

**PE04-078**

**FORD**

**1/28/2005**

**BOOK 3 OF 12**

**ATTACHMENT F**

**PART 2 OF 6**

# State Farm Insurance Companies®

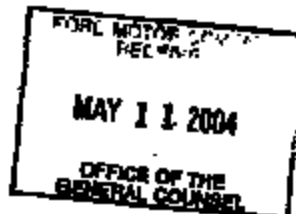


May 4, 2004

P. O. Box 9813  
Winter Haven, FL 32903-0813  
1-800-301-7350

FORD MOTOR COMPANY  
PARKLANE TOWERS WEST STE 400  
3 PARKLANE BLVD  
DEARBORN MI 48126-2588

RE: Our Claim Number: [REDACTED]  
Date of Loss: April 27, 2004  
Vehicle: 2001 Ford Pick-Up  
VIN: 1FTRX18L51 [REDACTED]



Dear Ford Motor Company:

The identified vehicle is insured by State Farm Mutual Automobile Insurance Company. This vehicle experienced an engine compartment fire.

State Farm® would like to give you the opportunity to inspect the vehicle and give you advanced notice of our potential subrogation claim.

Please contact me at 1 (800) 301-7350, Ext. 8585, within the next 15 days to set up a time for your inspection.

Sincerely,

Mattie Butler-Link  
Claim Representative  
1-800-301-7350, Ext. 8585  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

MEL/056/0504002.122

- F121  
- 4/27/04  
- '01 F 150  
- VIN



PE84-878 C 8858

## Vehicle Inspection Report

Claim # [REDACTED]

Prepared by:  
Rick Baisch  
State Farm Insurance  
VIP Investigator

## VIP Inspection

Name: [REDACTED]  
Claim: [REDACTED]  
D.O.I. 03-16-04  
Inspector: Rick Baisch

**Inspection Location:**  
Russell & Smith Body Shop  
State Farm Dallas Operation Center

**Enclosures:**  
Repair invoice  
Photo documentation

**Property Description:** The insured property consists of a 2001 Ford, F150 pickup. The VIN plate identified the vehicle as 1FTRW07L61K [REDACTED]

**Vehicle Examination:** The vehicle examination commenced on 03-19-04 at approximately 3.00 p.m. The initial investigation was conducted at the repair shop.

An examination of the vehicle showed the damage was contained to under the hood and engine see photos #1 and 2.

An inspection of the electrical circuitry, including the battery did not show any evidence of electrical faulting. The rest of the electrical circuits were checked and no faulting was found.

The inspection of the engine area showed that the major damage was to the Master cylinder reservoir and Brake pressure switch see photos # 3, 4 and 5.

The parts were then removed so repairs could be performed. The parts were boxed, labeled and sent to the Dallas Operations center where they were inspected, photographed and placed in secure storage.

The inspection of the parts was performed at the Dallas Operation Center of State Farm. The parts were removed from the box and photographed see photo # 6. The master cylinder was inspected and photographed. The burn patterns on the master cylinder appear to show the fire started in Brake pressure switch and proceeded back into the fluid reservoir see photos # 7 and 8.

Closer inspection of the Brake pressure switch and reservoir you can see an apparent V pattern starting, the Brake pressure switch shows more combustion on the inside edge towards the reservoir and the reservoir shows the most combustion starting at the front and proceeding to the rear see photos #9 and 10.

The wiring to the switch was examined next. The top half of the switch and connector is still attached to this portion of the wiring see photo # 11. The wiring does not show any signs of repair. Closer inspection of the switch connection and switch contacts show signs of beading see photos # 12 and 13.

The insured described the loss as he was outside working on the yard and smelled smoke and discovered the vehicle was on fire. He and a neighbor were able to extinguish the fire.

**Conclusion:** After inspection of the damaged parts, description of the loss by the insured. It appears that the Brake pressure switch failed shorted internally causing it to overheat and the ensuing fire to start. The parts were placed in secure storage and are available for inspection.



