1 the onus of a property and outside the possession of the
2 manufacturer.
3 Warranties are there. And the drafters of the
4 UCC have identified that four years from the tender of
5 delivery is adequate protection in the context of
6 commercial engagements for the sale of goods. Four
7 years is adequate protection, and four years is going to
8 be enough absent explicit language to the contrary. And
9 only then, and only then, will they allow for a warranty
10 of future performance to be recognized, granting an
11 extended warranty period for the benefit of the buyer;
12 otherwise, the default is against the buyer in favor of
13 the seller. And that's where the explicitness comes
14 from, the requirement of the language for futurity of
15 future performance for a defined period of time under
16 the case law.
17 I urge that the plea in bar be granted, Your
18 Honor.
19 THE COURT: Thank you. From the pleadings and
20 from the stipulated facts, the liability of Tyco, who is
21 the subject of Count 6, was as a seller of the items in
22 question. And as such, appears to be agreed and, in

1 fact, covered -- a matter covered by the Uniform
2 Commercial Code, in particular 8.2-725, that section in
3 paragraph two. It's argued that the liability in this
4 case arises as a result of the warranty of future
5 performance as set forth in the document attached to the
6 stipulated facts which has a dry horizontal sidewall
7 sprinkler as its title, and that that is, in fact, the
8 source of the alleged warranty for future performance.
9 And it's agreed and stipulated that June 16,
10 1997 is the last date these could have been delivered.
11 And under that code section, it is delivery which
12 commences a warranty claim absent a warranty of future
13 performance.
14 In subparagraph two, a breach warranty occurs
15 when tender of delivery was made, which was 6/16/97.
16 Absent a warranty which explicitly extends for future
17 performance of the goods and discovery of the breach
18 must await the time such performance cause (inaudible)
19 breach is or should have been discovered.
20 I think this is a matter of interpretation of
21 the plain meaning of the contract. I don't see any
22 particular ambiguity I see in these two potential

1 sources of future performance -- argument of future
2 performance warranty. Absent that, clearly was less
3 than -- between June 16, 1997, and the date of the fire
4 and when the sprinkler failed, February of 2003, was
5 certainly more than four years. The warranty section
6 itself says, a warranty for a period of one year from
7 the date of shipment, and the products furnished
8 hereunder will be free from defects and material and
9 workmanship.
10 I don't think that is, in fact, a warranty of
11 future performance. It's a present warranty that the
12 goods will remain in their present good material and
13 workmanship condition for that period. To the extent it
14 could be read as a future performance, it's only for a
15 year. And even with that reading, it would expire in
16 five years, rather than four years from the date, which
17 is still short of the February 8, 2003 date. So it
18 failed for that reason.
19 So if Plaintiffs argue, as I think they must,
20 that it falls within the preamble general description, I
21 find that in reading that, that is, in fact, a general
22 description of how it works. A general description of

1 how it works, particularly, in this context, it's not
2 necessarily a warranty. I see it's accompanied by a
3 schematic and a diagram. It can have many purposes, a
4 matter of this sort, other than warranty, describing for
5 those who may be installing it or who may take it apart
6 or who may wonder how it works or who may wonder how it
7 should be installed or the like, but the technical
8 description and the general verbal description of the
9 functioning of it, I don't think a description of how
10 something functions is in and of itself a warranty that
11 it will so function forever or for an indefinite period
12 of time.
13 I think under the code, it must explicitly
14 warrant the future performance for a specific defined
15 time as set forth in this statute. I don't see in this
16 either a warranty of future performance or to the extent
17 that it might be so read that it's going to work, like
18 this here is how it's always going to work, that there
19 is any specificity with respect to defined time. I
20 think Counsel for Tyco is correct, that the code comes
21 down in favor of those who supply -- who sell things,
22 that they don't guarantee them forever to function. And

1 if they want a warranty of that sort, they need to
2 bargain for one; and they didn't do that in this
3 particular situation.
4 And while the agreed facts is that it could
5 not be tested absent this, that may or may not be the
6 fact. I don't see that it's stipulated that it could
7 never be inspected and could never be determined that
8 there was a corrosion that might create some problems.
9 To the extent there is some literature that said these
10 need to be replaced, I don't think this general warranty
11 put any burden on the seller to say, you know, there is
12 some literature that says these things may not work for
13 a while if you leave them outside. I don't think there
14 is any duty that creates some sort of warranty. I think
15 that's part of the argument.
16 So as a result of all of that, I find there is
17 no material issue of fact in dispute with respect to
18 Count 6, that the statute of limitations had expired,
19 whether in the plea in bar or motion for summary
20 judgment. I will dismiss Count 6.
21 Is that the only allegation against Tyco now
22 pending?

1 MR. WILLIAMS: That's correct.

2 THE COURT: Then I will dismiss Count 6 with
3 respect to Tyco in Count 6. I don't know whether I
4 would be asked to dismiss Tyco by way of final order at
5 this time. We've got one order on the pleas in bar.
6 We'll have another one with Tyco. We have yet a third
7 undetermined with respect to the remaining ones. I'm
8 not sure what the correct wording with respect to that
9 is. I'll leave counsel to work it out, and I will
10 decide that if I need to as to whether it is dismissed
11 in its entirety and whether that's the final judgment as
12 to Tyco at this time.

13 MR. WILLIAMS: Would you like us to submit a
14 proposed order?

15 THE COURT: Do you have a proposed order?

16 MS. BOYCE: I have a --

17 THE COURT: We might as well do it. We can do
18 it now or if counsel would like to wait a few minutes.
19 Are you ready to do it now?

20 MS. BOYCE: I can draft it as you continue to
21 hear argument.

22 THE COURT: Do you wish to proceed with Count