

DONALD W. RICKETTS
28855 Kenroy Avenue
Santa Clarita, California 91387
Telephone: (661) 250-3091
Facsimile: (661) 250-1767
E-mail: scfarms@socal.rr.com

EXECUTIVE SECRETARIAT

2005 SEP -1 P 2:39

THE SECRETARY OF TRANSPORTATION

DP05-005

Attorney for Petitioners CHRIS RUH, DON HUSTON,
ROBERT GUTHRIE, JEFF BABIAK, J.A. MASSEY,
MICHELE BROWN, MARY MABRY, CHRIS TAYLOR,
and VICTOR AGUILAR

DEPARTMENT OF TRANSPORTATION

National Highway Transportation Safety Administration

In re:)	Docket No. _____
)	
FORD SPARK PLUG BLOWOUTS')	PETITION FOR INVESTIGATION,
)	REMEDIAL ORDERS, AND PENALTIES
_____)	

CHRIS RUH, DON HUSTON, ROBERT GUTHRIE, JEFF BABIAK, J.A. MASSEY,
MICHELE BROWN, MARY MABRY, CHRIS TAYLOR, and VICTOR AGUILAR
(hereinafter, "Petitioners"), pursuant to 49 U.S.C. §§30111, 30118 & 30162 and 49 CFR §§
552.1-552.10, hereby petition the Administrator, National Highway Transportation Safety
Administration:

(1) To institute and commence proceedings to decide whether to issue an order
concerning the notification and remedy of defects relating to motor vehicle safety in certain
motor vehicles manufactured, assembled and sold by FORD MOTOR COMPANY and FORD
MOTOR COMPANY OF CANADA, LTD. (hereinafter, "FORD");

(2) For a recall of said vehicles and other appropriate relief; and

(3) To institute and commence proceedings to determine whether FORD has met the

notification requirements of 49 U.S.C. §30118 and to assess the statutory penalty for violation.

Petitioners complain and allege as follows:

1. Petitioners are interested persons within the meaning of 49 U.S.C. §30162 and 49 CFR §552.3.

2. FORD MOTOR COMPANY and FORD MOTOR COMPANY OF CANADA, LTD. (hereinafter, "FORD") are corporations subject to the jurisdiction of the National Highway Transportation Safety Administration ("NHTSA").

3. This petition involves defects in motor vehicles which relate to motor vehicle safety.

Facts Re Defect and Safety Hazard

4. During the period 1997 through 2004, FORD designed and manufactured engine cylinder heads and spark plugs and, thereafter, installed them, together with other components, onto modular engine blocks to create engines including, but not limited to, their 4.6 and 5.4 liter V-8 engines and a V-10 engine, commonly referred to as the "Triton" engine.

5. During said period, said engines were then installed in several models of its motor vehicles including Econoline Vans; the F Series of pickup trucks; the Explorer, Expedition and Excursion SUV's; the Crown Victoria; and the Mustang.

6. The spark plugs and the cylinder heads which hold them contain less than half the threads used previously in automobile engines, still used in other heads, and used by other manufacturers and is insufficient to retain the spark plugs in the cylinder heads for the life of the plug unless periodically inspected and, if necessary, torqued.

7. The cylinder head is made of a metal alloy that is insufficient to securely hold the

spark plugs in the insufficiently threaded sockets for the life of the plug.

8. As the vehicles age, the plugs loosen in the insufficiently threaded head and/or the metal fatigues causing the spark plugs to be blown out of the head.

9. FORD, in its maintenance schedules and manuals, advises that the plugs should be inspected only when the mileage on the vehicles reaches 100,000. The blowouts occur, most often, after the vehicles have traveled 50,000 miles and before the vehicles travel 100,000 miles. More frequent inspection and maintenance would detect loosening plugs and would prevent blowouts from occurring.

10. The exact number of blowouts which have occurred to date is unknown but is believed to be in the thousands and the rate of blowouts is increasing as the vehicles age:

- As of March 31, 2005, 312 written complaints had been made by consumers to NHTSA.

- Approximately 1,000 telephonic complaints by California owners who have sustained a blowout have been made to FORD.

- Reports of hundreds of incidents have been posted on Ford-related websites on the World Wide Web.

- During the last three years Ford has sold, within California, approximately 12,000 replacement cylinder heads.