FEB-678 C 6559

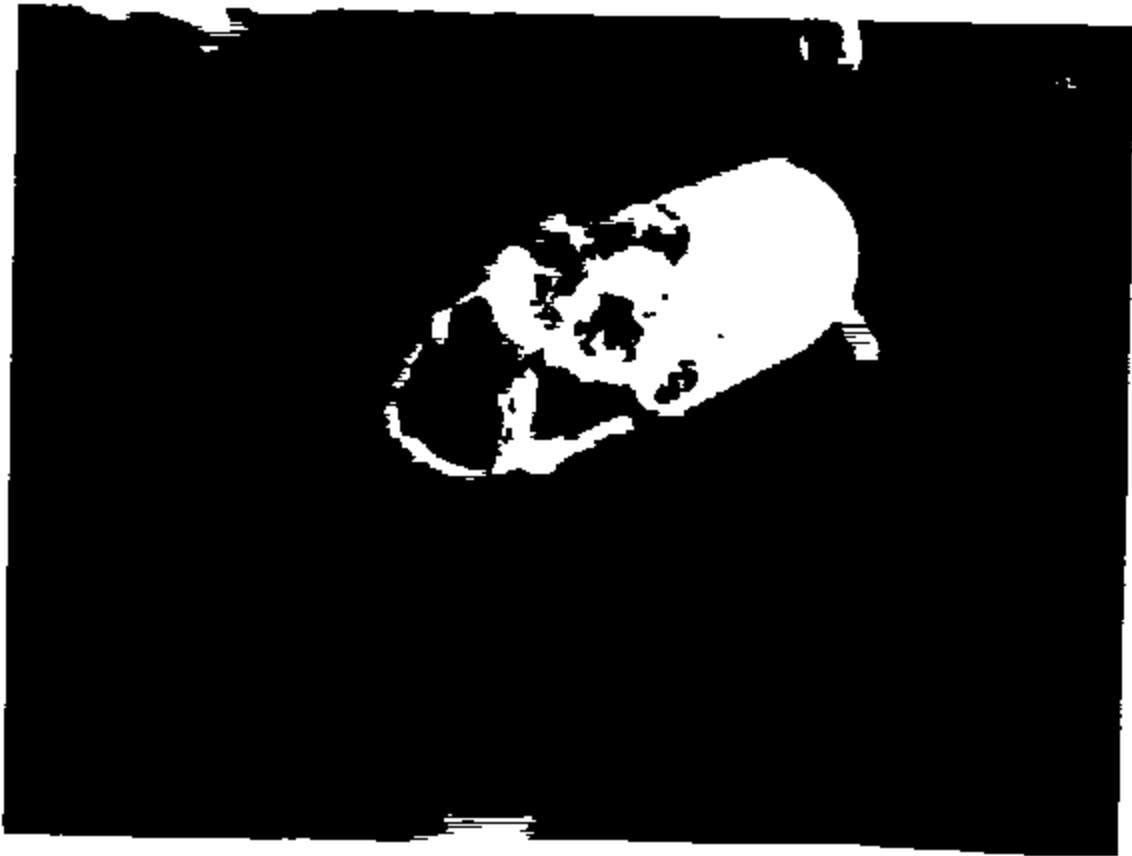


PEBA-878 C 9588









PE64-878 C 0563





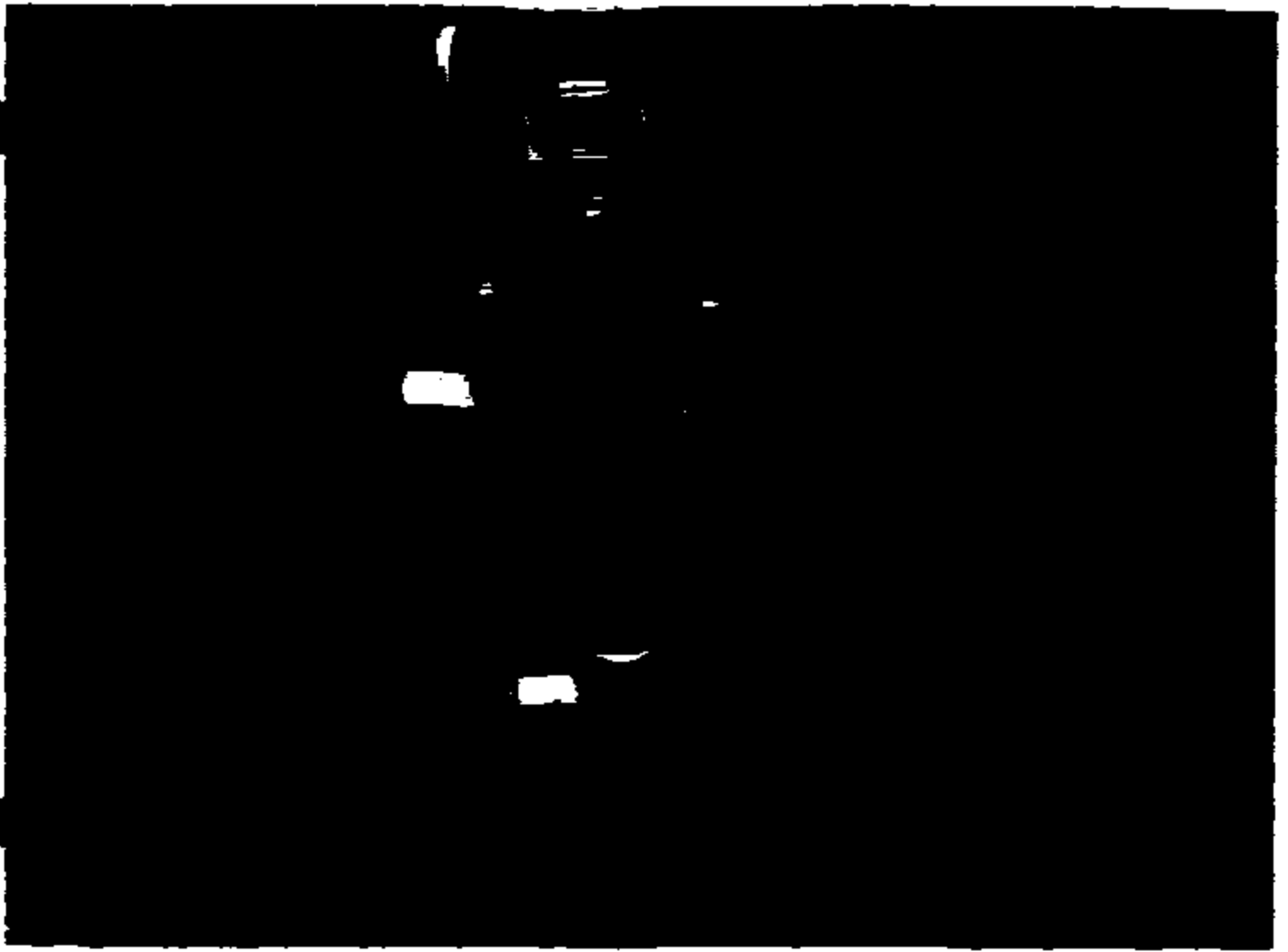


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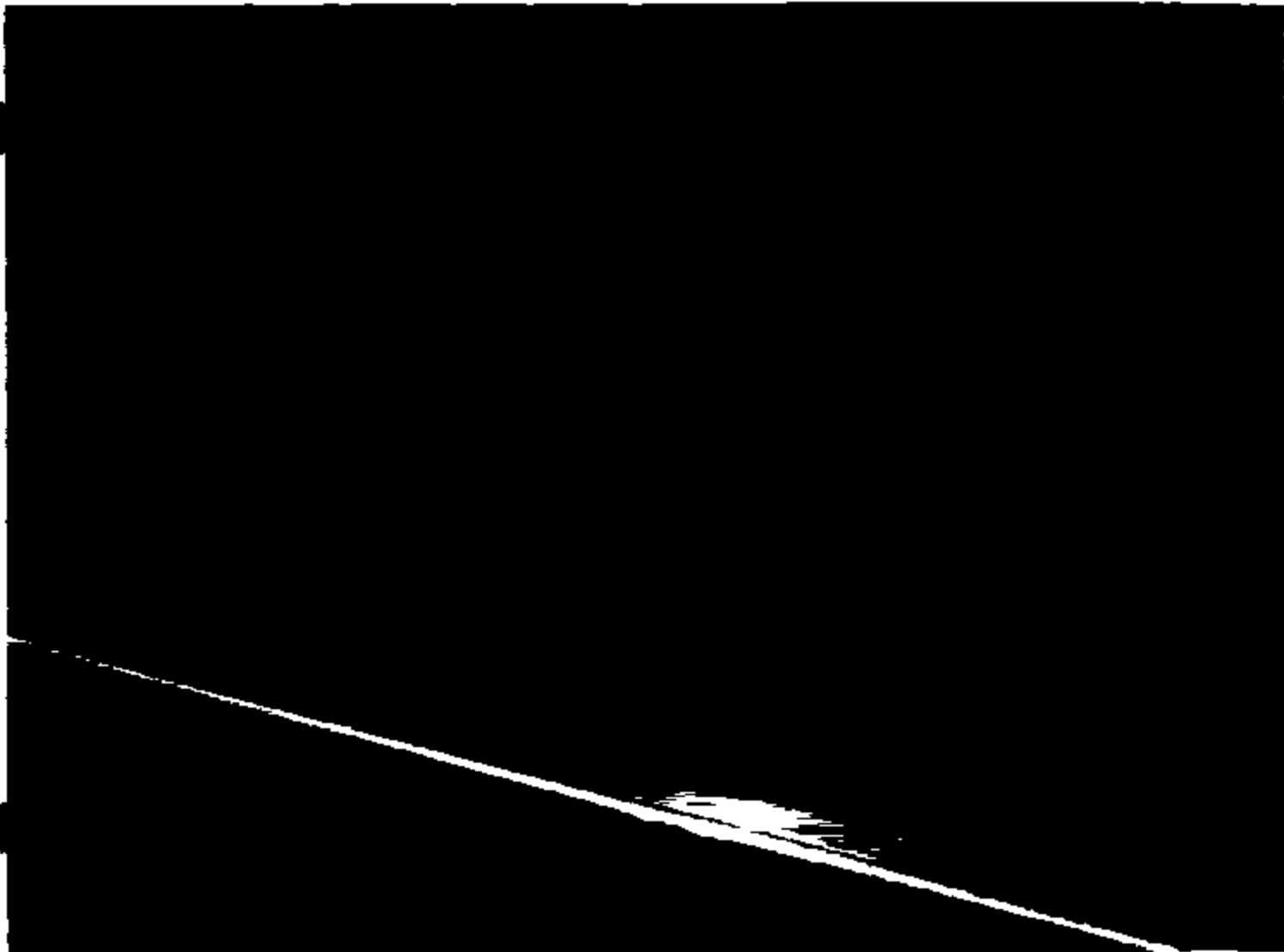


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FD-302 (Rev. 11-27-70)





PEBA-07B C 0588







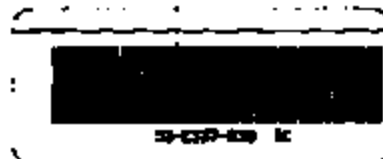
Office of the General Counsel

FORD MOTOR COMPANY

Ford Motor Company  
Fordham Tower West  
Suite 200  
Three Parkway Boulevard  
Dearborn, Michigan 48120-2000

July 7, 2004

State Farm Insurance  
PO BOX 798011  
Dallas, TX 75379-8011  
ATTENTION: TONGA BEDELL  
2nd REQUEST  
RE: Claim: [REDACTED]  
Your Claim #: [REDACTED]  
DOL: 03-16-2004



Dear Mr. Bedell:

We acknowledge your recently submitted subscription claim. In order to assist us in evaluating your claim, we request that you provide us with the following information: (Please note that the information requested is in regard to the Ford manufactured vehicle.)

- 1. Attach your insured's statement with a complete description of the incident, including events that occurred prior to and subsequent to the loss.
- 2. Copy of the police and/or fire report.
- 3. Original color photographs of the vehicle's collision/loss damage & the alleged defective parts, from several different angles.
- 4. Original color photographs of the inside of the vehicle showing the steering wheel, dash and roof area.
- 5. Original color photographs of the accident / fire scene from several different angles.
- 6. Attach a copy of your expert's report and the expert's original photographs.
- 7. Attach the repair estimate, repair order, or your total loss worksheet for the vehicle damage and any losses associated with this incident, and copies of all documents.
- 8. Attach the complete service history for the subject vehicle, including any tune-ups or oil changes.

Please answer the following in the space provided. If you need additional space, please use the back of the form:

- 9. What was the city and state of occurrence: Houston, Texas
- 10. The 17 digit vehicle identification number: NA
- 11. What was the nature of loss of occurrence:  
NA
- 12. What is the alleged defect: NA

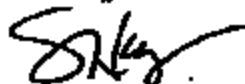
13. Has the alleged defective part been repaired or replaced? NA
14. What is the current location of the vehicle, and the alleged defective part(s)?  
State Farm's Secured Storage
15. List all other market additions or modifications that were made to the vehicle:  
We are unaware of any after market parts.
16. Was the engine running? (circle one) Yes or No
17. Were the keys in the ignition? (circle one) Yes or No
18. Was this vehicle purchased new or used: \_\_\_\_\_  
If purchased used, provide the date of purchase, mileage at the time of purchase, and from whom the vehicle was purchased: \_\_\_\_\_

Once we are in receipt of the requested information, it will be reviewed and you will be notified of our decision concerning your claim. Should you not send all of the requested information and materials, we will ensure that you are not interested in pursuing a claim and we will close our file. Please note that your vehicle will not be inspected until all the above information has been submitted and a determination has been made as to whether an inspection is warranted.

Please be advised that all necessary steps should be taken to ensure that the subject vehicle and all of its component parts are maintained and preserved for trial. Ford Motor Company has the right to inspect the vehicle and remove and test any component part that you claim to be defective, and to be presented with the vehicle and the subject component part(s) at the time of trial, should litigation ensue from this internal claim.

If you propose to repair the vehicle for continued usage, such repairs may not be performed until after Ford Motor Company has inspected the vehicle and removed and tested any component part you claim to be defective or advised you in writing that it does not intend to perform such inspection and/or testing at this time. But even in that event, Ford Motor Company will insist that all components claimed to be defective are maintained and preserved for trial.

Sincerely,



Susan L. Norton  
Claims Analyst /  
Litigation Assistant

# State Farm Insurance Companies



June 14, 2004

Shawn Norton  
Ford Motor Company  
Park Lane Towers West, Suite 300  
Three Parklane Boulevard  
Dearborn, MI 48126

Re: Our insured: [REDACTED]  
Our Claim number: [REDACTED]  
Date of Loss: 03/16/04

Dear Mr. Norton:

I have compiled the following responses for supporting documentation in the above referenced matter.

1. A recorded statement of facts was not taken from our insured. According to our insured, his vehicle was parked & unoccupied when the vehicle caught on fire. Neighbors put out the fire with water hose.
2. The loss occurred in Houston, Texas.
3. Copies of the original photographs of the vehicle fire are enclosed.
4. Keys were not in the ignition nor was the engine running.
5. We are unaware of any aftermarket parts or modifications were added to the vehicle.
6. The subject vehicle has been repaired and the estimate is enclosed for your review.

