

STATE OF MAINE  
CUMBERLAND, ss:

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. **CV-00-546**

TOM K. KOLE and )  
VICKY CROFT )

Plaintiffs )

vs. )

FORD MOTOR COMPANY, )  
BRIDGESTONE/FIRESTONE, INC. )  
and CLAIR FORD, LINCOLN )  
MERCURY, INC., )

Defendants )

COMPLAINT  
(Strict Liability, 14 M.R.S.A. §221;  
Negligence; Punitive Damages)

PLAINTIFFS DEMAND A JURY TRIAL

NOW COME Tom K. Kole and Vicky Croft, by their undersigned attorneys, and  
complain of Ford Motor Company, Bridgestone/Firestone, Inc. and Clair Ford, Lincoln Mercury,  
Inc. as follows:

**THE PARTIES**

1. At all times relevant, Plaintiffs, Tom K. Kole is a resident of Scarborough, Maine and was the owner and operator of a 1998 Ford Explorer, (hereinafter called the "Explorer") bearing VIN 1FMYU24X6WUD20527 equipped with 15" Firestone Wilderness AT tires.
2. At all times relevant Plaintiff, Vicky Croft, is a resident of Old Orchard Beach, Maine and was the right front seat passenger in the above-described vehicle in the crash as hereinafter described.
3. Defendant, FORD MOTOR COMPANY (hereinafter called "FORD") is a foreign corporation licensed to do business in the State of Maine, conducting business in Maine and deriving substantial economic profits in Maine.

4. Defendant, BRIDGESTONE/FIRESTONE, INC. (hereinafter called "FIRESTONE") is a foreign corporation licensed to do business in the State of Maine, conducting business in Maine and deriving substantial economic profits in Maine.

5. Defendant, CLAIR FORD, LINCOLN MERCURY, INC. is a domestic corporation doing business in Saco, Maine which leased, sold and otherwise distributed the Explorer vehicle at issue.

### INTRODUCTION

6. The defective Explorer vehicle involved herein was designed, manufactured, assembled and distributed by FORD.

7. The Explorer was first sold by FORD as a 1991 model and was designed to replace the Bronco II. In fact, for a significant of time, the Explorer was called the "4 door Brōnco II." FORD used the Bronco II as the "image" or "target" for the design of the Explorer and patterned the testing and analysis of the rollover behavior of the vehicle on the history and testing of the Bronco II. Both the Explorer and Bronco II were originally equipped with virtually identical front suspensions, rear suspensions, steering systems, tires, chassis, and steering ratios. In 1995, FORD modified the Explorer by changing front suspension system designs from a twin I beam to a SLA suspension.

8. The tires on the Explorer involved in the crash were 15" Firestone Wilderness AT designed as part of a joint venture between FORD and FIRESTONE. The tire specifications were created by FORD and the tire was manufactured by FIRESTONE. Both FORD and FIRESTONE jointly participated in the design, development and testing of the tire for use on the Explorer.

9. On Sunday, March 14, 1999 at about 6:25 p.m., on the Payne Road, so-called, in Scarborough, Maine the Explorer was being driven by Plaintiff, Tom K. Kole northbound. Plaintiff, Vicky Croft, was the right hand seat passenger in the Explorer. To avoid a deer in the middle of the roadway, Plaintiff, Tom K. Kole, swerved to the right and then swerved to the left resulting in the Explorer rolling over on its right side onto and on top of and over a southbound vehicle on the Payne Road and continuing across the Payne Road coming to rest on its left side in a ditch.

**COUNT I - STRICT LIABILITY**

14 M.R.S.A. §221

10. Plaintiff's repeat and reallege each and every allegation contained within paragraphs number 1-9.

11. At all times relevant to the Complaint, the Defendants were in the business of designing, manufacturing or otherwise distributing automobiles and tires. The Explorer was defective and unreasonably dangerous at the time it was designed, manufactured and distributed. The defective nature of the design of the Explorer included defects in design; stability; handling; marketing; instructions; warnings; crashworthiness; rollover resistance and controllability. The defective nature of the vehicle included the following:

- a) The vehicle is defective in that the design of the "package", which includes the combination of track width, wheelbase and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed;
- b) The front suspension system has a tendency to "jack" in a cornering maneuver according to FORD's own documents;

- c) The combination of a) and b) create an extreme risk of rollover that is both beyond the expectations of the consumer and creates a risk that far outweighs any benefit associated with the design;
- d) The design referred to in a), b) and c) creates an unreasonable risk of rollover given that the vehicle was intentionally marketed as a "station wagon" for use on interstate highways at interstate speeds with full knowledge that a vehicle could not handle ordinary emergencies as encountered on a day to day basis and will roll over on flat level surfaces due to tire friction forces;
- e) The vehicle was defectively marketed in that the consumer was led to believe the vehicle was a safe and stable "station wagon-type" vehicle without providing necessary and adequate warnings and instructions that would have given the consumer adequate information so that an informed choice could be made about purchasing the vehicle.
- f) The vehicle was defective in that it was designed to provide reasonable and necessary occupant protection in the event of a rollover accident.

12. The 15" Firestone Wilderness AT tire (the "tire") was defective and unreasonably dangerous at the time it was designed, manufactured and distributed. The defect created an emergency condition that was uncontrollable given the Explorer vehicle involved. The combination of defects of the Explorer and the tire were a proximate and producing cause of the crash and resulting injuries and damages.

13. In consequence thereof, Defendants, individually and collectively, are strictly liable for supplying a defective and unreasonably dangerous product.

14. In direct consequence of the above, Plaintiffs Tom K. Kole and Vicky Croft suffered serious personal injuries and damages, including permanent injury, past, present and future medical and hospital expenses and past, present and future pain and suffering, both physical and mental, all to their damages.

WHEREFORE, Plaintiffs seek money judgments against all Defendants for strict liability, 14M.R.S.A. §221 in such sums as are fair and reasonable in the premises, together with interest and costs.

### COUNT II - NEGLIGENCE

15. Plaintiff's repeat and reallege each and every allegation contained within paragraphs number 1-14.

16. At all times relevant to the Complaint, the Defendants were in the business of supplying motor vehicle and tires for use on the public roadways. The Defendants held themselves out as having special expertise in the industry. As such, the Defendants owed Plaintiffs a duty to use reasonable care in the design; manufacture; preparation; testing; instructing; and warnings surrounding the Explorer. The Defendants violated this duty by supplying a vehicle that was defective. The negligent acts included, but are not limited to the following acts or omissions:

- a) Negligently designing the vehicle from a handling and stability standpoint;
- b) Negligently designing the vehicle with poor rollover resistance;
- c) Negligently testing of the vehicle from a handling and stability standpoint;
- d) Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;

- e) Failing to adequately train and assist dealers in the dangers associated with the vehicle;
- f) Failing to disclose known problems and defects;
- g) Negligently marketing the vehicle as a safe and stable passenger vehicle;
- h) Failing to meet or exceed internal corporate guidelines;
- i) Negligently designing the vehicle from a marketing standpoint;
- j) Failing to inform the consumer, including the Plaintiff, of information that FORD knew about rollover risk in light utility vehicles thus depriving Plaintiff of the right to make a conscious and free choice;
- k) Failing to comply with the standards of care applicable in the automotive industry insofar as providing reasonable occupant protection in a rollover;
- l) Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards;
- m) Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;
- n) Failing to recall the vehicle or, alternatively, retrofitting the vehicle to enhance safety;
- o) Negligent design and manufacturing of the tire.
- p) Negligent failure to warn of the dangers of the tire.
- q) Negligent failure to properly test the tire.
- r) Negligent failure to warn consumers of a known danger/defect in the tire.
- s) Negligent failure to disclose post-sale information known about the dangers or defects in the tire.

- t) Negligent concealment of the known dangers associated with the tire.
- u) Negligent operation of the plant where the tire was made;
- v) Negligent quality control procedures resulting in poor quality tire production;
- w) Negligent failure to recall the tire or, alternatively, to warn consumers of known crashes precipitated by known tire problems.