- In 2004, manufacturers of kits used to repair the damage caused by the blowouts sold approximately 8000 such kits; during the first half of 2005, 7000 such kits had been sold.

11. The number of vehicles containing these engines, and still on the road, is in the millions and they present a safety hazard to occupants of the vehicle, nearby persons, and other

motorists on the road:

- The spark plugs shoot out of the cylinder port suddenly and with great force, sometimes puncturing the hood, and, often, so damaging the engine that a new engine is required.
 - Fire and explosion are likely if the plugs puncture nearby fuel lines.
 - Owners report a strong smell of gasoline vapor after the blowouts occur and the cylinder is open, presenting an additional danger of fire and explosion.
 - The sudden expulsion of the plug out of the head often causes drivers to be startled and lose control of the vehicle momentarily, presenting a traffic hazard.
 - The vehicles always lose power and, often, stall, presenting a traffic hazard.
12. The average cost of parts and services required to repair the damage caused by the blowouts is, approximately, \$3000.

Facts Re Violation of Duty to Report & Cover-up

14. Despite knowledge of the safety defect FORD has neither reported the problem to NHTSA as it is required to by 49 USC § 30118(c) nor sought an exemption from reporting under 49 USC § 30118(d).

15. FORD has, in fact, sought to suppress and conceal the existence of the defect from the owners of the vehicles and its repair agencies. As the vehicles aged and the number of incidents mounted, FORD developed pattern responses to complaints and inquiries from its dealers and owners of the vehicles:

- It denied any knowledge of the problem;
- It denied that the problem was caused by any defect
- In a classic Catch-22 ploy, it advised that it could do nothing

because it had not issued a recall; and,

- It stonewalled questions responding, only, with the comment that there is nothing we can do for you.

16. FORD's responses to claims and complaints by owners of the vehicles and inquiries by its authorized service and repair facilities regarding the spark plug blowout problem were part of a pattern and business practice developed by FORD to avoid responsibility for defects in its vehicles and cover up defects:

- At the same time FORD was wrongfully denying knowledge of the spark plug blowout problem and its cause and refusing to answer questions and complaints it was engaging in exactly the same pattern of conduct in regard to defective distributor-mounted thick film ignition modules and defective Firestone/Bridgestone tires, both of which, following litigation and action by the NHTSA, were the subject of recalls.

- Ford has been condemned and sanctioned by numerous courts for covering up and refusing to disclose information regarding defects in its vehicles. (See Exhibit A.)

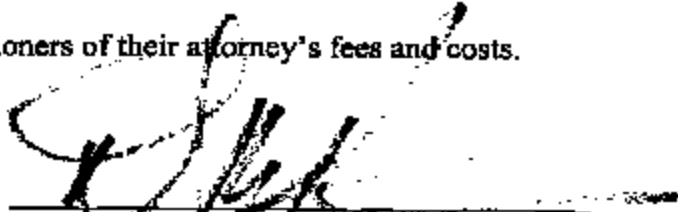
- Very recently (June 27,2005), the California Supreme Court ordered that punitive damages assessed against FORD for defect coverup be increased. It found that the court "failed to adequately consider that Ford's fraud was more reprehensible because it was part of a repeated corporate practice rather than an isolated incident." (*Johnson v. Ford Motor Company* (2005) 35 Cal.4th 1191.)

17. Ford's practice of concealing and covering up defects requires owners of defective vehicles to seek relief by individual lawsuits. Strong action is required by NHTSA to curb this policy and practice and to require FORD to comply with its duty to report.

WHEREFORE, petitioners pray:

1. For an order instituting and commencing proceedings to decide whether to issue an order concerning the notification and remedy of defects relating to motor vehicle safety in the vehicles described above;
2. For an order recalling said vehicles and other appropriate relief;
3. For an order instituting and commencing proceedings to determine whether FORD has met the notification requirements of 49 U.S.C. §30118.
4. For an order compelling FORD to comply with its duties under 49 U.S.C. §30118. to report safety defects in the future or obtain an exemption from reporting defects.
5. For a civil penalty of \$15,000,000; and,
6. For an award to petitioners of their attorney's fees and costs.