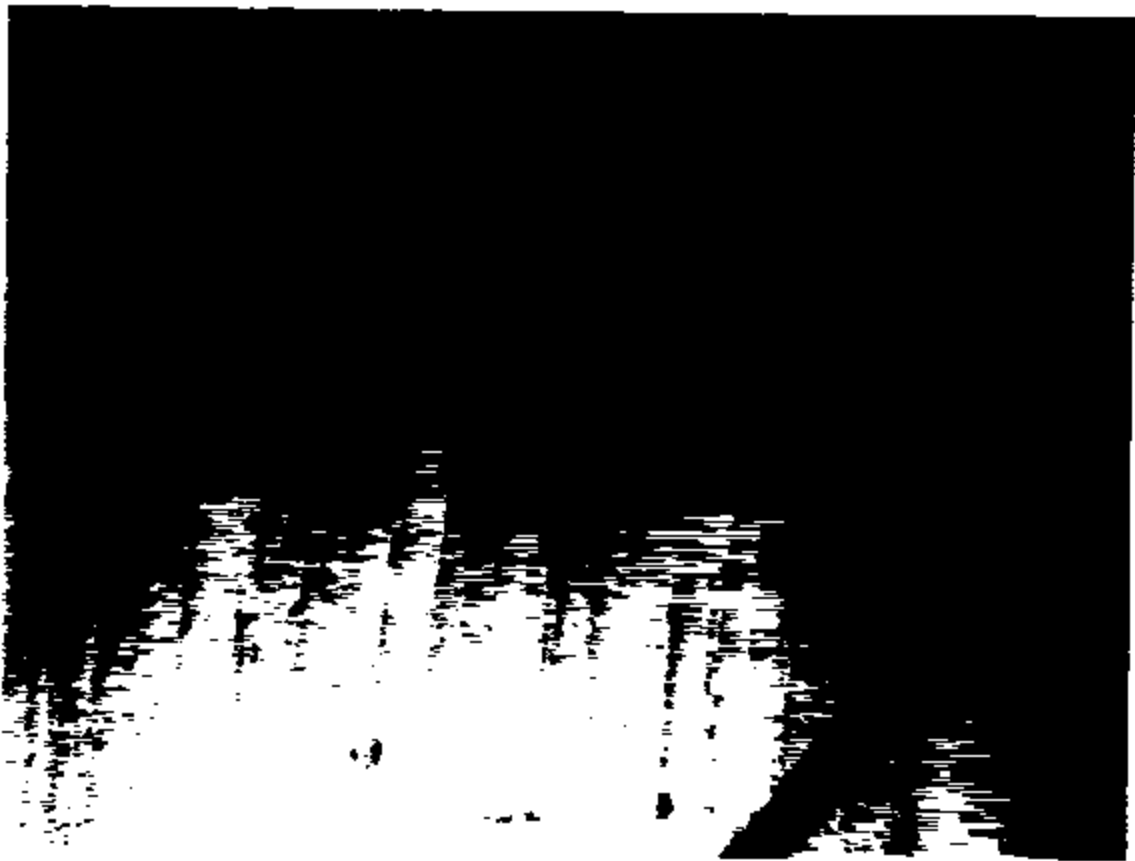
State Farm contends that Ford Motor was negligent in manufacturing and assembling the brake pressure switch. Also, Ford is responsible for placing into the stream of commerce a defective vehicle because it did not work as intended, failing in safety. Therefore, we are requesting reimbursement in the amount of \$995.17.

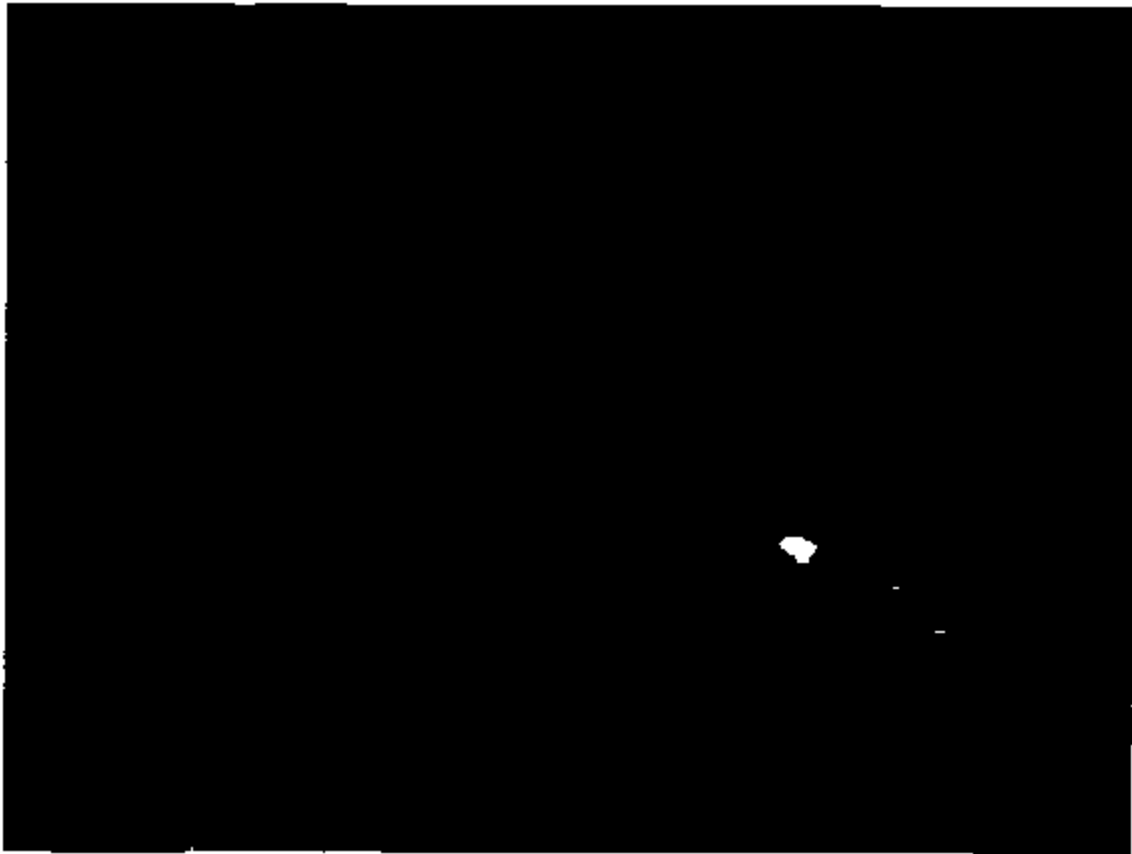
If you have any questions regarding this matter please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Bedell".

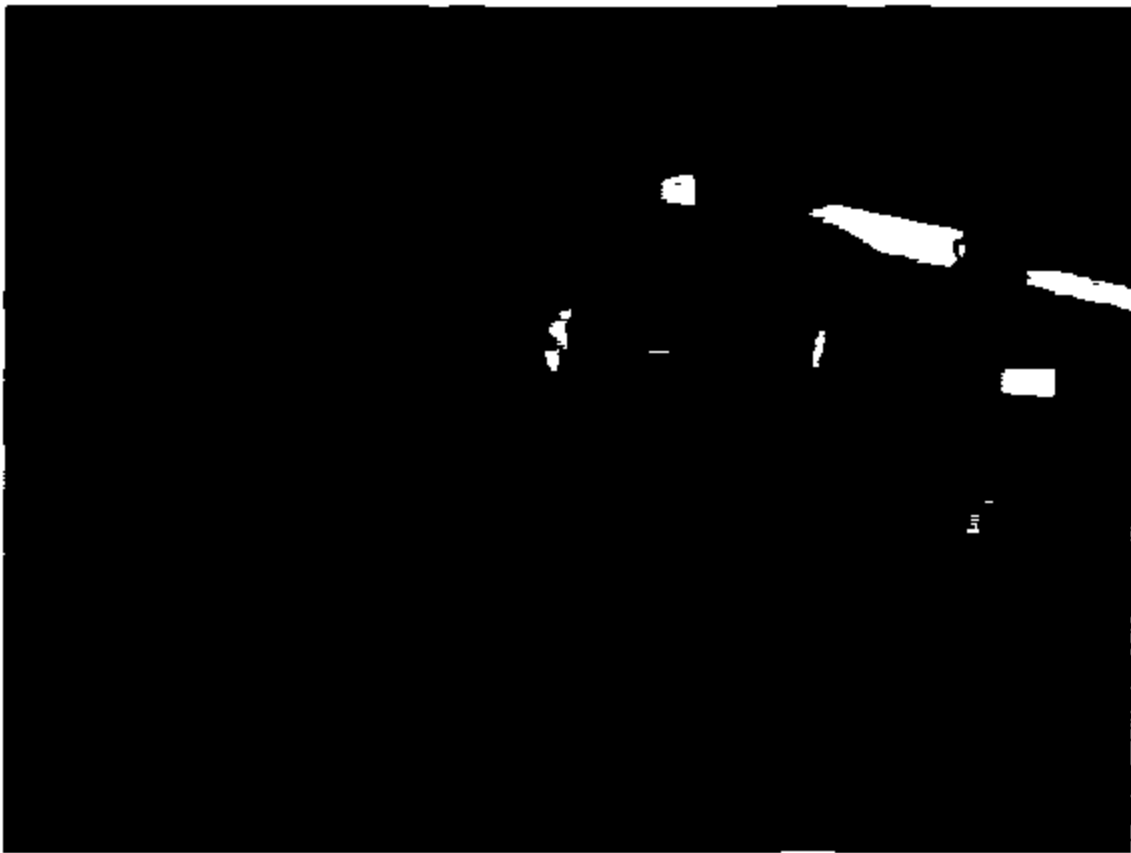
Cheryl Bedell  
Subrogation Department  
(214) 269-8712

