case, we call the persons or entities who sue, the plaintiffs, in this case, Chaplake Holdings, Ltd., Portman Lamborghini, Ltd., and David T. Lakeman, and we call the entity which is sued, the defendant, in this case, Chrysler Corporation. I will use the terms plaintiffs and defendant and I hope it will be clear to whom I am referring.
>
> Plaintiffs are suing Chrysler for damages they claim resulted from Chrysler's alleged fraudulent and negligent misrepresentations to them, from Chrysler's alleged breach of an implied contract with them and from Chrysler's alleged failure to honor certain promises that it made to them. Plaintiffs claim that in 1987, after Chrysler acquired Lamborghini as a wholly owned subsidiary, it unveiled an ambitious expansion plan for Lamborghini and announced that it would increase production of Lamborghini automobiles tenfold over a five-year period. According to the plaintiffs, the control of Lamborghini's future rested squarely in Chrysler's hands, as the expansion plan was dependent upon Chrysler investing large sums of money into Lamborghini. Plaintiffs assert that, as part of its plan, Chrysler promised them that they would continue to hold their exclusive franchise in the UK only if the plaintiffs committed to expanding their facilities to increase distribution from 30 to 40 cars a year to 300 to 400 cars a year. Plaintiffs further assert that Chrysler also committed to doing its part to insure that Lamborghini expanded pursuant to the terms of the expansion plan with Chrysler's financial support.
>
> Plaintiffs allege that they agreed to Chrysler's plan and performed their end of the bargain. They assert that, in reliance

---

[103](...continued)
relationship with Chrysler International and/or Chrysler. This is the first time in this case Chrysler mentions any differences between Chrysler International and Chrysler. Since Chrysler failed to make this argument before trial or even during trial, it will not be considered now after trial.

on Chrysler's promises and commitments to them, they borrowed money, bought land, took orders on new automobiles, hired additional staff and retained other professionals to expand their distribution capacity. Plaintiffs further contend that, while they were doing this, Chrysler failed to honor its commitment to provide the significant capital infusion into Lamborghini that was crucial to the expansion plan and then secretly abandoned its expansion scheme while deliberately concealing this abandonment from plaintiffs. Plaintiffs assert that, as a result of Chrysler's breaches of its implied contract with them, its broken promises and alleged nondisclosures, the plaintiffs' business was driven into financial insolvency.

As you know, Portman Lamborghini is in receivership in the UK. Any monies it receives goes to the receiver. If you award Portman Lamborghini any damages, that award will be paid to the receiver to be disposed of in accordance with the laws of the UK.

Chrysler denies that it had an implied contract with plaintiffs, that it made any misrepresentations to plaintiffs or that it broke any promises to plaintiffs. It contends the plaintiffs knowingly accepted a business risk and that whatever may have been said to them were not promises or commitments. Chrysler also contends that certain of the plaintiffs' claims are barred because they were filed too late. If Chrysler is liable on any of the claims, it disputes the amount of damages plaintiffs seek.

CORPORATE AND PARTNERSHIP ACTS

Plaintiffs Chaplake Holdings Ltd., and Portman Lamborghini Ltd. and defendant Chrysler are corporations. Because these entities are not of themselves living beings, they can act only through their respective officers, directors, agents or employees. The acts or omissions of those persons are therefore the acts or omissions of their respective entities.

Turning to the question of what knowledge the corporation has, a corporation knows everything that is known to its officers, directors, agents and employees. A corporation can acquire knowledge only through the individuals that act on behalf of the corporation. Knowledge is imputed to a corporation when of an officer, director, agent or employee gains the information while acting within the scope of his or her employment and the information is relevant to his or her employment responsibilities. Therefore, whenever in these instructions I talk about any of the corporations knowing

something or being notified of something, you should understand that this is simply a way of saying that one of the corporation's officers, directors, agents or employees knew something or was notified about something. In general, an officer, director, agent or employee of a corporation may bind the corporation by the acts or statements that he or she makes while acting within the scope of the authority that has been delegated to him or her by the corporation, or within the scope of the individual's duties as an agent or employee of the corporation. An agent is one who acts for another, known as a principal, or on the principal's behalf and subject to the principal's control and consent. The principal, in this case, is the corporation.

A subsidiary of a corporation also can act as the agent of the parent corporation. In order to show that Lamborghini was acting as an agent on behalf of Chrysler, the plaintiffs must prove by a preponderance of the evidence:

(1) that Lamborghini acted at Chrysler's discretion or on its behalf; and

(2) that there was a close connection between Chrysler's control over Lamborghini and the actions or events giving rise to the plaintiffs' claims.

In determining whether a parent exercised sufficient control over its subsidiary, you may consider certain factors, which include, but are not limited to, the following:

(a) stock ownership

(b) the extent of overlap of officers and directors;

(c) methods of financing;

(d) arrangements for payments of salaries and expenses;

(e) the division of responsibility for day-to-day management; and

(f) the origin of the subsidiary's business and assets.

No one factor is either necessary or determinative nor is this list exclusive. Rather, it is the specific combination of factors which is significant.

A corporation can know a fact or a set of circumstances, even if no officer, agent or employee of the corporation has complete knowledge of the fact or set of circumstances. For example, if an officer, agent or employee of a corporation knows that a particular statement is untrue, but does not know whether that statement was made to anyone and another officer, agent or employee of the corporation knows that the particular

statement was made to someone, but does not know that it is true, the corporation can be said, nonetheless, to have knowingly made an untrue statement. In other words, the corporation, as a whole, knows both that the statement was not true and that the statement was made.

APPARENT AUTHORITY

One of the issues you must decide is whether alleged statements made or actions of people employed by Chrysler International or Lamborghini are the statements or actions of defendant Chrysler. If so, Chrysler would be bound by these statements or actions, if they occurred. This is known as apparent authority.

In deciding this issue, you must consider whether Chrysler placed the individual in such a situation that a reasonable person would be justified in assuming that the person was acting or speaking with Chrysler's authority. If you find that the plaintiffs were justified in assuming that the individual had authority to act or speak on behalf of Chrysler, you must find that Chrysler is bound by the individual's acts or statements.

