

IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI

<p>JAMARIAN SMITH, a Minor, and JIREHIAN SMITH, a Minor, the sole Wrongful Death Beneficiaries of JENARO SMITH, Deceased, by and Through NYEISHA WILSON, their Mother and Next Friend; and JAMARIAN and JIREHIAN SMITH, Minors, by and through NYEISHA WILSON, the Natural Mother and Next Friend</p> <p style="text-align: center;">Plaintiffs</p> <p>vs.</p> <p>FORD MOTOR COMPANY; TRACEY SMITH and JANE DOES A-Z</p>	<p>Civil Action <u>16-225 PCT</u></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"><p style="text-align: center;">FILED PIKE COUNTY, MISS. SEP 30 2016 ROGER A. GRAVES CIRCUIT CLERK</p><p>BY _____</p></div>
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COMPLAINT
(JURY TRIAL DEMANDED)

Come now the Plaintiffs, Jamarian Smith, a minor, and Jirehian Smith, a minor, by and through their mother, next friend, and natural guardian Nyeisha Wilson who file this Complaint against Ford Motor Company, Tracey Smith and Does 1-10. In support of the complaint, Plaintiffs state the following:

PARTIES

1. Plaintiff Jamarian Smith is a minor, and brings this action by and through Nyeisha Wilson, his mother and next friend.
2. Plaintiff Jirehian Smith is a minor, and brings this action by and through Nyeisha Wilson, his mother and next friend.

3. Plaintiff Jamarian Smith, a minor, and Plaintiff Jirehian Smith, a minor, are the sole wrongful death beneficiaries of Jenaro Smith.
4. Nyeisha Wilson is the mother, natural guardian, and next friend of Jamarian Smith, a minor, and Jirehian Smith, a minor.
5. Defendant Ford Motor Company (hereinafter "*Ford*") is a Delaware corporation with its principal place of business in Dearborn, Michigan. Ford is authorized to conduct business in Mississippi, owns property in Mississippi, transacts business in Mississippi and derives significant revenue from its activities in Mississippi, and is therefore subject to be sued in Mississippi courts for supplying a defective product in Mississippi that resulted in injuries suffered in Mississippi. Ford designed, developed, tested, manufactured, marketed, and distributed the defective vehicle involved in the litigation. Ford's agent for service of process in Mississippi is CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.
6. Defendant Tracey Smith is an adult resident citizen of the State of Mississippi.
7. Does 1-10 are corporations, entities, agencies, businesses, individuals, and the like which are presently unknown to the Plaintiffs but whose negligent acts and/or omissions proximately caused the Plaintiffs' injuries and damages. Plaintiffs will amend their Complaint to allege the true capacity of these parties when they are ascertained. Plaintiffs are informed and believe that each of the Defendants designated herein as unknown is responsible in some manner for the occurrences herein alleged that proximately contributed to the damages set forth herein.

JURISDICTION AND VENUE

8. The Circuit Court of Pike County, Mississippi has jurisdiction over defendant Ford Motor Company.

9. The Circuit Court of the Pike County, Mississippi has jurisdiction over defendant Tracey Smith.

10. Venue is proper before this Court pursuant to *Miss. Code Ann. § 11-11-3*.

FACTUAL BACKGROUND

11. On October 4, 2013, defendant Tracey Smith was driving a 2000 Mercury Mountaineer (VIN 4M2ZU86P1YUJ47795) along Interstate 55 in Mississippi when a sudden and unexpected tire failure occurred. The tire failure necessitated emergency action. During the course of trying to maintain control of the vehicle, it unexpectedly rolled over causing the death and injuries set forth herein.

12. Jamarian Smith, a minor, Jirehian Smith, a minor, and Jenaro Smith were guest passengers in the Mercury Mountaineer.

13. As a result of the crash Plaintiff Jamarian Smith, a minor, and Plaintiff Jirehian Smith, a minor, suffered personal injuries and medical expenses, and damages in an amount to be determined by the Court. The damages for Jamarian Smith and Jirehian Smith include, but are not limited to the following, to wit:

- a) Past, present and future medical expenses;
- b) Past, present and future physical pain and suffering;
- c) Past, present and future mental and emotional distress/anguish;
- d) Loss of wage earning ability;
- e) Punitive damages; and
- f) Any other relief, which the Court or jury deems just or appropriate based upon the circumstances.