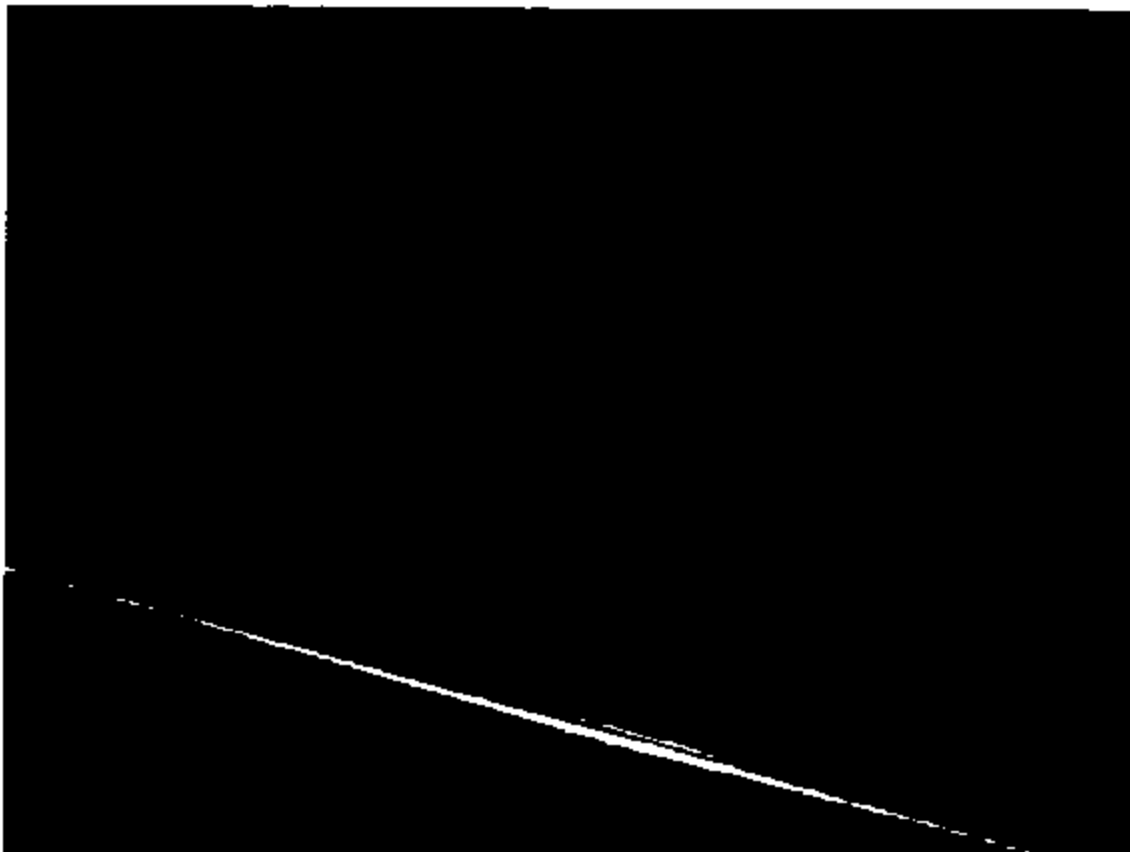


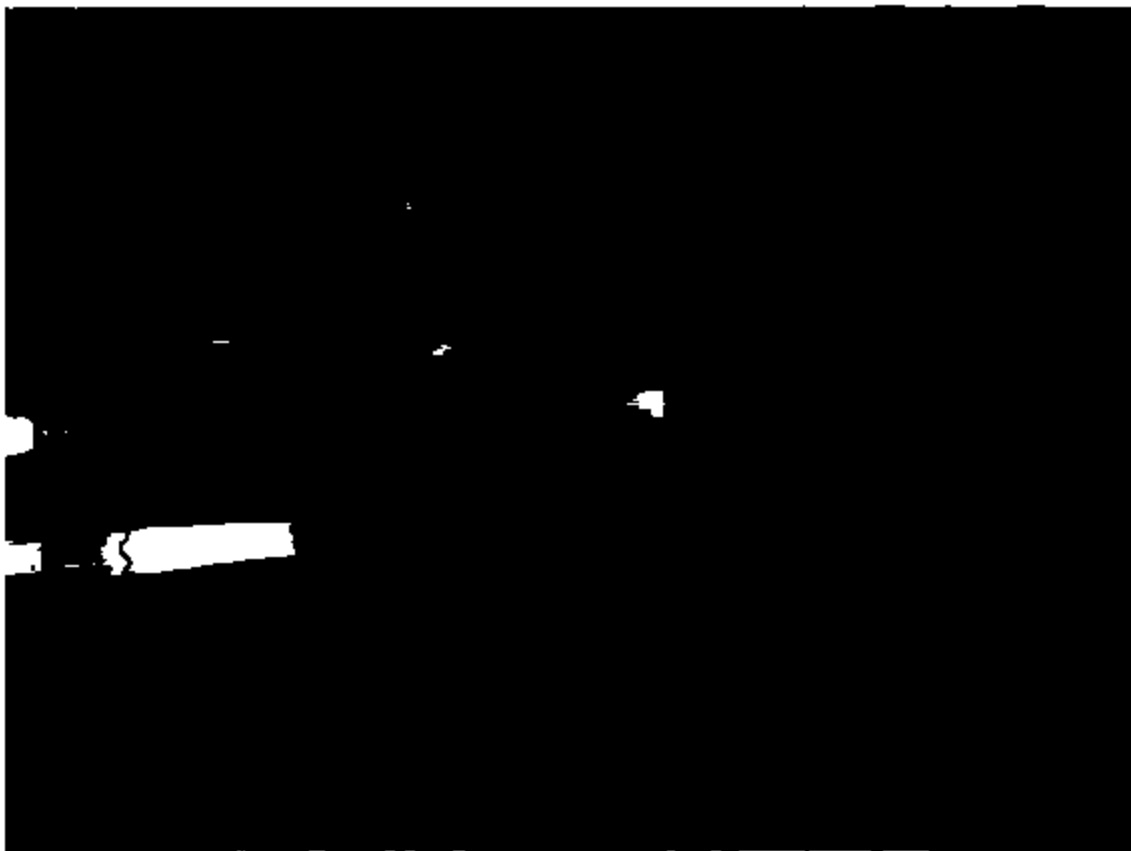






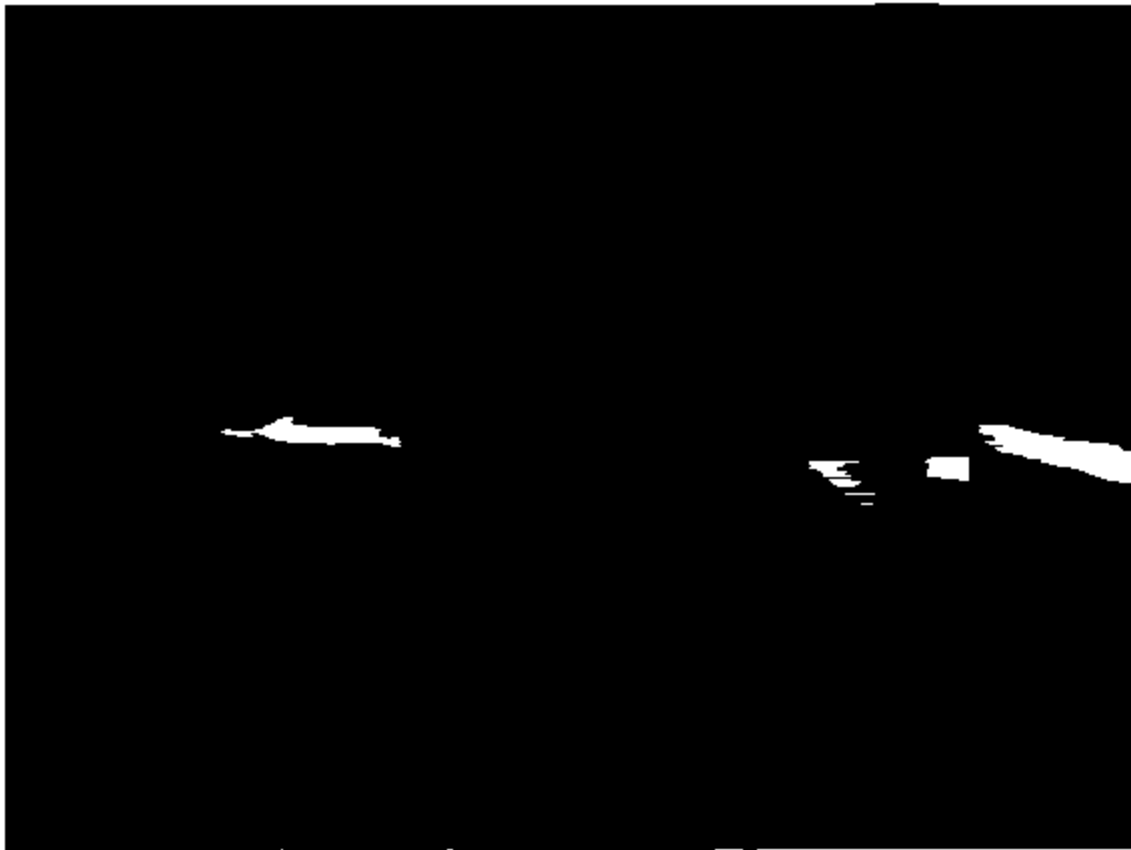




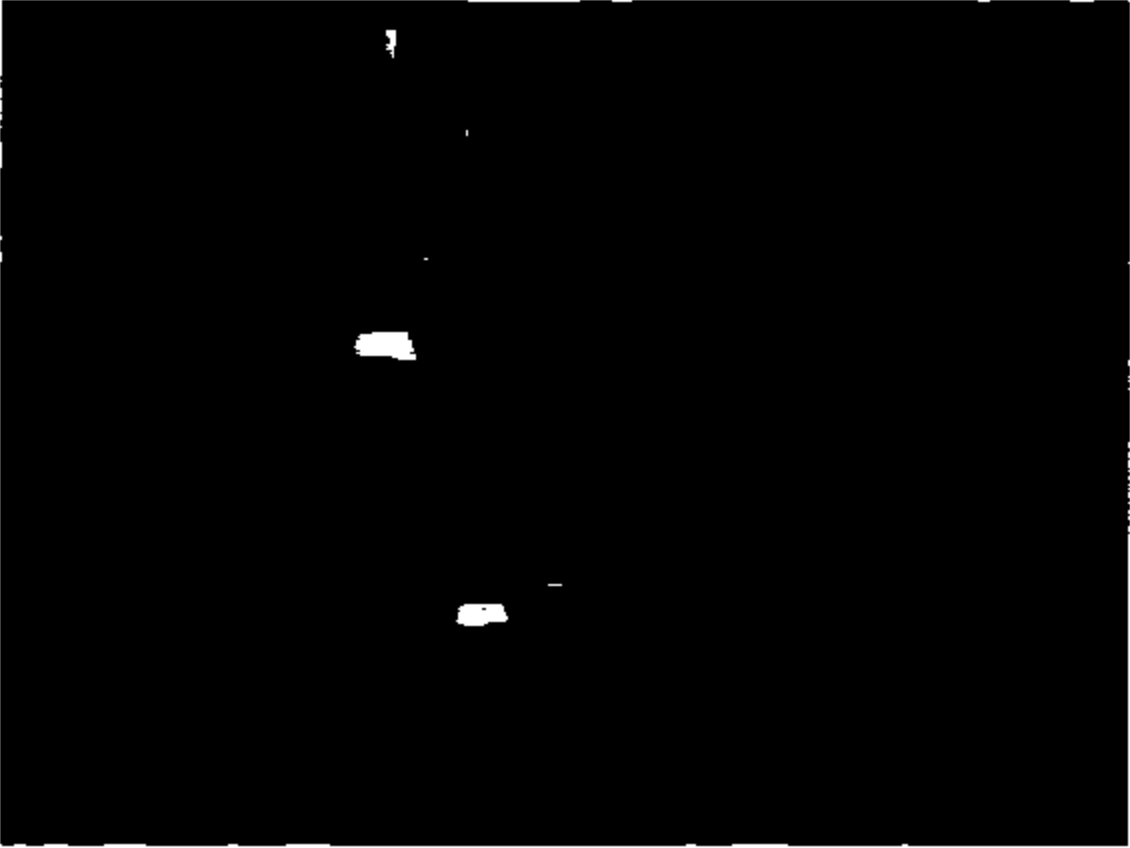


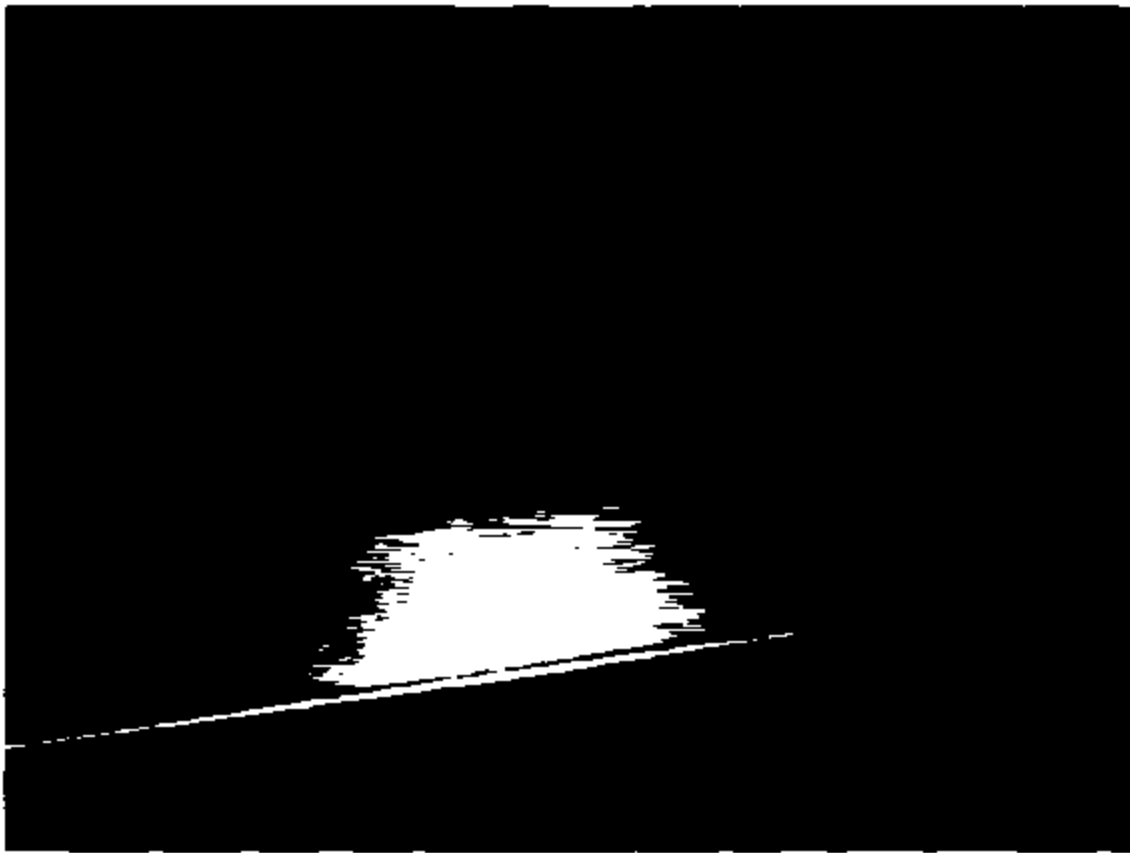


PED4-878 C 8581



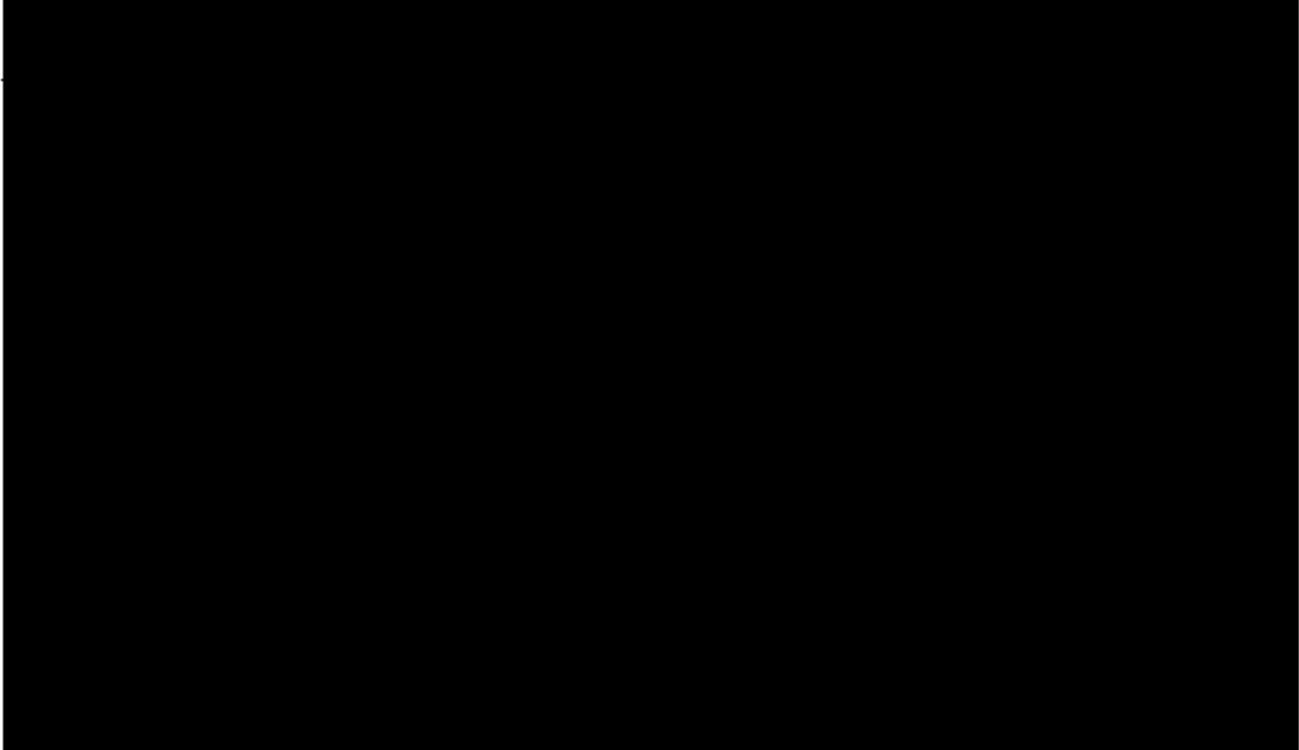
PEBA-878 C 8582





FE04-076 C 0584





CAUSE NO. C200465798



IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

FORD MOTOR COMPANY, TEXAS INSTRUMENTS, INC., E.I. DUPONT DE NEMOURS AND COMPANY and FRIENDLY FORD, INC. d/b/a ELVIN HAYES FORD d/b/a HAYES FRANKLIN FORD, INC., HELLMAN FORD, INC., AUTOMATION, INC. d/b/a W.O. BANGSTON LINCOLN MERCURY, BURNS MOTORS GP LLC and SPIKES MOTOR COMPANY, INC.