In other words, even if a person does not have actual authority to act on behalf of the corporation, the person may still bind the corporation by his or her acts or statements if that person is acting with apparent authority. Apparent authority is created if the principal places a person in such a situation that the other person is justified in believing that the person is acting or speaking on behalf of or with the consent of the corporation. It does not matter that the actor may not have actual authority to act or speak on behalf of the corporation. What matters is whether a third person with ordinary prudence and reasonable diligence believes that the actor has the authority to act or speak on behalf of the corporation. The actor with apparent authority also will subject the corporation to liability if the actor's actions usually accompany or are incidental to transactions that the agent is authorized to conduct, even if they are unauthorized by the corporation, if the other party reasonably believes that the actor is authorized to act and has no notice that the actor is not authorized to act on behalf of the corporation.

INDEPENDENT CONTRACTOR WHO IS AN AGENT OF AN OWNER/CONTRACTEE

You have heard testimony describing Carl Levy as an independent contractor. Generally, an independent contractor is

not considered the agent of an owner or contractee who ordered the work performed and cannot bind the owner or contractee. But, if the owner or contractee's control or direction dominates the way that the work is performed, the independent contractor becomes an agent of the owner/contractee, making the owner/contractee liable for the statements or acts of the independent contractor.

You must determine whether Chrysler's control over the work dominated the manner in which it was performed by Cary Levy. In this regard, some factors that you may consider include:

(1) the extent of control, which, by agreement, the owner/contractee may exercise over the details of the work;

(2) whether the independent contractor maintains a business distinct from the owner/contractee;

(3) whether the details of the work are directly supervised by the owner/ contractee or performed by an independent specialist without supervision;

(4) whether, in the locale where the work was performed, it is customary for the owner/contractee or for the independent contractor to supply the means and place for doing the work;

(5) the length of time over which the work is done;

(6) whether the nature of the work is part of the regular business of the owner/contractee;

(7) whether the owner/contractee and independent contractor believe they are acting as a principal and agent; that is, acting in a situation where the person in the role of an agent acts for another, known as a principal, on the principal's behalf and subject to the principal's control and consent; and

(8) whether the owner/contractee is or is not in business.

These are all factors that may determine whether the manner in which the work was performed was dominated by Chrysler or by Carl Levy. You must examine these factors and any others that you believe to be relevant within the context that I have just supplied to you. No one factor is determinative. It is the totality of the relationship that governs. You must then determine whether Carl Levy was an agent of Chrysler.[104]

[104]Jury Instructions (June 21, 2001) at 3-11.

Much of the evidence recited earlier also shows the agency. Chrysler owned all of Lamborghini's stock; its senior officials occupied two of the four slots on its board; it provided one hundred percent of the financing to carry out Lamborghini's new product and expensive expansion plans; Lamborghini's top executive, Novaro, reported to Richards, a Chrysler employee; Levy, hired by Chrysler, had duties specified by Richard and Hammes; to name but a few items in evidence. It was Iacocca who was in charge of the Diablo unveiling at Monte Carlo. He announced to the Lamborghini dealers in 1988 what Chrysler's plans were for Lamborghini, approved of the Diablo design and so on. Chrysler, now that Iacocca is gone, seems to seek to run away from his "God"-like (as Richards put it) presence, involvement and decision-making involving Lamborghini. It seeks to ignore, to the point of exasperation, its own documents and actions during 1987-1991.

There were several key events in this saga. One was the original public announcement by Chrysler of its purchase of Lamborghini and its plans for significant expansion. Another was Richards' confirmation of these same plans to Jolliffe and Lakeman in 1987 at Sant'Agata, which confirmed what Novaro had already said to one or both of them after Chrysler bought Lamborghini. Still another was Levy's statements at the famous lunch in late 1987 confirming again those figures and expansion plans. In 1988, at a meeting of all dealers, Iacocca reaffirmed those expansion plans. And, in a separate conversation, according to Jolliffe, Iacocca asked if Portman was with them (in the expansion effort) when they met briefly in Sant'Agata.

The Court maintains that the jury was properly instructed on all of the principles quoted above. The overwhelming evidence supports the verdict of agency and Chrysler's liability. Many of the statements Chrysler now disputes were by its own people, starting at the very top with Iacocca. Others included Richards, who remained a Chrysler employee while at Lamborghini, Smith and Levy. The written words on Chrysler's own documents are consistent with and correspond to the verbal statements made directly to Jolliffe, Lakeman and Mitchinson and, on occasion, other dealers. Specifically and most importantly, the plans to increase production and the commensurate need for the dealers to expand.

In Levy's case, his "Consultant Agreement," and what Richards said was his assignment, dovetails with what the plaintiffs said were his remarks at the lunch with the Credit Suisse representative. Further, Novaro's written agreement in January 1990 represented both Chrysler's plans for Lamborghini's increased production and the stretched-out time for delivery of right-hand drive Bravos. The agreement also was consistent with earlier discussions with Richards and Novaro that for Portman to remain the sole UK concessionaire, it had to expand in ways to satisfy Chrysler.

Another way of expressing the Court's conclusion rejecting Chrysler's argument is, if the jury had not found agency, that would have been against the great weight of the evidence.

C

Once past these hearsay and agency arguments, Chrysler next argues Portman and Chaplake's promissory estoppel verdicts are against the great weight of the evidence. These arguments, too, mirror arguments in its Rule 50(b) motion. To put these arguments in context, it is necessary to recite the Court's instructions to the jury on the elements of the claim of promissory estoppel:

> PROMISSORY ESTOPPEL
>
> Plaintiffs claim that they relied on Chrysler's promises to their detriment by spending and borrowing money to finance the expansion of their facilities in Great Britain. Chrysler denies the plaintiffs' claim. Plaintiffs may recover money damages from Chrysler on its claim if, they prove the following four elements by clear and convincing evidence.
>
> 1. Chrysler made a promise to plaintiffs;
>
> 2. Chrysler intended or reasonably expected the promise to induce the plaintiff to act or refrain from acting;
>
> 3. Plaintiffs relied upon the promise in acting or refraining from acting; and
>
> 4. Plaintiffs were injured by acting or refraining from acting in reliance upon Chrysler's promises.
>
> If someone makes a promise to a person who reasonably relies on that promise and who later takes an action to that person's detriment, the one making the promise is obligated to fulfill the promise. A promise is a declaration by which a person agrees to perform or refrain from doing a specified act. Mere expressions of opinion, expectation or assumption are not promises.
>
> You must determine from the evidence whether Chrysler made a promise to plaintiffs. If you find that such a promise was made and that plaintiffs relied on it to their detriment, you may award plaintiffs damages for the detriment suffered as a result of Chrysler's failure to fulfill its promise.[105]

D

[105] Jury Instruction (June 21, 2001) at 25.