DATED: August 24, 2005


DONALD W. RICKETTS
Attorney for Petitioners CHRIS RUH, DON
HUSTON, ROBERT GUTHRIE, JEFF BABIAK,
J.A. MASSEY, MICHELE BROWN, MARY
MABRY, CHRIS TAYLOR, and VICTOR
AGUILAR

Ford Stonewalls on Evidence, Judges Say; Ford has dragged its feet, misled plaintiffs and lied in a number of lawsuits, jurists in those cases contend. The automaker calls the incidents 'honest mistakes.'; [HOME EDITION]

Myron Levin. Los Angeles Times. Los Angeles, Calif.: Mar 28, 2004. pg. C.1

Full Text (2300 words)

(Copyright (c) 2004 Los Angeles Times)

"Tough" is a word that Ford Motor Co. likes to use in marketing its popular pickup trucks, as in "Built Ford Tough." The term could also be applied to Ford's take-no-prisoners style in defending itself against product liability suits.

Some judges who have heard cases involving Ford from Mississippi to Michigan to California have used far stronger language to describe the automaker's courtroom conduct:

"Totally reprehensible."

"Disgusting."

"Blatantly lied."

"Almost borders on the criminal."

In recent years, Dearborn, Mich.-based Ford has been painted in courtroom after courtroom as something of a renegade, accused by judges of hiding or misrepresenting evidence.

Ford is hardly the only big company to be cited for such behavior. Others, from automotive rival General Motors Corp. to British American Tobacco, also have been sanctioned for failing to produce relevant documents. Yet Ford appears to have a special knack for antagonizing judges.

"Why is it that Ford has this attitude that they don't have to comply with a clear order" to give up certain documents? U.S. District Court Judge T. John Ward asked at a July 2001 hearing in Texas. "You can take it back to Dearborn: This court is not impressed with the ... lack of candor that I find from Ford's counsel."

Early last year, Ford was forced to pay more than \$700,000 in Michigan after exhausting its appeals of sanctions for failing to produce test reports in the case of a seat belt failure that left the victim a quadriplegic.

Last summer, a Mississippi judge tossed out a verdict in Ford's favor and ordered a new trial in the case of two students killed in the fiery wreck of a Ford Explorer. Ford had waited until the trial began to turn over thousands of pages of documents — a "willful and blatant" violation of court rules, said Hinds County Circuit Court Judge Winston L. Kidd. For good measure, he ordered Ford to reimburse more than \$200,000 in plaintiffs' trial expenses. Ford has appealed.

Ford's problems in this area aren't new. In the early 1980s, prior to introduction of the Bronco II SUV, Ford's office of general counsel took the unprecedented step of collecting documents on the handling characteristics of the rollover-prone vehicle. Court cases later revealed that 53 of 118 crucial documents snagged in the roundup were lost or destroyed.

In 1998, Marion County Circuit Court Judge David L. Rlmsdtit in Indiana called the disappearance of the records a "sanitization" at best, and "at worst ... an outright fraud."

Company spokeswoman Kathleen Vokes said Ford "makes a good-faith effort to cooperate" with judges and opponents.

"Like other major companies, we have been sued tens of thousands of times ... and have produced millions of documents," Vokes said. "With this volume of litigation involving a company as large and complex as ours, it is inevitable that we ... will make some infrequent and honest mistakes."

As John F. Murphy, an outside attorney for Ford, argued at a sanctions hearing in Missouri: "There's been this misimpression that somehow all Ford needs to do is touch a button on the computer and every document that has been produced in the last 40 years at Ford suddenly appears."

Court sanctions against Ford typically have come in cases in which judges found that the company abused the discovery process, in which parties in a lawsuit are supposed to exchange relevant information before trial.

Plaintiffs in automotive cases try to sift through documents for evidence that manufacturers may have cut corners to shave costs, or ignored safety recommendations of engineers. Yet corporate defendants often balk at handing over documents for months or years on grounds that they can't be located or would expose trade secrets. A certain amount of resistance is regarded as a normal part of the litigation game — but Ford has been accused of going to extremes.

Frank Branson, a Texas lawyer who has often tangled with the company, said he "can't remember encountering a defendant who set about in a more orchestrated way to conceal evidence from the public's eye and from disclosure in courtrooms."

Critics say Ford stonewalls not only in court but also in its dealings with regulators. The company has been cited repeatedly by federal officials and judges for withholding information from the National Highway Traffic Safety Administration.