LIABILITY OF FORD

14. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

15. The Mountaineer is the twin sister vehicle of the Ford Explorer. The Mountaineer is defective and unreasonably dangerous by design when used as marketed by Ford. The inherent defects in the design were present at the time the vehicle was manufactured and distributed to the consuming public. The defects were a proximate and producing cause of the injuries, death and damages, including the production of enhanced injuries. At all significant times, Ford was in the business of designing, manufacturing or otherwise distributing automobiles for use by the public. The defective design of the Mountaineer included defects in stability; handling (skate); marketing; instructions; warnings; crashworthiness; rollover resistance and controllability, including the following specific factual allegations:

- a) The Mountaineer is defective in that the design of the “package”, which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed;
- b) The Mountaineer is defective from a handling standpoint because it has an unreasonable tendency to get oversteer, skate and get sideways in emergency situations, including tire failures, and does not remain controllable under all operating conditions as required by Ford guidelines;
- c) The Mountaineer is unreasonably dangerous from a stability standpoint because it rolls over instead of slides when loss of control does occur on relatively flat level surfaces during foreseeable steering maneuvers;
- d) The combination of the foregoing creates an extreme risk of loss of control leading to rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design, given the uses for which the vehicle was marketed;
- e) The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable turning maneuvers that are consistent with Ford’s effort to market the vehicle as a “station wagon” replacement, which Ford had both actual and constructive knowledge would lead to rollover crashes. Ford’s knowledge included both actual knowledge based on its test history with SUVs; its research and knowledge of rollover in foreseeable turning maneuvers; and given its corporate history with respect to SUV designs;

- f) The vehicle was defectively marketed in that consumers were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying, station-wagon replacement type vehicle when Ford knew that this was untrue;
- g) The risk of operating the vehicle as designed outweighed any benefits associated with the design and Ford knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;
- h) Ford knew that this type vehicle – an SUV – was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;
- i) The Mountaineer was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system – roof, safety belt system, and glazing design --- that would effectively provide reasonable protection in the event of a rollover. Ford knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers and Ford knew of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants. Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing – such as pretensioners and side airbags or curtains --, Ford intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants.
- j) Ford had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;
- k) Ford willfully, wantonly, and consciously marketed the Mountaineer for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.
- l) Ford was negligent in designing, testing, manufacturing, warning, instructing, evaluating, and marketing the Mountaineer in the condition it was from a design standpoint, all of which was a proximate cause of the death and injuries claimed herein.
- m) Ford's conduct was reckless, grossly negligent, malicious, willful and wanton in that Ford knew the vehicle design was inherently unsafe prior to production; engineers within Ford warned Ford of these dangers and recommended reasonable and feasible design changes to fix the problem, prior to production, yet management chose to ignore the recommendations; and Ford knew the design risks created an extreme risk of danger

to consumers worldwide. Despite such knowledge, Ford willfully proceeded and placed profit before safety thus warranting a substantial award for punitive damages, interest, fees, and costs.

16. The defective nature of the vehicle was a proximate and producing cause of the accident, injuries, death, and the damages suffered by Plaintiffs. Ford is therefore strictly liable for supplying a defective and unreasonably dangerous product that resulted in personal injury, enhanced injury, death and property damage. A safer alternative design was economically and technologically feasible at the time the product left the control of Ford, both with respect to handling, rollover propensity and crash protection.

LIABILITY OF TRACEY SMITH

17. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

18. Defendant Tracey Smith negligently failed to maintain proper control of the Mercury Mountaineer on October 4, 2013 and allowed the vehicle to crash.

19. The negligence of Defendant Tracey Smith in failing to maintain proper control of the Mercury Mountaineer was a proximate contributing cause of the damages for which recovery is sought.

DAMAGES

20. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

21. Plaintiff Jamarian Smith, a minor, and Plaintiff Jirehian Smith, a minor, seek all damages recoverable under Mississippi law and *Miss. Code Ann. § 11-7-13* for the wrongful death of their father, Jenaro Smith.


22. The jury will determine the amount of damages to be awarded to Jamarian Smith, a minor, and Jirehian Smith, a minor, for the wrongful death of Jenaro Smith. Plaintiff Jamarian

Smith, a minor, and Plaintiff Jirehian Smith, a minor, seek all damages allowable under Mississippi law for the damages they each sustained as a result of the October 4, 2013 crash.

WHEREFORE PREMISES CONSIDERED, Plaintiffs demand a jury trial in Pike County, Mississippi and seek an award of damages to be determined by the jury for all damages of whatever kind and type available under Mississippi law, fees (including attorney fees), and costs of whatever kind and type available under Mississippi law against defendants. Plaintiffs also request such general and equitable relief as this Court sees fit.

Dated: September 30th 2016.

Respectfully submitted:



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