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Michael Chertoff, Assistant Attorney General
United States Department of Justice
Criminal Division
950 Pennsylvania Avenue
Washington, D.C. 20530-0001

Re: Request for Criminal Investigation into Possible Fraud, Perjury, and False Statements Made by Ford Motor Company to Courts, Regulators and Consumers Regarding the Safety of Ford Vehicles

Assistant Attorney General Chertoff:

On behalf of the millions of drivers and passengers on our nation's highways, Environmental Working Group requests that the Criminal Division of the Department of Justice investigate Ford Motor Company's ("Ford") pattern and practice of willfully concealing safety-related defect data from courts, federal regulators and consumers. Ford has engaged in obstructive practices aimed at concealing information related to the safety of its vehicles from courts, regulators and consumers—particularly with respect to Ford's Bronco II and the Econoline 350 ("E-350") van. This is a fact that has been confirmed by the National Highway Traffic Safety Administration ("NHTSA"), and by state and federal courts. Based on information uncovered in civil products liability lawsuits brought against Ford Motor Company, it appears that Ford may have violated the following criminal statutes: (1) 18 U.S.C. § 1001, which governs false statements made in the course of government proceedings; (2) 18 U.S.C. § 371, which proscribes fraud against the United States; and (3) 18 U.S.C. § 1621 and 18 U.S.C. § 1622, which prohibit perjury and subornation of perjury.

Thousands of innocent victims have lost their lives or suffered serious injury in rollover accidents due to the dangerous rollover propensity of the Bronco II and the Econoline 350 van, which Ford knowingly failed to cure and strategically obscured from regulators, courts and consumers. Hundreds of thousands of these cars travel the nation's roadways every day. Ford's obstructive practice of concealing safety data poses an unacceptable danger to the motoring public and creates an intolerable gap in the automobile safety framework. In order to address Ford's misconduct and put an end to these abuses, it is necessary for the Department of Justice to investigate Ford, and upon a finding of criminal misconduct, penalize Ford to the fullest extent of the law for its pattern and practice of concealing safety data from regulators, courts and consumers.

I. *Ford Engaged in a Conspiracy to Conceal Safety Data Related to the Bronco II's Increased Rollover Propensity from Regulators and Consumers.*

Ford willfully concealed safety-related defect data about the Bronco II from rollover victims, courts and NHTSA. Without the dogged determination of conscientious judges, rollover victims and their attorneys, crucial information about the stability defects present in Ford's Bronco II would remain in the files of Ford's Office of General Counsel. Documents uncovered in civil products liability litigation reveal that Ford knew that the Bronco II posed a risk of death or injury due to increased rollover propensity, released a defective vehicle to the public despite its engineers' concerns about the vehicle's increased rollover propensity, mishandled key documents relating to the development of the vehicle, and paid at least one witness to lie about the safety of the Bronco II. Courts stepped in, revealing fraud and gross misconduct.

A. *Ford Committed Fraud in Bronco II Product Liability Litigation.*

A federal court in West Virginia found that Ford had engaged in a conspiracy to commit fraud by paying a former staff engineer five million dollars to lie about Bronco II safety in some 30 cases brought by rollover victims. The former Ford engineer, David Bickerstaff, testifying as both a fact and expert witness for Ford, lied about his assessment of the rollover propensity of the Bronco II, about Ford engineers' concerns about the rollover propensity of the vehicle, and about his decision-making authority during his tenure at Ford. After uncovering inconsistencies in Bickerstaff's testimony and learning of Ford's contract to pay Bickerstaff millions of dollars to testify in Ford's favor, a federal court in West Virginia found that Ford and Bickerstaff were co-conspirators in a common scheme of fraud. The court held that a "conspiracy has been shown to have existed between Ford and its officers and agents ... as well as Mr. Bickerstaff and his company from July 1990 until the year 1996." Goff, et al. v. Ford Motor Company, Civ. No. 2:97-0341 (S.D.W.V. 2001), Transcript dated March 15, 2001, at 477 (attached as Exhibit A).