The Environmental Working Group, a Washington-based advocacy organization, recently asked the Justice Department to investigate what it called Ford's "practice of wilfully concealing safety-related data from courts, regulators and consumers" — a charge Ford called false and irresponsible.

It isn't clear why Ford approaches litigation the way it does. At a deposition in January, Ford Chairman William Clay Ford Jr. was questioned about a string of cases in which judges had savaged Ford for its conduct. He testified that he was unfamiliar with each of the cases, and said he relied on Ford's office of general counsel to alert him to matters requiring his personal attention. He described the office's lawyers as people of "the utmost integrity."

Lawyers currently or formerly in Ford's general counsel office didn't respond to requests for interviews.

To some, it seems obvious what lies behind Ford's strategy: saving money.

Although sanctions have proven costly to Ford in isolated cases, company critics say its tactics have reduced lawsuits; many plaintiffs' lawyers are scared off by the prospect of exhausting discovery battles.

Though Ford isn't unique in embracing this strategy, "they've been an outstanding practitioner of it," said Tom Feaheny, a Ford vice president in the 1970s and '80s who now testifies as an expert witness against the company. As a result, "an awful lot of plaintiffs go away."

Ford and other automakers have denounced product litigation as a money grab that tries to shift blame away from people who didn't wear seat belts or drove while drowsy or drunk. "That's why we think things are stacked against us," said a former Ford official who would not speak for attribution.

Vincent Galvin, a San Jose lawyer who has defended Ford and other automakers, contends that plaintiffs often contrive discovery disputes to distract from the weakness of their cases. It's "a ruse ... to get a sanctions order to try to pressure the defendant to settle," he said.

That indeed may occur, said Stephen Gillers, vice dean of the New York University School of Law. But when it comes to Ford, he's skeptical. "Once you have five, six or seven incidents of failure to produce documents," Gillers said, "it's hard to explain it as purely the machinations of a devious plaintiffs lawyer."

In the mid-1990s, Ford announced a more pugnacious litigation strategy, vowing to try more cases and offer settlements on a take-it-or-leave-it basis.

"If the plaintiff doesn't settle, it doesn't matter to us," former Assistant General Counsel James Brown told the National Law Journal in 1996. "We tell them, 'We're coming after you.'"

That didn't mean Ford wouldn't cooperate with judges and opponents, Brown said. "Ford wants to have the reputation that we're open and honest in the discovery process."

At the time, Ford was having its reputation shredded by a judge in its home state of Michigan. The suit was filed by the parents of Sarah Traxler, who suffered severe brain damage when she was 2 months old. Sarah was riding in her car seat in the back when the family's Ford Tempo was rear-ended, causing her mother's seat back to collapse on the baby. The suit claimed the seat was defective because it wasn't designed to withstand a routine collision.

Kent County Circuit Judge Dennis C. Kolenda issued a default judgment against Ford in January 1997, citing its "disgusting" failure to cooperate in discovery.

In a default judgment, the judge ends the trial and issues a verdict against one party for failing to meet its obligations.

Ford had perpetrated "an outrageous fraud," according to the ruling. The company had "concealed very significant documents and ... worse, had blatantly lied about those documents," Kolenda said. "Any word other than 'lie' would understate what Ford did."

Among other things, the judge found, documents showed that Ford had concealed safety tests and the existence of hundreds of similar lawsuits, and had developed — but not used — a seat capable of withstanding much greater rear-end impacts. Ford appealed and eventually settled.

Another default judgment was issued against Ford in October 2001 in a New Mexico case filed by the widow of John F. Sturdevant, who died when his F-350 pickup rolled over and the roof collapsed.

Sturdevant's lawyers knew Ford had considered reducing the thickness of steel in the roofs of its trucks to save money. Ford lawyers insisted there were no records showing whether the change had ever been implemented.

However, the supposedly nonexistent documents turned up in another fatal roof-crush case in Missouri. The Sturdevant lawyers eventually got the records by getting in touch with plaintiffs in the Missouri case. One of the documents appeared to show that Ford had thinned the roofs for a savings of about 66 cents per vehicle.

District Judge Art Encinias issued a default judgment against Ford, and the case was eventually settled.

In October, discovery abuse figured prominently in a \$45.4-million verdict against Ford and two trucking firms in Los Angeles County Superior Court in Chatsworth.