Chrysler initially divides its great weight argument into two parts: one part for each prevailing plaintiff. As to Chaplake, Chrysler argues that there is no evidence that Chrysler made any promises to Chaplake. In so many words, this is a corollary argument to the one made in its Rule 50(b) motion. It is that Chaplake is not a real party in interest. As the two arguments overlap, and the Court determined that Chaplake is a real party in interest,[106] Chrysler's argument here is rejected.

It does not dispute, however, that Portman is a real party in interest. Instead, Chrysler's argument is that the verdict in favor of Portman on its promissory estoppel claim is against the great weight of the evidence. This argument is broken down into three parts: (1) there was no proof of agency, (2) there was no definite and certain promise, and (3) Portman did not reasonably and justifiably rely on any alleged promise.

The Court has already addressed the agency argument. The overwhelming evidence was that Chrysler executives and personnel were making statements for Chrysler and others, such as Molaschi, whose documents and words in evidence were acting as Chrysler agents.

The second contention Chrysler raises is that there is insufficient evidence of a definite and certain promise. The short reply to this argument is that Chrysler promised to keep Portman as its exclusive UK concessionaire if it agreed to expand to meet specific production increases and greater sales demands. These promises came specifically to Portman after the increased production figures were announced and millions of dollars spent

[106] *Infra* at 89.

to effectuate them. The promises came in conversations or presentations by Iacocca, Richards, Levy and Novaro. The goals and needs expressed were entirely consistent with the internal memoranda, business plans and other documents which Chrysler executives generated. In other words, what Jolliffe, Lakeman and Mitchinson testified was told to them about the Chrysler/Lamborghini plans for expanded production/sales and expectations for Portman were confirmed by Chrysler's own documents.

The context of Portman's need to expand must be kept in mind. It was Lamborghini's single largest dealer prior to expansion and its only dealer selling right-hand drive cars. It was important to Chrysler and Portman to sell more such cars. That could only be done in the numbers mentioned by expanding. Even though the 1990 agreement raised the possibility of Portman no longer remaining the exclusive UK concessionaire, it acknowledged that for several more years, it would remain so and during that time, Portman would be expanding. The great weight of the clear and convincing evidence showed there was, or more accurately were, definite and certain promises made to Portman.

Chrysler also contends that the damage award for expenses incurred in reasonable and justifiable reliance on these promises is not supported by clear and convincing evidence. There was detailed testimony and documentary evidence about Portman's reliance expenses. The jury chose to accept portions of that testimony and reject others as is its right. Chrysler's argument is really no more than asking this Court to overrule the jury's credibility determination. The Court cannot do that.

Richards and Molaschi said Portman's facilities were inadequate to meet the upcoming sales demands. Novaro said so, too. The jury chose to believe Levy said it also and discussed a location for an expanded central distribution center. Richards and Molaschi saw and approved of the expansion plans at Brooklands; a step and expense Chrysler never disputed, certainly at the time. While the jury obviously found some of the expansion costs, such as personnel, were not proven by clear and convincing evidence, it was within its power to find other expenses were. The evidence supports that finding. When Novaro spoke to Jolliffe and Lakeman, when the January 1990 agreement was signed, Portman's future exclusive status and expansion were clearly linked and that linkage is in the agreement itself.

The great weight of the clear and convincing evidence supports the jury's award of damages to Portman.

E

Chrysler's next argument is that, as to both Chaplake and Portman, there is insufficient evidence to support a claim for promissory estoppel. While again appearing in its Rule 50(b) motion, Chrysler makes the same argument in its motion for a new trial.[107]

This particular argument is premised on the claimed failure of both plaintiffs to show by clear and convincing evidence that an actual promise or definite assurance was made to them and also that such promise(s) was (were) made by Chrysler.

---

[107]In its post-trial motion, Chrysler refers, as with other arguments, to specific pages in its Rule 50(b) motion and incorporates them into its new trial motion. This is troublesome because the standards for considering these two types of motions, as noted, differ significantly.

The earlier discussion concerning agency addresses the argument that Chrysler made no promises. This argument is another way of saying Lamborghini, either through its own people like Novaro or Lamborghini as a subsidiary, could not bind the parent. The Court's recitation of the evidence clearly demonstrating Iacocca, Richards, Levy and Smith were Chrysler people and fully authorized to say what is attributed to them dispels the first part of this argument that promises were not made by Chrysler. There was, of course, much more. The Court has also indicated earlier that Lamborghini, as a corporation, and those like Novaro, Molaschi and others, bound Chrysler by its or their words, deeds, letters and contracts. In short, there was more than ample evidence to show that whatever promises were made were made by Chrysler.

In addition to these two arguments, Chrysler contends what was said and done fails to meet the requisite level of an enforceable promise. Before meeting Richards in 1987, Jolliffe knew Chrysler had bought Lamborghini and greatly increased its production. When the two met, that was put in specific enough terms of a ten-fold increase for all of Lamborghini but also Portman. There was discussion then on the effect on Portman and whether it could meet that increased demand. Portman's future as sole UK concessionaire was clearly linked to an ability to expand and satisfy what Richards was saying. Levy repeated these figures. Iacocca repeated these plans in 1988 and specifically asked Jolliffe if Portman was "with us." Richards saw plans for Portman's Brooklands expansion and gave his blessing. The Lamborghini literature reporting Iacocca's comments underscored the expansion. Molaschi, hired to assess European dealers, including, as he wrote them, their

ability to meet the promised expansion, visited Portman and approved of its expansion plans. Finally, the 1990 agreement linked delivery of Bravos and Portman's ability to expand to meet the increased Lamborghini production to Portman's continuation as sole UK concessionaire.

There was more than enough evidence to meet plaintiffs' burden of proof by clear and convincing evidence that a promise had been made to them: a promise and definite enough assurance to sustain the jury's verdict as to this element of promissory estoppel.

F

The Court discussed earlier[108] Chrysler' contention that Portman had not shown by clear and convincing evidence that the damages awarded it were reasonable and justifiable. When now lumping both Portman and Chaplake together in this motion, it renews the same arguments as to Portman. No repetition of the Court's rejection of that contention is needed. Chrysler also disputes the inclusion of £110,000 in Portman's damage award. Again, this is nothing more than an effort to have the Court overturn a jury credibility determination. Both damage awards were supported by clear and convincing evidence.

As part of its dispute with this damage award, Chrysler claims it was prejudiced by "last minute" damage testimony from Jolliffe and Mitchinson. Despite some difficulties Chrysler encountered earlier in this protracted litigation, the claim of surprise and prejudice was not manifested at trial. Chrysler's extremely competent battery of counsel more than

[108] *Supra* at 76-79.

capably handled the damage testimony whether belated or not. While prejudice is argued, no specifics are demonstrated.

The damages awarded were amply shown on numerous documents and by extensive testimony from Mitchinson. There were some inaccuracies in some of what he and those documents showed but the jury was free to sift through all of those documents and his testimony and accept what it believed and deemed reasonable. The evidence supports its choices.

G

Additionally, Chrysler contends that Portman and Chaplake's claims for promissory estoppel are barred by the statute of limitations and the statute of frauds. The Court will not consider Chrysler's argument that Portman and Chaplake's promissory estoppel claims are barred by the statute of frauds because this argument was not raised during trial. Chrysler failed to preserve this objection on the record.[109] It submitted proposed jury instructions on the statute of frauds, but the instructions were limited to a defense against the claims of an implied breach of contract. It did not submit a similar instruction relating to the promissory estoppel claim.

The statute of limitations on a claim for promissory estoppel is three years.[110] The complaint in this case was filed on April 22, 1994. The jury was instructed on the defense of statute of limitations as to the claim in this fashion:

---

[109] *Riggins v. Mauriello*, Del.Supr., 603 A.2d 827 (1992).

[110] 10 *Del.C.* §8106.

STATUTE OF LIMITATIONS -
PROMISSORY ESTOPPEL

> Defendant Chrysler has raised the defense that plaintiffs' promissory estoppel claim is barred because it was filed too late. Under Delaware law, a promissory estoppel claim must be brought within three years of the time of injury. If not done so, it is barred. However, the filing of a complaint may be postponed until the plaintiff's rights are or could have been discovered by the exercise of reasonable diligence. Here, the plaintiffs filed their complaint on April 22, 1994. Chrysler must prove this defense by a preponderance of the evidence. Before considering whether Chrysler is liable for promissory estoppel, you must answer this question:
>
> Do you find by a preponderance of the evidence that the plaintiffs discovered, or could have discovered through reasonable diligence, that they suffered an injury as a result of their reliance on Chrysler's alleged promissory estoppel before April 22, 1991? If the answer is "no," you must then decide whether plaintiffs have met their burden of proof on all of the elements of their promissory estoppel claim. If the answer is "yes," plaintiffs may not recover on their promissory estoppel claim and you must enter a verdict for Chrysler.[111]

Chrysler argues that the injury triggering the statute of limitations occurred in September 1990 when the Bravos specified in the January 31, 1990 agreement were not delivered in the time indicated. But, there was enough other evidence to show that as of September 1990, no injury had occurred or that an injury triggering the statute did not occur until 1992, at least, or sometime after April 1991, or that simply Chrysler failed to sustain its burden of proof on this defense.

Portman closed its doors on March 31, 1992 after Credit Suisse called the loan "facility." Disgruntled Diablo purchasers did not start making demands for their cars or return of their deposits until the latter half of 1991 and lawsuits or threatened lawsuits came

[111]Jury Instructions (June 21, 2001) at 26.

in 1992. In the fall of 1991, Jolliffe, Lakeman, Fakhry and a Credit Suisse representative visited the Lamborghini factory in Sant'Agata. They obviously could see the expanded factory. Jolliffe was provided with a prototype P140/Bravo in the fall of 1991 to take to the UK for crash testing. In sum, the jury's verdict rejecting Chrysler's statute of limitations defense was not against the great weight of the evidence.

H

In its motion for a new trial, Chrysler next argues that the Court erred by not instructing the jury on its waiver defense. It argues Jolliffe, Lakeman and Portman Concessionaires signed a document waiving certain claims against Lamborghini. Portman Concessionaires was a successor corporation to Portman Lamborghini. It was set up later in 1992 to try to pick up the pieces when Portman Lamborghini ceased doing business in March 1992. It operated only about a year.

Chrysler's argument is founded on its Exhibit 154 which purports to waive or compromise certain claims. Jolliffe and Lakeman signed it. But, no one from Lamborghini did. And, that was their testimony at trial, too. Further, Portman, Lamborghini and Chaplake were not signatories and were the recovering plaintiffs. There was, therefore, no factual basis to warrant an instruction on the defense of waiver.

I

Chrysler's next arguments relate to the Court's instructions on nature of the case, corporate and partnership acts and apparent authority. These instructions were quoted

earlier[112] in the context of Chrysler's corollary argument about agency.[113] Most of the Court's opinion responding to that argument applies to this portion of Chrysler's argument. The Court has re-examined its instructions and Chrysler's arguments and finds no error in the instructions. Chrysler's argument, in large part, is an *ex post facto* distancing from the authority and many uncontradicted statements of its own people, Iacocca, Richards, Smith, Levy, et al., and what they did.

J

Chrysler's final argument in its motion for a new trial is the Court's decision not to use its special verdict form. As to promissory estoppel, Chrysler asked the Court to submit the following to the jury to answer:

> *Promissory Estoppel*
>
> 1. Did Chrysler make a promise to Portman with the intent of inducing Portman to take any special action(s)?
>
> _____ Yes _____ No
>
> If the answer to Question No. 1 is "No" stop here. If the answer is "Yes" describe the promise that Chrysler made to the plaintiff and the action(s) that Chrysler intended to induce Portman to take in the space provided below, and then answer Question No. 2.
>
> _____
> _____
>
> 2. Did Portman take any action in reasonable reliance upon Chrysler's promise(s)?
>
> _____ Yes _____ No
>
> If the answer to Question No. 2 is "No" stop here. If the answer is "Yes" describe what specific action Portman took in reasonable reliance upon Chrysler's promise in the space provided below, and then answer Question No. 3.

[112] *Supra*, at 68-74.

[113] *Supra*, at 64-76.

_____

_____

3. Did Chrysler fulfill the promise(s) to Portman described above in the answer to Question No. 1?

_____ Yes _____ No

If the answer to Question No. 3 is "Yes" stop here. If the answer is "No" answer Question No. 4 [sic]

4. Did the action described above in your answer to Question No. 2 that Portman took in reliance upon Chrysler's promise cause Portman any injury?

_____ Yes _____ No

If the answer to Question No. 4 is "No" stop here. If the answer is "Yes" describe the Portman's injury in the space provided below, and then answer Question No. 5.

_____

_____

5. State the amount of damages in British pounds that Portman suffered as a result of the injury described above in the answer to Question No. 4 in the space provided below and then answer Question No. 6.

_____pounds

6. Could the promise(s) and the actions described above in the answer to Question No. 1 have been performed within one year?

_____ Yes _____ No

Go to Question No. 7.

7. Did Portman know, or should it reasonably have known, before April 22, 1991 that Chrysler had broken its promise(s) to Portman?

_____ Yes _____ No[114]

Instead of this approach, the Court, in addition to defining the elements of burden of proof, asked the jury to answer the following questions about promissory estoppel:

9. Do you find by clear and convincing evidence that defendant Chrysler Corporation is liable to plaintiff Portman Lamborghini Ltd. under its claim of promissory estoppel?

_____ Yes Go to Question No. 10

_____ No Go to Question No. 12

[114]Docket No. 238.

10. Do you find by a preponderance of the evidence that Portman Lamborghini's promissory estoppel claim is time barred?

_____ Yes Go to Question No. 12

_____ No Go to Question No. 11

11. What amount of damages do you award plaintiff Portman Lamborghini Ltd. for its promissory estoppel claim?

£_____ Go to Question No. 12

* * *

24. Do you find by clear and convincing evidence that defendant Chrysler Corporation is liable to plaintiff Chaplake Holdings Ltd. under its claim of promissory estoppel?

_____ Yes Go to Question No. 25

_____ No Stop and summon the bailiff

25. Do you find by a preponderance of the evidence that Chaplake Holdings Ltd.'s promissory estoppel claim is time barred?

_____ Yes Stop and summon the bailiff

_____ No Go to Question No. 26

26. What amount of damages do you award plaintiff Chaplake Holdings Ltd. for its promissory estoppel claim?

£_____ Summon the bailiff[115]

The Court's format complies with Superior Court Civil Rule 49 and comports with the years-long practice of this Court. The format used also supports with the suggested special verdict forms in the Pattern Jury Instructions, Section 28. Further, Chrysler's proposed form in this case is more of a means to be able to make post-trial mischief than be elucidated.

In conclusion, the Court finds that the arguments which Chrysler raises do not warrant a new trial.

[115]Jury Instructions (June 21, 2001) at 39, 42.

III

Chrysler's Motion for Judgment as a Matter of Law

A

As the preceding section alerted, Chrysler has renewed its motion for judgment as a matter of law. Also, as noted earlier, many of its arguments in support of this motion are mirror images of arguments raised in support of its separate motion for a new trial.

While also mentioned earlier, it is important to briefly restate the tests to be applied when considering a motion under Rule 50(b). The Court does not weigh the evidence.[116] It views evidence in a light favorable to the non-moving party.[117] A Rule 50(b) motion should be granted only if the jury could reach but one conclusion, one in favor of the moving party.[118]

While largely repetitive of earlier arguments, those Chrysler offers on this motion are: (1) Chaplake is not a real party in interest; (2) Chaplake's promissory estoppel claim is legally insufficient; (3) Portman's promissory claim is insufficient because (a) Chrysler did not make a definite and certain promise, (b) Portman did not justifiably or reasonably rely on any promise by Chrysler, and (c) enforcement of the promise was unwarranted; (4) plaintiffs' proof is legally insufficient; (5) plaintiffs' claims are barred by

---

[116]*McCloskey v. McKelvey*, Del.Supr., 174 A.2d 691, 693 (1961).

[117]*Rumble v. Lingo*, Del.Super., 147 A.2d 511, 513 (1958).

[118]*O'Hara v. Petrillo Bros.*, Del.Supr., 216 A.2d 672, 674 (1966).

the statute of frauds; (6) plaintiffs' claims are barred by the statute of limitations; and (7) plaintiffs failed to prove damages by clear and convincing evidence.

The Court has addressed most of these arguments. For instance, the Court discussed, but deferred until now, the argument that Chaplake was not a real party in interest.[119] This argument is primarily constructed from testimony from Mitchinson about the money being Jolliffe's. But, the loan was from Chaplake. Perhaps, plaintiffs fell into Chrysler's trap laid in its opening accusing Jolliffe and Lakeman of lining their pockets with other's money and living high. Jolliffe was not the wealthy man Lakeman was and counsel may have overplayed the rebuttal to Chrysler's pejorative accusation by getting Mitchinson to say the money was really Jolliffe's. In any event, there was evidence Chaplake loaned the money to Portman and the jury chose to accept that.

Every action should be prosecuted in the name of the real party in interest.[120] A real party in interest is one who has the right sought to be enforced.[121] In order for a party to be a real party in interest, that party must allege facts sufficient to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant."[122]

---

[119] *Supra*, at 77.

[120] Superior Court Civil Rule 17(a).

[121] *Cammile v. Sanderson*, Del.Super., 101 A.2d 316 (1953).