120TH JUDICIAL DISTRICT

**PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

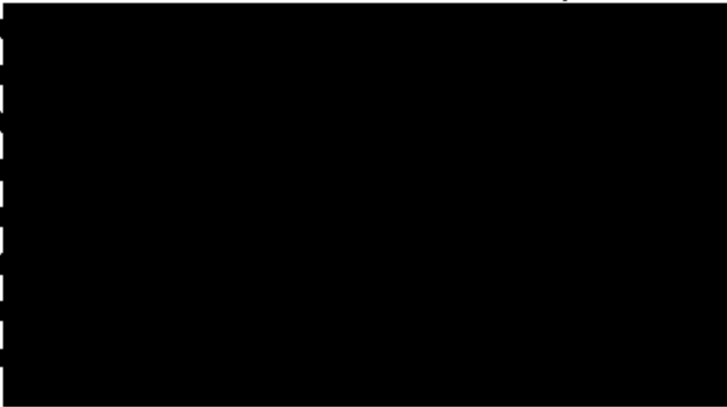
COME NOW, Plaintiffs



Sellina comprising of Ford Motor Company ("Ford"), Texas Instruments, Inc. ("TI") E. I. DuPont De Nemours and Company ("DP") and Friendly Ford Inc. d/b/a Elvin Hayes Ford d/b/a Hayes Franklin Ford, Inc. ("Friendly Ford"), Hellman Ford, Inc. ("Hellman"), Automation, Inc. d/b/a W.O. Bangston Lincoln Mercury ("Automation"), Burns Motors GP LLC ("Burns") and Spikes Motor Company, Inc. ("Spikes") and would show unto the court as follows:

**1. Parties & Venue:**

Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff  
Plaintiff



Defendant, Ford Motor Company, has been served and has answered.

Defendant, Texas Instruments, Inc., has been served and has answered.

Defendant, E.I. Du Pont De Nemours and Company, has been served and has answered.

Defendant, Fordly Ford, Inc. d/b/a Elvin Hayes Ford Elvin Hayes Franklin Ford, is in the process of being served.

Defendant, Hallmark Ford, Inc. is in the process of being served.

Defendant, AutoNation, Inc. d/b/a W.O. Barkston Lincoln Mercury is in the process of being served.

Defendant, Buses Motors GP LLC is a Texas corporation and may be served with citation by certified mail, return receipt requested, upon its registered agent for service, Don R. Bozsa, 1380 E. Highway 83, McAllen, Texas 78501.

Defendant, Buses Motor Company, Inc. is a Texas corporation and may be served with citation by certified mail, return receipt requested, upon its registered agent for service, Clark P. Spillie, Jr., 1708 Doherty, Mission, Texas 78572.

Venue is proper in Harris County, Texas because the Plaintiff made in Harris County, all or part of the conduct complained of herein took place in Harris County, Texas, and because at least one Defendant conducts business there.

#### 2. Discovery Control Plan

The Plaintiff moves the court to enter a discovery control plan pursuant to TRCP §190.4 which includes two sets of interrogatories of no more than 30 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Plaintiff will submit a proposed discovery control plan after consulting with Defendant's counsel.

#### 3. Facts and Background

Plaintiff, [REDACTED] purchased a 1994 Ford Lincoln Towncar (VIN 1LNLJ82A0RY [REDACTED]) from Fordly Ford, Inc. d/b/a Elvin Hayes Ford Elvin Hayes Franklin Ford manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON."

On or about March 28, 2004 Ms. Curvella parked her Towncar in front of her Harris County residence at 422 St. Charles, Crosby, Texas 77532. The defective speed control deactivation switch either solely or in combination with the "KAPTON," and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Towncar and consumed Plaintiff's vehicle and damaged Plaintiff's residence.

Plaintiff, [REDACTED] purchased a 1992 Mercury Grand Marquis (VIN ZMECM76W9RD [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON<sub>®</sub>".

On or about October 22, 2003 [REDACTED] parked his Grand Marquis in front of his Harris County residence at [REDACTED] Texas City, Texas [REDACTED]. The defective speed control deactivation switch either solely or in combination with the "KAPTON<sub>®</sub>" and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Towncar and consumed Plaintiff's vehicle, Plaintiff's residence, personal property, family photographs and other irreplaceable possessions.

The [REDACTED] family purchased a 2000 Ford Expedition (VIN 1FMRU17L1Y [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON<sub>®</sub>".

On or about July 28, 2003, the [REDACTED] family parked their Ford Expedition in front of the home at [REDACTED] League City, Texas which they were renting from Plaintiff Marvin Bandole in Harris County. The defective speed control deactivation switch either solely or in combination with the "KAPTON<sub>®</sub>" and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Expedition and consumed Plaintiff's rental home.

Plaintiff [REDACTED] purchased a 1993 Ford Lincoln Towncar, VIN 1LNLM22KDP [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>". On or about June 28, 2003 a fire, which originated in the speed control switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff [REDACTED] purchased a 1993 Ford Crown Victoria, VIN ZFALJ74W78D [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>" and which vehicle was purchased at Halfman Ford. On or about September 16, 2002 a fire, which originated in the speed control switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff [REDACTED] purchased a 1997 Grand Marquis, VIN 2MELM74H1VX [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed,

manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>". On or About September 27, 2003 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff, [REDACTED] purchased a 1994 Mercury Grand Marquis, VIN 2B6LM76W6R0X [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>" and which vehicle was purchased new at AutoNation, Inc. d/b/a W.O. Barton Lincoln Mercury in Dallas, Texas. On or About January 8, 2002 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff [REDACTED] purchased a 2008 Ford F-150, VIN 1FTRX17W0Y7 [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>" and which vehicle was purchased new at Burns Motors in McAllen, Texas. On or about November 12, 2008 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near his garage, caused considerable property loss.

Plaintiff [REDACTED] purchased a 2000 Ford F-150, VIN 1FTRX17L2Y [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>" and which vehicle was purchased new at Spikes Motor Company in Mission, Texas. On or about November 14, 2003 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near his garage, caused considerable property loss.

#### 4. Negligence

The Defendants were negligent in one or more of the following particulars and such negligence was a proximate cause of Plaintiff's damages:

As to Defendants, Ford, TI, DP, Plaintiff Fred Hoffman, AutoNation, Burns and Spikes:

- a. in failing to timely and properly notify Plaintiff of the defective condition of their vehicle;
- b. in failing to remedy the defective condition;
- c. in failing to advise authorized Ford dealerships to remedy the defective condition;

- d. In failing to properly monitor and locate vehicle registrations to identify and locate customers, such as Plaintiff, who own defective vehicles;
- e. In failing to advise Plaintiff not to park the automobile in a garage, carport or flame capable of catching fire;
- f. In manufacturing and distributing Plaintiff's vehicle without correcting defects;
- g. In failing to adequately investigate fires occurring in the subject vehicle line which included a similar cause and origin of the fires in question;
- h. In failing to institute a timely or effective vehicle recall campaign;
- i. By negligently designing the electrical circuit which controls the vehicles' cruise control;
- j. By designing an electrical circuit that supplies continuous electrical power to the speed control switch when the vehicle is parked, not running with the ignition key off, thereby providing an ignition source for the fire;
- k. By failing to provide adequate engineering design specifications to TI and/or DP concerning the number of cycles the speed control deactivation switch would encounter over the subject vehicles' foreseeable life. Additionally, Ford failed to consider or provide switch cycle data created by the vehicles' anti-lock brake, suspension leveling and traction control systems;
- l. By failing to provide adequate engineering design specifications to TI;
- m. By failing to include an adequate electrical current limiting device in the electrical circuit which supplies power to the switch;
- n. By instituting an unreasonable date of production to achieve "Job One";
- o. In failing to adequately manufacture, investigate, engineer and/or test the speed control switch prior to distribution to Ford for inclusion into the subject vehicles;
- p. In failing to design a speed control switch which does not allow the intrusion of conductive substances in contact with the electrical components of the switch;
- q. In failing to test the speed control switch prior to distribution based on foreseeable electrical, thermal, cyclical, and environmental conditions the switch would

- r. in failing to consider previous failure and/or engineering problems associated with the use of "KAPTON," in similar hydraulic pressure switches whose chemical attack, mechanical forces, and/or manufacturing processes were suspected but not considered during the design, manufacture and/or marketing of the speed control deactivation switch installed on Plaintiff's vehicles;
- s. in failing to advise Ford and/or DF and/or the Plaintiff that "KAPTON," failures had occurred in other similarly designed pressure switches;
- t. in supplying and/or distributing defective components for installation in vehicles such as Plaintiff's without correcting such defects;
- u. By failing to design and manufacture the switch with electrical components which would not corrode and cause an electrical short and fire; and
- v. in such other respects as may be shown by the discovery or trial.

#### **5. Gross Negligence**

The Plaintiff's resulting damages, injuries and losses were caused by the gross negligence, fraud and malice of the Defendants. The conduct of Defendants Ford and TI constitutes gross negligence, fraud and malice as those terms are understood under Texas law and as defined by Section 41.001 Tex. Civ. Prac. and Rem. Code, in that it constituted a conscious indifference to the rights and welfare of persons affected by it. The Defendants' fraud and deceit will, in one way, be shown by Ford's and TI's application of evidence that has been uncovered during the course of this lawsuit. As a result, Plaintiff's seek to recover exemplary damages from Defendants, Ford and TI as a result of their gross negligence, fraud, deceit and malice. Plaintiff's intend to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

1. the nature of the wrong committed by Ford and TI;
2. the character of Ford's and TI's conduct;
3. the degree of culpability of Ford and TI;
4. the situation and sensibilities of the parties concerned; and
5. the extent to which Ford's and TI's conduct offends a public sense of justice and propriety.

The Plaintiff's believe that exemplary damages should not exceed Three Million Dollars (\$3,000,000.00).

**C. Damages**

Plaintiffs would show that their damages, injuries and/or losses are within the jurisdictional limits of this Court, and include property damages, loss of their vehicle(s), home, home contents, loss of use of vehicle and home, mental anguish, costs to repair or replace their property, and any other consequential damages reasonably arising from the incident in question.

Plaintiffs would show that they are entitled to reasonable and necessary attorney fees and costs of prosecuting this matter.

Plaintiffs would show that they are entitled to pre-judgment and post-judgment interest at the maximum rate allowed by law.

**REQUEST FOR RELIEF**

- (a) Plaintiffs request that Defendants be cited according to law to appear and answer;
- (b) Plaintiffs demand judgment against Defendants for all actual damages within the jurisdictional limits of the Court and for attorneys' fees, and all statutory additional (or exemplary) damages as set forth above, costs of court, and pre-judgment and post-judgment interest at the highest lawful rates;
- (c) Plaintiffs also ask for such other relief to which they may be entitled.

Respectfully submitted:

By: 

Michael Jolly  
TEAF 10880020  
Michael Jolly  
TEAF 10880010  
1018 Preston, 4th Floor  
Houston, Texas 77002  
(713) 237-8383  
Fax: (713) 237-8385

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was forwarded to the court of record, pursuant to the Rules of Procedure, on this the 11<sup>th</sup> day of January, 2005.

  
Michael Jolly



**MICHAEL B. JOLLY**  
ATTORNEY AT LAW

1918 FRESTON, 4th FLOOR  
HOUSTON, TEXAS 77008  
MEMORANDUM RECEIVED

OFFICE (713) 237-5383  
FAX (713) 237-6385  
mjbolly@aol.com

December 2, 2003

Dana S. Spear  
Andrew Schimmeister

Via Fax (713) 860-1699

Jason Eldin  
Eric Meyer

Via Fax (713) 654-6688

Wayne Pickering

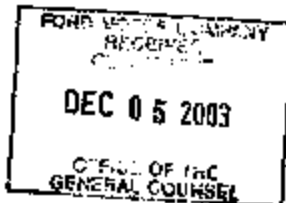
Via Fax (281) 340-7001

Alison Kammmer

Via Fax (956) 541-2170

Sarah Kirkwood

Via Fax (248) 203-0763



*New for Shawn*

RE: [REDACTED] 2000 Ford F-150 truck, date of fire: September 2003, location: #  
[REDACTED]

[REDACTED] 2000 Ford F-150 truck, VIN 1FTRX17W0Y [REDACTED] date of fire:  
November 12, 2003, location: McAllen, Texas

[REDACTED] 2000 Ford F-150 truck, VIN 1FRTX17L2Y [REDACTED] date of fire:  
November 14, 2003, location: McAllen, Texas

Dear Counsel:

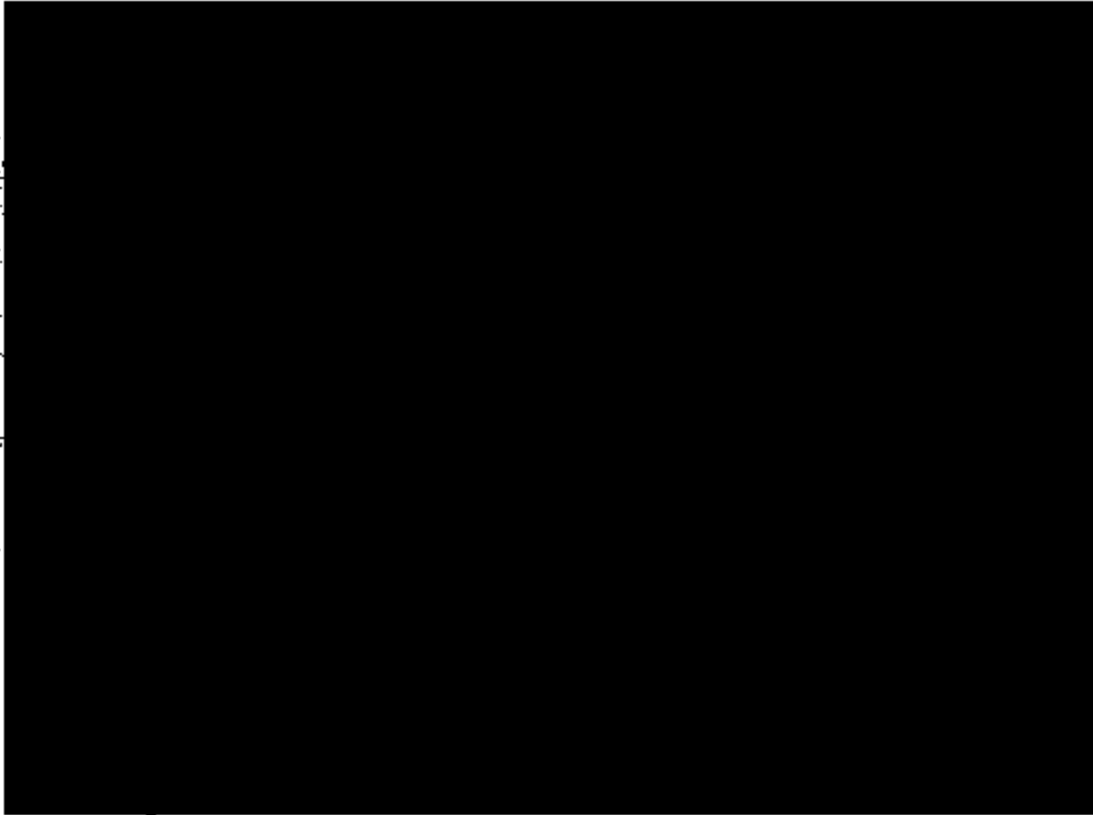
We represent the above individuals regarding fire which originated in the front left engine compartment of these vehicles. These vehicles are available for your inspection immediately. Please let me know when each of you plan on inspecting these vehicles.

Sincerely,

*[Signature]*  
Michael Jolly

MJW

*- F121  
- 11/12/03  
- McAllen TX  
- 100 F-150  
- VIN*



CAUSE NO. C200435788



IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

VS.

FORD MOTOR COMPANY, TEXAS INSTRUMENTS, INC., E.I. DUPONT DE NEMOURS AND COMPANY and FRIENDLY FORD, INC. d/b/a ELVIN HAYES FORD d/b/a HAYES FRANKLIN FORD, INC., HELLMAN FORD, INC., AUTONATION, INC. d/b/a W.D. BARKSTON LINCOLN MERCURY, BURNSTMOTORS GP LLC and SPIES MOTOR COMPANY, INC.

129TH JUDICIAL DISTRICT

**PLAINTIFFS SECOND AMENDED ORIGINAL PETITION**

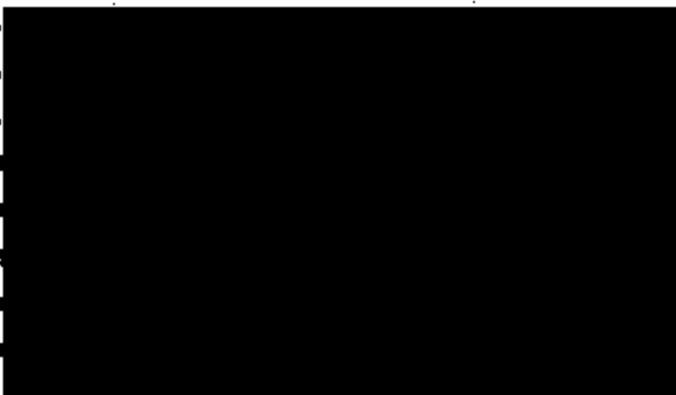
TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiff, 

Selines complaining of Ford Motor Company ("Ford"), Texas Instruments, Inc. ("TI") E. I. DuPont De Nemours and Company ("DP") and Friendly Ford Inc. d/b/a Elvin Hayes Ford d/b/a Hayes Franklin Ford, Inc. ("Friendly Ford"), Hellman Ford, Inc. ("Hellman"), Autonation, Inc. d/b/a W.D. Barkston Lincoln Mercury ("Autonation"), Burne Motors GP LLC ("Burne") and Spies Motor Company, Inc. ("Spies") and would show unto the court as follows:

**1. Parties & Venue:**

Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,  
Plaintiff,



Defendant, Ford Motor Company, has been served and has answered.

Defendant, Texas Instruments, Inc., has been served and has answered.

Defendant, E.I. Du Pont De Nemours and Company, has been served and has answered.

Defendant, Friendly Ford, Inc. d/b/a Elvin Hayes Ford d/b/a Hayes Franklin Ford, is in the process of being served.

Defendant, Holligan Ford, Inc. is in the process of being served.

Defendant, Autolite, Inc. d/b/a W.O. Barton Lincoln Mercury is in the process of being served.

Defendant, Burns Motors GP LLC is a Texas corporation and may be served with citation by certified mail, return receipt requested, upon its registered agent for service, Don R. Burns, 1380 E. Highway 83, McAllen, Texas 78501.

Defendant, Spilke Motor Company, Inc. is a Texas corporation and may be served with citation by certified mail, return receipt requested, upon its registered agent for service, Clark F. Spilke, Jr., 1708 Doherty, Mission, Texas 78572.

Venue is proper in Harris County, Texas because the Plaintiff reside in Harris County, all or part of the conduct complained of herein took place in Harris County, Texas, and because at least one Defendant conducts business there.

### 2. Discovery Control Plan

The Plaintiff move the court to enter a discovery control plan pursuant to TRCP §190.4 which includes two sets of interrogatories of no more than 30 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Plaintiff will submit a proposed discovery control plan after consulting with Defendants' counsel.

### 3. Facts and Background

Plaintiff [REDACTED] purchased a 1994 Ford Lincoln Towncar (VIN 1LNLM82N0RY [REDACTED]) from Friendly Ford, Inc. d/b/a Elvin Hayes Ford d/b/a Hayes Franklin Ford manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON".

On or about March 28, 2004 [REDACTED] parked her Towncar in front of her Harris County residence [REDACTED] Crosby, Texas [REDACTED] the defective speed control deactivation switch either solely or in combination with the "KAPTON" and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Towncar and consumed Plaintiff's vehicle and damaged Plaintiff's residence.