The suit stemmed from the paralyzing injuries suffered by [REDACTED] of Orange County in the crash of his family's '95 Windstar minivan. The minivan struck a roll of steel that had fallen onto Interstate 5 near Gorman after two big-rig trucks collided. [REDACTED], whose rear-center seat was equipped with a lap belt only, suffered a severed spine when the minivan slammed to a stop. Six family members wearing shoulder and lap belts sustained lesser injuries.

[REDACTED] parents and the insurer for one of the trucking firms sued Ford, claiming the lap-belt-only design was defective.

A bitter, nearly four-year discovery battle ensued. Ford had created reading rooms at its Dearborn headquarters to store records pertinent to certain categories of lawsuits. The company told the [REDACTED] lawyers that seat-belt-related documents could be found in one of those rooms.

But after months spent reviewing thousands of records, it became clear that the most crucial ones — on the design of rear restraints in the Windstar — were missing from the collection.

It was "a classic case of giving too many documents to overwhelm an adversary," complained Thomas F. Nuss, a retired judge serving as discovery referee. If Ford did not know what was in the reading room, he said, it should not have sent the plaintiffs there.

Most of the review was done by Gregory Scott, a paralegal. By sheer accident, Scott discovered some of the missing papers in another reading room about two years later while reviewing records for a different case. The papers showed that a Ford contractor had built a prototype restraint system of the kind the plaintiffs said could have prevented [REDACTED] injuries.

But when asked for the prototypes, Ford said it was unable to produce them.

"They're trying to bury the attorneys who are fighting them on these cases," [REDACTED] mother, said in an interview. It's "scary for a big corporation to behave like that."

Los Angeles County Superior Court Judge Howard J. Schwab instructed jurors to accept as proven that the lap-belt-only design was inadequate and that Ford had not warned owners of this fact.

The jury awarded \$30.4 million in compensatory damages and \$15 million in punitive damages against Ford and the trucking

companies. Ford has appealed, contending that the sanctions were unwarranted and had "severely prejudiced" its defense.

In February 2003, Ford came under scathing attack by a federal judge in Chicago for misrepresenting evidence in the case of a rollover of a 15-passenger van.

Two people died and several others were seriously injured when the driver dozed off and grazed a guardrail. The van then flipped as the driver tried to steer back onto the highway. One of the dead was Julia Whitley, a foster mother of 10 children.

The plaintiffs claimed that Ford knew its large passenger vans were unusually prone to flipping over in sudden steering maneuvers. As it had done in previous cases, Ford asserted that computerized stability tests used in analyzing other Ford vehicles had not been performed on the vans. The company further claimed that it had never experienced a rollover of the vans in handling tests.

It turned out Ford had done the computer analysis, and a Ford test driver acknowledged that he had rolled a van while driving a slalom course at about 40 miles per hour. He testified that he had been told not to file a report on the incident – and that the instruction came from a Ford engineer who already had testified that no rollovers took place.

Defense lawyers said Ford had made an "honest mistake" in interpreting the questions.

U.S. District Judge Robert W. Gettleman would have none of it, indicating that he would instruct the jury that Ford had concealed test data showing the vans were "unsafe in handling and stability."

"It almost borders on the criminal," Gettleman said. "Somebody is committing perjury ... or at least may be committing perjury."

"I don't want to believe a corporation like Ford does stuff like this," Gettleman added, but "I'm being convinced against my own instincts."

Ford paid a confidential settlement just before trial.

[Illustration]

Caption: PHOTO: CRITIC: U.S. District Court Judge John Ward chided Ford lawyers in a 2001 hearing.; PHOTO: LOSS: A Ford case before L.A. County Judge Howard Schwab ended in a \$45.4-million award.; PHOTOGRAPHER: Myung J. Chun Los Angeles Times; PHOTO: SEAT-BELT SUIT: Agneta Karlsson of Coto de Caza with Didl, left, Johan, Tina, Erik and Isak. The family sued Ford after a crash severed Johan's spine.; PHOTOGRAPHER: Don Kalaen Los Angeles Times

Credit: Times Staff Writer

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Subjects: Litigation, Automobile industry, Trials, Corporate Image, Products liability, Defective products

Companies: Ford Motor Co(Ticker:F, NAICS: 336111, 336399, 333924, Duns:00-134-4746)

Document types: News

Section: Business; Part C; Business Desk

ISSN/ISBN: 04583035

Text Word Count 2300

Document URL: