

roadway on the right hand side of the westbound travel lanes. She once again steered sharply to the left and the vehicle began a passenger-side leading rollover. After rolling over some six (6) complete times, the vehicle came to rest upright off the right side of I-64. Ms. Hinkle died of her injuries received in the crash sequence. Mr. Turner and Ms. Stafford survived the crash.

Plaintiffs' single theory of liability is that the 2004 AWD Mercury Mountaineer is defective and unreasonably dangerous because it is not equipped with Electronic Stability Control ("ESC"). ESC is a system that may, under certain circumstances, enhance a driver's control of the vehicle. Plaintiffs are relying on an "expert" witness, Murat Okcuoglu, to provide opinion testimony to support their defect theory and their alternative design.

Ford contests Plaintiffs' defect and liability theory and intends to demonstrate that the 2004 AWD Mercury Mountaineer is a safe, non-defective vehicle. Ford will also demonstrate that even if the subject vehicle had been equipped with ESC, this crash would have occurred much the same way.

After the crash, Plaintiffs had possession of the vehicle. One of Plaintiffs' experts, their accident reconstructionist Michael McCort, directed the download of data from the Powertrain Control Module ("PCM"). Among other types of data, the EDR (Event Data Recorder) function of the subject vehicle's PCM can record pre-crash speeds. The PCM data from this vehicle indicates that approximately 25 seconds before the crash, the vehicle was traveling approximately 90 miles per hour in a 70 mile per hour zone.

Ford has retained Todd Hoover as its accident reconstructionist, who has testified that the speed recorded by the PCM is accurate, based on the data he collected and analyzed regarding this crash. In Mr. Hoover's opinion, the vehicle rolled six complete revolutions before coming to final rest.

Ford has also retained Don Tandy and Robert Pascarella, who will testify as to the vehicle's inherent stability, with and without the addition of ESC technology. They are of the opinion that the likely causes of the crash were severe steering maneuvers coupled with the vehicle's excessive speed.

Dr. Catherine Corrigan may also testify on behalf of Ford from a biomechanical perspective in assessing the occupant kinematics during the crash and to demonstrate the mechanisms of the occupants' injuries.

Ford has designated its employee, Steve Beane, as an expert to testify as to Ford's design, development, testing and implementation of Interactive Vehicle Dynamics ("IVD") technology in general, and more specifically on the vehicle platform of the subject vehicle, U-152.

Ford has also disclosed as one of its experts James Engle, a Design Analysis Engineer employed by Ford. Mr. Engle will testify that the data recorded by the PCM on the subject vehicle is accurate.

II. Questions of Fact

1. Whether the 2004 AWD Mercury Mountaineer was in a defective and unreasonably dangerous condition to the user by reason of its design at the time it was designed and manufactured.

2. Whether a defective and unreasonably dangerous condition existed at the time the subject 2004 AWD Mercury Mountaineer was manufactured by Ford Motor Company.

3. Whether a defective and unreasonably dangerous condition created such a risk of accidental injury to users that an ordinarily reasonable and prudent company engaged in the manufacture of such a product, being fully aware of that risk, would not have put the product on the market.

4. Whether, at the time the subject 2004 AWD Mercury Mountaineer was designed and manufactured, its design conformed to the generally recognized and prevailing standards of the state-of-the-art in existence at the time.

5. Whether Plaintiffs have proposed a practicable, feasible, and safer alternative design.

6. Whether the alleged defective and unreasonably dangerous condition was a substantial factor in causing bodily injury to the Plaintiffs and damage to the 2004 AWD Mercury Mountaineer itself.

III. Questions of Law

1. Whether Plaintiffs' experts' opinions create a triable question of material fact for a jury as to whether the 2004 AWD Mercury Mountaineer was defective and unreasonably dangerous because it was not equipped with ESC.

2. Whether Plaintiffs can establish that they suffered any legal injury caused by Ford as a result of the crash.

3. All other issues briefed in Ford's Motions for Partial Summary Judgment, Ford's Motions in Limine, and/or described in Ford's proposed Jury Instructions.

IV. Pending Motions

On July 20, 2012, this Court granted Ford's Motion for Partial Summary Judgment on all theories of liability other than ESC (Doc # 52).

Presently, the Court has under submission the following:

1. Doc # 39: Ford's Motion for Partial Summary Judgment regarding claims of loss of enjoyment of life and punitive damages.

2. Doc #38: Ford's Motions in Limine.

V. Expected Evidentiary Objections

At this time, Ford's expected evidentiary objections are contained in its Motion in Limine (Doc # 38).

VI. Progress of the Case

The parties have completed the pretrial discovery, including the depositions of the experts.

VII. Status of Settlement Negotiations

The parties appeared before United States Magistrate Judge Edward B. Atkins on January 31, 2012 at the United States Courthouse in Lexington, Kentucky for a settlement conference. The conference concluded with no settlement. No settlement negotiations have taken place since then. There is little, if any, likelihood of settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2012, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following non-CM/ECF participants: None

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