[122] *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed. 700, 709 (1982).

Claims based on injuries to the corporation are derivative in nature and any damages suffered are owed to the corporation.[123] To the extent that the claims of shareholders, creditors, or guarantors are derivative, those claims belong to the corporation, but not to any of them because none of them is the real party in interest under Rule 17(a).[124]

Jolliffe and Lakeman were the sole shareholders of Chaplake since its inception in 1987. In 1991, Jolliffe sold sixty percent of his share to Fakhry for £500,000. Mitchinson testified that this was Jolliffe's money, but £462, 686.47 was reinvested in Chaplake then loaned to Portman.[125]

Jolliffe had a choice to make when he sold his shares. He could have kept the money, or he could have reinvested it. He chose to reinvest it in Chaplake . Once this was done, the money was Chaplake's. It decided to invest that money in Portman. This investment, however, would not have occurred unless Jolliffe was promised, as he testified, that Portman would continue to hold its exclusive concessionaire agreement in the UK. If this promise was not made to Jolliffe, he would presumably not have reinvested his funds in Chaplake. Although Jolliffe may have lost money, this loss was Chaplake's when it reinvested his money. Therefore, Chaplake was the real party in interest.[126]

---

[123]*Kramer v. Western Pacific Indus., Inc.*, Del.Supr., 546 A.2d 348, 351 (1988).

[124]*Labovitz v. Washington Times Corp.*, D.C.Cir., 172 F.3d 897, 903 (1999) (applying Delaware law).

[125]*See* Plaintiffs' Exhibit No. 172.

[126]Chrysler, through this real party in interest motion, has now reversed its previous position. Earlier in this trial Chrysler maintained that Lakeman, as a shareholder (continued...)

Except as discussed in Subsection B, all other arguments, made in this Rule 50(b) motion were addressed, to a degree, in Section II of this opinion. The earlier discussion explains why the same arguments in Chrysler's Rule 50(b) motion must also be rejected. Since the Court does not weigh the evidence, Chrysler's bar is higher. And, since the evidence does not militate in favor of just one verdict in favor of Chrysler, that higher bar also compels rejection of this motion.

B

There remains one other Chrysler argument, however, that the Court has not yet addressed. It claims the Court should have instructed the jury on one additional element of promissory estoppel which plaintiffs had to prove by clear and convincing evidence. The Court instructed the jury that the elements of promissory estoppel are:

> 1. Chrysler made a promise to plaintiffs;
> 2. Chrysler intended or reasonably expected the promise to induce plaintiff to act or refrain from acting;
> 3. Plaintiffs relied upon the promise in acting or refraining from acting; and
> 4. Plaintiffs were injured by acting or refraining from acting in reliance upon Chrysler's promises.[127]

---

[126](...continued)
of Streamtrade, Ltd., could not maintain his suit against Chrysler as a shareholder, but that Streamtrade must bring the suit. Now, it contends that Chaplake cannot maintain a suit, but that Jolliffe must bring the action. Once Jolliffe reinvested his money, it was in the control of Chaplake. Chaplake suffered the loss, so, essentially all the shareholders of Chaplake suffered the lost, not only Jolliffe. Chaplake is the real party in interest.

[127]Jury Instructions (June 21, 2001) at 25.

For these four elements, Chrysler contends the Court should have also instructed the jury that the promise is binding because injustice can only be avoided by its enforcement.

First, this proffered additional element is not part of an action at law for promissory estoppel.[128] Second, in a dispute not involving an employment situation, the element of preventing injustice is not one that need be proven. As the Supreme Court said in *Quimby*, "[t]he doctrine, at bottom, embodies the fundamental idea of the prevention of injustice."[129] When, however, more recently stating the elements of a claim for promissory estoppel, the Supreme Court said:

> At trial, [plaintiff] invoked both promissory and equitable estoppel. To succeed on a claim for promissory estoppel, plaintiff must prove that defendant made a promise with the intent to induce action or forbearance, that plaintiff actually relied on the promise and that he suffered an injury as a result. Equitable estoppel is based on similar principles. To make out a claim of equitable estoppel, plaintiff must show that he was induced to rely detrimentally on defendant's conduct.*[footnote:] *Rabkin v. Philip A. Hunt Chem. Corp.*, Del.Ch., 480 A.2d 655, 661 (1984), *rev'd on other grounds,*, Del.Supr., 498 A.2d 1099 (1985). On appeal [plaintiff] challenges the Court of Chancery's holding that a necessary element of promissory estoppel is a reasonable expectation on the part of the promisor to induce action or non-action on the part of the promisee. Because the Court of Chancery correctly found that [plaintiff] failed to satisfy on of the admitted

---

[128] *See, e.g., Chrysler Corp. v. Quimby*, Del.Supr., 144 A.2d 123 (1958); *Haveg Corp. v. Guyer*, Del.Supr., 226 A.2d 231 (1967); Civil Pattern Instruction §19.14.

[129] *Quimby*, 144 A.2d at 133.

> elements of promissory estoppel, it is not necessary for us to reach this question.[130]

The footnote is of some import. While the Supreme Court declined in *VonFeldt* to hold that a promisor's reasonable expectation to induce promisee action is or is not a necessary element of this claim, this Court instructed the jury that it was.

In an opinion reviewing an at-will employment matter, however, the Supreme Court did add the element that a promise is binding because injustice can be avoided only by enforcing it.[131] This iteration on an employment-at-will case was consistent with other such iterations also, but only in employment cases.[132] Parenthetically, it should be noted that when listing the elements of a cause of action for promissory estoppel in *Lord*, the Supreme Court, without discussion, inexplicably slipped in the reasonable expectation element it had declined to consider just three years earlier in *VonFeldt*. What the Supreme Court said in *Quimby* is not that avoiding injustice is an element to be proven but is the policy underpinning for the cause of action for promissory estoppel.

For these reasons, the Court did not err by not including this manifest injustice element in its instructions. But, the facts of this case are a good example of the policy behind the cause of action.

---

[130] *VonFeldt v. Stifel Financial Corp.*, Del.Supr., 714 A.2d 79, 86 (1998).

[131] *Lord v. Souder*, Del.Supr., 748 A.2d 393, 399 (2000).