17. The above acts of negligence of Defendants were a direct and proximate cause of the crash at issue and resulting injuries and damages to Plaintiffs, all without any comparative negligence on the part of Plaintiffs.

WHEREFORE, Plaintiffs seek money judgments against all Defendants for such sums as are fair and reasonable in the premises, together with interest and costs.

### **COUNT III - BREACH OF WARRANTY**

18. Plaintiff's repeat and reallege each and every allegation contained within paragraphs number 1-17.

19. At all times relevant to the Complaint, the Defendants were "merchants" in the business of supplying "goods". The Explorer and its tires were "goods" and/or "products" sold for consumer usage.

20. As such, the Defendants breached the warranties of merchantability and fitness for a particular purpose in that the Explorer was not fit for ordinary use or for the intended use for which it was purchased.

21. These breaches of warranty proximately resulted in the accident, injuries and damages suffered by the Plaintiffs.

WHEREFORE, Plaintiffs seek money judgments against all Defendants for such sums as are fair and reasonable in the premises, together with interest and costs.

**COUNT IV - PUNITIVE DAMAGES**

22. Plaintiff's repeat and reallege each and every allegation contained within paragraphs number 1-21.

23. In consequence of the aforementioned acts of Defendants FORD and FIRESTONE, said Defendants evidenced willful, wanton and reckless conduct, express or implied, which included and is not limited to the conduct as previously described in paragraph 16 a) through x) and;

- a) The Ford Explorer was designed to replace the Bronco II. In fact the Ford Explorer was originally called the "4 door Bronco II.
- b) The Bronco II has been judicially determined to be a defective and unreasonably dangerous vehicle.
- c) The design and testing history behind the development of the Bronco II establishes the knowledge that FORD had at the time it designed and distributed the Explorer.
- d) FORD's knowledge included knowledge that SUV's designed with the combination of a narrow track width and high center of gravity had a dangerous tendency to flip in ordinary turning maneuvers when operated as a passenger-type vehicle. FORD knew this fact when it sold the Explorer.
- e) FORD also knew that the Explorer was not equipped to properly handle emergency maneuvers at normal roadway speeds as evidenced by rollover accident involving FORD company owned vehicles.
- f) FORD consciously chose to market the Explorer despite this knowledge and placed the consuming public at risk of extreme danger.

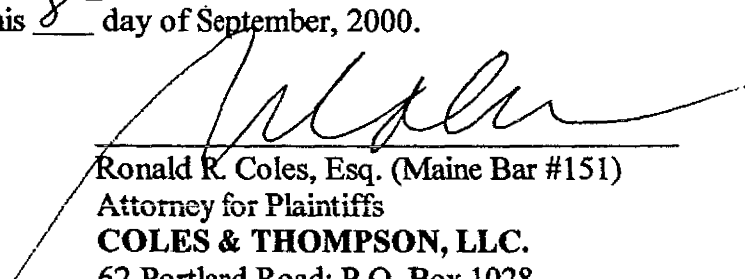


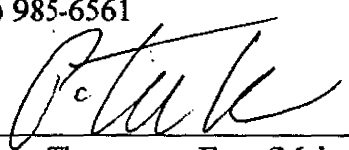
g) Likewise, both FORD and FIRESTONE knew, prior to the crash at issue, that the Explorer and the tires in question were, in combination, defective, unreasonably dangerous, and was producing death and injury due to the catastrophic tread separations.

24. In consequence of the above conduct by Defendants FORD and FIRESTONE, said Defendants were engaged in a willful, malicious, wanton and reckless design, manufacture, marketing, testing and distribution of a product which they knew was unreasonably dangerous and defective.

WHEREFORE, Plaintiffs seek punitive money damages against Defendants FORD and FIRESTONE, individually and collectively for such sums as are fair and reasonable in the premises, together with interest and costs.

Dated at Kennebunk, Maine this 8<sup>th</sup> day of September, 2000.

  
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