Plaintiff, [REDACTED], purchased a 1992 Mercury Grand Marquis (VIN 2MECM76N82K [REDACTED]) manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON<sub>®</sub>".

On or about October 22, 2003, [REDACTED] parked his Grand Marquis in front of his Harris County residence at [REDACTED] Texas City, Texas [REDACTED]. The defective speed control deactivation switch either solely or in combination with the "KAPTON<sub>®</sub>" and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Towncar and consumed Plaintiff's vehicle, Plaintiff's residence, personal property, family photographs and other irreplaceable memorabilia.

The [REDACTED] family purchased a 2000 Ford Expedition (VIN 1FMRU17L1Y [REDACTED]) manufactured and designed by Ford and equipped with a defective speed control deactivation switch, manufactured and marketed by TI which utilized defective components manufactured by DP known as "KAPTON<sub>®</sub>".

On or about July 28, 2003, the [REDACTED] family parked their Ford Expedition in front of the home at [REDACTED] League City, Texas which they were renting from Plaintiff Marvin Bendis in Harris County. The defective speed control deactivation switch either solely or in combination with the "KAPTON<sub>®</sub>" and/or other defective electrical components, wiring and/or circuits on the vehicle, was the ignition source for the fire which originated in the Expedition and consumed Plaintiff's rental home.

Plaintiff [REDACTED] purchased a 1993 Ford Lincoln Towncar, VIN 1LNLM82Y03P [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>". On or about June 29, 2003 a fire, which originated in the speed control switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff, [REDACTED] purchased a 1993 Ford Crown Victoria, VIN 2FALP74W72K [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON<sub>®</sub>" and which vehicle was purchased at Halfman Ford. On or about September 15, 2002 a fire, which originated in the speed control switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff [REDACTED] purchased a 1997 Grand Marquis, VIN 2MELM74W1VX [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed,

manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON." On or About September 27, 2003 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff, [REDACTED] purchased a 1994 Mercury Grand Marquis, VIN 2HJELM76H0F0 [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON," and which vehicle was purchased new at AutoNation, Inc. db/a W.O. Bankston Lincoln Mercury in Dallas, Texas. On or About January 8, 2002 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near their garage, caused considerable property loss.

Plaintiff, [REDACTED] purchased a 2000 Ford F-150, VIN 1FTRX17H0Y [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON," and which vehicle was purchased new at Buss Motors in McAllen, Texas. On or about November 12, 2003 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near his garage, caused considerable property loss.

Plaintiff, [REDACTED] purchased a 2000 Ford F-150, VIN 1FTRX17L2Y [REDACTED] manufactured and designed by Ford and equipped with a defective speed control deactivation switch designed, manufactured and marketed by Texas Instruments which utilized components manufactured by Du Pont known as "KAPTON," and which vehicle was purchased new at Spikes Motor Company in Mission, Texas. On or about November 14, 2003 a fire, which originated in the speed control deactivation switch while the vehicle was parked on or near his garage, caused considerable property loss.

#### 4. Negligence

The Defendants were negligent in one or more of the following particulars and such negligence was a proximate cause of Plaintiff's damages:

##### As to Defendants Ford, TI, DP, Friendly Ford, Hellman, AutoNation, Buss and Spikes:

- a. in failing to timely and properly notify Plaintiffs of the defective condition of their vehicle;
- b. in failing to remedy the defective condition;
- c. in failing to advise authorized Ford dealerships to remedy the defective condition;

- d. In failing to properly monitor and locate vehicle registrations to identify and locate customers, such as Plaintiffs, who own defective vehicles;
- e. In failing to advise Plaintiffs not to park the automobile in a garage, carport or items capable of catching fire;
- f. In manufacturing and distributing Plaintiffs' vehicle without correcting defects;
- g. In failing to adequately investigate fires occurring in the subject vehicle line which included a similar cause and origin of the fires in question;
- h. In failing to institute a timely or effective vehicle recall campaign;
- i. By negligently designing the electrical circuit which controls the vehicles' cruise control;
- j. By designing an electrical circuit that supplies continuous electrical power to the speed control switch when the vehicle is parked, not running with the ignition key off, thereby providing an ignition source for the fire;
- k. By failing to provide adequate engineering design specifications to TI and/or DP concerning the number of cycles the speed control deactivation switch would encounter over the subject vehicles' foreseeable life. Additionally, Ford failed to consider or provide switch cycle data created by the vehicles' anti-lock brake, suspension leveling and traction control systems;
- l. By failing to provide adequate engineering design specifications to TI;
- m. By failing to include an adequate electrical current limiting device in the electrical circuit which supplies power to the switch;
- n. By instituting an unreasonable date of production to achieve "Job One;"
- o. In failing to adequately manufacture, investigate, engineer and/or test the speed control switch prior to distribution to Ford for inclusion into the subject vehicles;
- p. In failing to design a speed control switch which does not allow the intrusion of cohesive substances in contact with the electrical components of the switch;
- q. In failing to test the speed control switch prior to distribution based on foreseeable electrical, thermal, cyclical, and environmental conditions the switch would

- r. In failing to consider previous failure and/or engineering problems associated with the use of "KAPTON<sub>6</sub>" in similar hydraulic pressure switches where chemical attack, mechanical forces, and/or manufacturing processes were suspected but not considered during the design, manufacture and/or marketing of the speed control deactivation switch installed on Plaintiff's vehicles;
- s. In failing to advise Ford and/or DF and/or the Plaintiff that "KAPTON<sub>6</sub>" failures had occurred in other similarly designed pressure switches;
- t. In supplying and/or distributing defective components for installation in vehicles such as Plaintiff without correcting such defects;
- u. By failing to design and manufacture the switch with electrical components which would not corrode and cause an electrical short and fire; and
- v. In such other respects as may be shown by the discovery or at trial.

#### **5. Gross Negligence**

The Plaintiff's resulting damages, injuries and losses were caused by the gross negligence, fraud and malice of the Defendants. The conduct of Defendants Ford and TI constitutes gross negligence, fraud and malice as those terms are understood under Texas law and as defined by Section 41.001 Tex. Civ. Prac. and Rem. Code, in that it constituted a conscious indifference to the rights and welfare of persons affected by it. The Defendants' fraud and deceit will, in one way, be shown by Ford's and TI's spoliation of evidence that has been uncovered during the course of this lawsuit. As a result, Plaintiff seeks to recover exemplary damages from Defendants, Ford and TI as a result of their gross negligence, fraud, deceit and malice. Plaintiff intend to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

1. the nature of the wrong committed by Ford and TI;
2. the character of Ford's and TI's conduct;
3. the degree of culpability of Ford and TI;
4. the situation and necessities of the parties concerned; and
5. the extent to which Ford's and TI's conduct offends a public sense of justice and propriety.

The Plaintiff believe that exemplary damages should not exceed Three Million Dollars (\$3,000,000.00).



**B. Damages**

Plaintiffs would show that their damages, injuries and/or losses are within the jurisdictional limits of this Court, and include property damages, loss of their vehicle(s), home, home contents, loss of use of vehicle and home, mental anguish, costs to repair or replace their property, and any other consequential damages foreseeably arising from the incident in question.

Plaintiffs would show that they are entitled to reasonable and necessary attorney fees and costs of prosecuting this matter.

Plaintiffs would show that they are entitled to pre-judgment and post-judgment interest at the maximum rate allowed by law.

**REQUEST FOR RELIEF**

- (a) Plaintiffs request that Defendants be cited according to law to appear and answer;
- (b) Plaintiffs demand judgment against Defendants for all actual damages within the jurisdictional limits of the Court and for attorneys' fees, and all statutory additional (or exemplary) damages as set forth above, costs of court, and pre-judgment and post-judgment interest at the highest lawful rates;
- (c) Plaintiffs also ask for such other relief to which they may be entitled

Respectfully submitted:

By:

  
 Norman Jolly  
 TBAP 10856920  
 Michael Jolly  
 TBAP 10856910  
 1015 Preston, 4th Floor  
 Houston, Texas 77002  
 (713) 237-8383  
 Fax: (713) 237-8385

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was forwarded to all counsel of record, pursuant to the Rules of Procedure, on this the 11<sup>th</sup> day of January, 2006.

Norman Jolly

**MICHAEL B. JOLLY**  
ATTORNEY AT LAW

918 PRESTON, 4th FLOOR  
HOUSTON, TEXAS 77028  
REGISTERED PROFESSIONAL

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FAX (713) 287-8385  
mbjolly@aol.com

December 2, 2003

*New  
Ford  
Shower*

Dana S. Spear  
Andrew Schimmelster

Via Fax (713) 860-1699

Jason Itin  
Eric Mayer

Via Fax (713) 854-8888

Wayne Pickering

Via Fax (281) 340-7001

Alicia Kennamer

Via Fax (858) 641-2170

Sarah Kirkwood

Via Fax (248) 203-0789

DEC 05 2003  
OFFICE OF THE  
GENERAL COUNSEL

RE: [REDACTED] 2000 Ford F-150 truck, date of fire: September 2003, location: San Antonio, Texas

[REDACTED] 2000 Ford F-150 truck, VIN 1FTRX17W0YK [REDACTED] date of fire: November 12, 2003, location: McAllen, Texas

[REDACTED] 2000 Ford F-150 truck, VIN 1FRTX17LZY [REDACTED] date of fire: November 14, 2003, location: McAllen, Texas

Dear Counsel:

We represent the above individuals regarding fires which originated in the front left engine compartment of these vehicles. These vehicles are available for your inspection immediately. Please let me know when each of you plan on inspecting these vehicles.

Sincerely,



Michael Jolly

MJ/w

*- F121  
- 11/14/03  
- McAllen, TX  
TOTAL P. 82  
- '00 F-150  
- VIN*