[132] *Id.* at 398.

C

In conclusion, for the reasons stated in Section II above and those reasons stated in this Section, Chrysler's motion for judgment as a matter of law must be denied.

The Court now turns its attention to the remaining motions, none of which affect the principal verdict or whether there should be a new trial.

IV

Plaintiffs' Motion for Award of Prejudgment Interest

Portman and Chrysler seek an award of prejudgment interest. Interest on this verdict would normally be a matter of right and from the date payment was due.[133] As noted earlier,[134] the damages being sought and the award to be made had to be in British pounds.[135] The parties agreed to this. The jury's award was in pounds. Accordingly, the Court initially looks to the Delaware Uniform Foreign-Money Claims Act[136] for guidance concerning whether these plaintiffs are entitled to prejudgment interest.

The Act provides:

> With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b) of this section, are matters of the

---

[133] *Moskowitz v. Mayor and Council of Wilmington*, Del.Supr., 391 A.2d 209, 210 (1978).

[134] *Supra,* at 1.

[135] 10 *Del.C.* Ch. 52.

[136] *Id.*

> substantive law governing the right to recovery under the conflict-of-laws rules in this State.[137]

Neither party disputes the applicability of Delaware law to the determination of plaintiffs' entitlement to prejudgment interest. Under Delaware law, the Court looks to the specific language plaintiffs used in their original and amended complaints:

Original Complaint

1. That this Court award adequate monetary damages.

* * *

3. Issue such other orders as may be just.[138]

First Amended Complaint

1. Same as original complaint.
2. Same as No. 3 in original complaint.[139]

Second Amended Complaint

1. Same as first amended complaint.
2. Same as first amended complaint.[140]

Third Amended Complaint

1. Same as earlier complaints.
2. Same as earlier complaints.[141]

Delaware law is that to be entitled to prejudgment interest it must be specifically requested. There are two ways to accomplish this: one is to make such request and another is by a general allegation of damages in an amount sufficient to cover the

---

[137]10 *Del.C.* §5209(a).

[138]Docket No. 1

[139]Docket No. 116.

[140]Docket No. 147.

[141]Docket No. 193.

principal loss plus interest.[142] The prayers for relief cited above do not meet those requirements.

After receiving Chrysler's opposition to its request for prejudgment interest, plaintiffs have moved to file additional briefing. Chrysler opposes that motion. Even though the Court has examined plaintiffs proposed additional brief, in effect, granting the motion, nothing substantively changes.

Plaintiffs, in their "additional briefing" point to the certificate of value filed with their complaint. That certificate indicates their complaint seeks damages in excess of $100,000, exclusive of costs and interest. From this statement, they deduce they have met the *Collins* standard.

But, plaintiffs misconstrue the role of a certificate of value. This Court requires such a certificate if a plaintiff (or defendant on a counterclaim) seeks to avoid this Court's mandatory pretrial arbitration.[143] Any complaint for damages under $100,000 must undergo arbitration. The Court, by eliminating costs and interest, wants to prevent parties avoiding arbitration of claims when the substantive damages sought are less than $100,000 but could be artificially inflated by including costs and interest. In short, the certificate is not a mechanism to request prejudgment interest.

Plaintiffs do not stop there in their "additional briefing." They also argue that various items produced in discovery and deposition testimony meet the *Collins* standard.

---

[142] *Collins v. Throckmorton*, Del.Supr., 425 A.2d 146, 152 (1980).

[143] Superior Court Civil Rule 16.1(a).

Collins set a higher bar than that. Further, respectfully to plaintiffs, their damage demands varied too widely over the years to conclude Chrysler was on notice that prejudgment interest was included.

When opposing plaintiffs' motion for additional briefing, Chrysler alternative asked to submit further briefing if plaintiffs' motion were granted. Even though the Court, in so many words, granted plaintiffs' additional briefing motion by reading the proposed brief, the discussion above moots Chrysler's request to supply its own additional brief.

In conclusion, while the Court views the *Collins* rule as unduly harsh and unrealistic, plaintiffs' motion for prejudgment interest, nevertheless, must be **DENIED**. Chrysler also requests a hearing regarding any application for or consideration of an award of prejudgment interest. That motion is now **MOOT**.

V

Both parties move for recovery of litigation costs. This is permitted by statute:

> In a court of law, whether of original jurisdiction or of error, upon voluntary or involuntary discontinuance or dismissal of the action, there shall be judgment for costs for the defendants. Generally a party for whom final judgment in any civil action, or on a writ of error upon a judgment is given in such action, shall recover, against the adverse party, costs of suit, to be awarded by the court.[144]

Also, the Superior Court rules permit the recovery of costs:

> *Costs*. Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10)

[144] 10 *Del.C.* §5101.

> days of the entry of final judgment unless the Court otherwise directs.[145]

Costs are permissible, however, they are limited.

> The statute says that the party given a final judgment "generally" shall be awarded costs of suit. Does this mean in every case? We think not. "Generally" means "for the most part," or "usually." . . . Therefore, when the statute says that costs are "generally" given, this means something less than "always."[146]

The award of such costs is a discretionary matter for the Court to determine.[147] Unnecessary costs may be taxed against the party causing the unnecessary expense.[148] Fees paid to court reporters for the Court's copy of transcript depositions shall not be considered costs unless introduced into evidence.[149] Filing fees and service fees are permissible costs,[150] while photocopies of exhibits and other documents are impermissible.[151] Attorney's fees, absent

---

[145]Superior Court Civil Rule 54(d).

[146]*Donovan v. Delaware Water & Air Resources Com'n.*, Del.Supr., 358 A.2d 717, 722 (1976) (citations omitted).

[147]*Id.* at 723.

[148]Superior Court Civil Rule 54(c).

[149]Superior Court Civil Rule 54(f); *Nygaard v. Lucchesi*, Del.Super., 654 A.2d 410 (1994); *Mulford v. Haas*, Del.Super., C.A.No. 98C-12-296, Slights, J. (April 25, 2001) (denying costs for a deposition transcript that was not presented as evidence at trial).

[150]*Nygaard* at 412.

[151]*Ripsom v. Beaver*, Del.Super., C.A.No. 83C-AU-128, Poppiti, J. (December 4, 1989).

statutory authorization, are not permitted as costs.[152] There is no statute applicable to this case enabling the recovery of attorney's fees.

The prevailing party, for purposes of an award of costs, is determined by asking whether a verdict was returned in that party's favor.[153]

A

Portman and Chaplake's Motion for Costs of Litigation

Portman and Chaplake have applied for an award of costs pursuant to Superior Court Civil Rule 54 and 10 *Del.C.* §5101. They are both prevailing parties because the jury returned a verdict in their favor.

Specifically, they seek copying costs of $18,006.25, court filing fees of $994, service fees of $90, deposition fees of $9,481.91, court video equipment costs of $4,812.50, California proceedings costs of $23,644.25, travel costs to California of $627.53, service fees pertaining to the deposition of Iacocca costing $943.22 and postage costs of $2,796.85. The total costs are $61,396.51.

Chrysler contends that it is a prevailing party because two of the four plaintiffs "lost" at trial. And, since there are alleged prevailing parties on both sides of the action, all

---

[152]Superior Court Civil Rule 54(i); *Stephenson v. Capano Development, Inc.*, Del.Supr., 462 A.2d 1069 (1983); *Casson v. Nationwide Ins. Co.*, Del.Super., 455 A.2d 361 (1982) ("In an action at law, a court may not order the payment of attorney's fees as part of costs to be paid by the losing party unless the payment of such fees is authorized by some provision of statute or contract.").

[153]*Graham v. Keene Corp.*, Del.Supr., 616 A.2d 827, 829 (1992).

parties should bear their own costs. Additionally, Chrysler asserts that most of the costs that Portman and Chrysler seek are non-recoverable under Delaware law.

The copying costs of $18,006.25 are impermissible and non-recoverable pursuant to Delaware law.[154] The service fee of $90 and the filing fees of $994 are permissible, excluding the *pro hac vice* admission fees. The plaintiffs could have avoided this fee by selecting a Delaware attorney or choosing a different forum to bring their claims. Therefore, the $100 *pro hac vice* fees are subtracted from the $994.

The plaintiffs seek to recover deposition fees costing $9,481.91. Chrysler alleges that the depositions of Jolliffe, Lakeman and Mitchinson were never introduced at trial and, therefore, are not recoverable. The Court finds that these deposition costs are not taxable because they were not introduced in their entirety during the plaintiffs' case.[155] Chrysler does not dispute the cost of producing Richards' deposition ($1,349.15) and the playing of the tape in Court ($1,087.50). The other deposition fees are not recoverable because they are either duplicative or editing costs, for which Delaware law does not permit recovery.[156] And, the deposition of Timothy Adams is not recoverable because it produced no materially relevant evidence. Therefore, the plaintiffs are awarded $2,436.65 in deposition costs. The video equipment costs of $4,812.50 also are not recoverable. The

---

[154]*Radka v. Irman, [sic]*, Del.Super., No. 97C-03-191, Alford, J. (September 19, 2001).

[155]Superior Court Civil Rule 54(g).

[156]*Buck v. Anderson*, Del.Super., C.A.No. 93C-05-113, Del Pesco, J. (September 7, 1994); *Little v. Morgan*, Del.Super., C.A.No. 86C-AP-1, Toliver, J. (April 10, 1991).

parties stipulated that they could split the cost of the equipment and that agreement should control.[157]

Lastly, the California proceeding costs of $23,644.25, travel costs of $627.53 and service fees of Iacocca for $943.22 are not recoverable. The plaintiffs sought the deposition of Iacocca, but were denied by a California Court. While Chrysler opposed the taking of Iacocca's depositions, for reasons it never made known to this Court, it still should not be responsible for costs when it actually was the prevailing party in that action. In sum, plaintiffs are awarded $3,410.65 in costs.

B

Chrysler's Motion for Costs

Chrysler moves for costs stemming from the litigation brought by Lakeman and Vehiclise. It contends it is the prevailing party and is entitled to these costs as a matter of law.

This Court finds that although Chrysler may be the prevailing party, it is not entitled to the costs of litigation. Chrysler would have incurred the same amount of costs if Portman and Chaplake brought this action alone. The additional two plaintiffs did not add additional recoverable costs to the litigation, therefore, Chrysler's motion for costs is **DENIED**.

[157] *See* Affidavit of Robert D. Cultice at 2 (Docket No. 281).

VI

Chrysler's Motion to Stay Execution of Judgment

Finally, Chrysler moved to stay execution of the judgment pending disposition of all of these motions. The Court did not take action on that motion for two reasons. One, the Court was not made aware of any effort by plaintiffs to execute on their judgment and, two, it is not the practice of this jurisdiction for execution to be undertaken when post-trial motions are pending. That practice, of course, would have been set aside if the Court were informed of an effort at execution was initiated. The motion is now **MOOT**.

CONCLUSION

For the reasons stated herein: (1) Chaplake Holdings, Ltd., Portman Lamborghini, Ltd., and David T. Lakeman's motion for a new trial on their claims for fraud and negligent misrepresentation is **DENIED**; (2) Portman Lamborghini, Ltd.'s motion for additur on its promissory estoppel damages is **DENIED**; (3) Chrysler Corporation's motion for a new trial on Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s promissory estoppel claims is **DENIED**; (4) Chrysler Corporation's renewed motion for judgment as a matter of law is **DENIED**; (5) Chaplake Holdings, Ltd., and Portman Lamborghini, Ltd.'s motion for prejudgment interest is **DENIED**; (6) Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s motion for additional briefing on prejudgment interest is **DENIED**; (7) Chrysler Corporation's motion requesting a hearing regarding any application for or consideration of an award of prejudgment interest is **MOOT**; (8) Chaplake Holdings, Ltd. and Portman Lamborghini, Ltd.'s motion for costs is **GRANTED** in part and **DENIED** in

part; (9) Chrysler Corporation's motion for costs is **DENIED**; and (10) Chrysler Corporation's motion for stay of execution of judgment pending disposition of motions is **MOOT**.

IT IS SO ORDERED.

_____

J.