The Supreme Court of South Carolina allowed a rollover victim to proceed in an action to set aside a jury ruling in Ford's favor where the victim presented evidence of Ford's subornation of perjury, in its purchase and use of David Bickerstaff's false testimony, and of Ford's fraudulent concealment of critical safety data. Upon learning of Ford's misconduct after the original trial, the victim filed a lawsuit against Ford for fraud, seeking to overturn the jury verdict exonerating Ford. In support of his claim, the victim, Ray Chewing, presented the court with a letter from Bickerstaff to Ford in which Bickerstaff stated "I would suggest you retain our services to assist you in preparing myself, in Ford's favor, as we discussed per our phone conversation." Chewing v. Ford Motor Company, et al., South Carolina Supreme Court, Op. No. 25627, filed April 14, 2003 (attached as Exhibit B). Chewing also submitted a memorandum from Ford to the Arizona Proving Ground "acknowledging jacking, stability and design problems with the Bronco II." *Id.*

Reviewing this evidence, the South Carolina Court of Appeals found that “an ongoing plot between Ford, Ford’s attorneys, and a witness to hide the truth in a series of products liability cases ... would constitute a scheme resulting in harm to the public at large,” and that such fraud upon the court would make it “manifestly unjust for the original judgment to stand.” Chewning v. Ford Motor Company, et al., South Carolina Court of Appeals, Op. No. 3351, filed June 4, 2001 (attached as Exhibit C). The South Carolina Supreme Court agreed, upholding the Court of Appeals’ finding that the victim could pursue a claim for fraud and move to set aside the jury’s verdict in Ford’s favor, finding that Chewning’s “complaint sufficiently stated a claim for fraud on the court.” Chewning v. Ford Motor Company, et al., South Carolina Supreme Court, Op. No. 25627, filed April 14, 2003.

An Ohio court vacated a settlement agreement between Ford and the parents of a two-year-old rollover victim, finding by clear and convincing evidence that Ford committed fraud on the court by concealing key medical records in the course of settlement proceedings. In the case of In the Matter of Adam Matyaszek, a two-year-old child was seriously injured in a Bronco II rollover accident. Ford concealed medical records indicating that the child had serious brain injuries, settling the case for \$10,000. The child suffered for years following the accident from the brain injury, and the parents later learned that Ford had concealed a doctor’s report, which had identified the injury prior to the settlement. The victim then sued Ford for fraud, seeking to vacate the original settlement. The Ohio Court hearing the case permitted the victim to set aside the settlement and found that Ford committed fraud on the court in concealing the doctor’s report:

[B]ased on the evidence, testimony and law, [Plaintiff] has proved by clear and convincing evidence that the attorneys for Ford Motor Company submitted ... an Application for Settlement which they prepared representing that [Plaintiff] had recovered from his injuries, when in fact said attorneys knew or reasonably should have known that there was another doctor’s report which disagreed with their application and that would have put into question the approval of the settlement. Therefore, the Court, finds and concludes that Ford’s attorneys hereby committed a fraud on the Court....

In the Matter of Adam Matyaszek, Court of Common Pleas Probate Division, Summit County Ohio, Case No. 1988 GM 04051, filed March 27, 2003 (attached as Exhibit D).

An Indiana court, which discovered that Ford withheld key safety information about the Bronco II from consumers and NHTSA, found that Ford’s conduct displayed an “utter indifference” for the rights of consumers. See Ford Motor Company v. Ammerman, 705 N.E. 2d 539, 557 (Ind. Ct. App. 1999) *cert denied* by 2000 U.S. LEXIS 1947 (Ind. 2000) (attached as Exhibit E). During the litigation, the court discovered the following facts: (1) Ford cancelled routine safety tests of the Bronco II due to concerns about the safety of its professional test drivers; (2) Ford collected 113 Bronco II development documents, 53 of which were lost or destroyed while in the custody of Ford’s Office of General Counsel; (3) Ford concealed from NHTSA proof that the Bronco II rolled over during routine safety tests; and (4) Ford had

knowledge of its engineers' concerns about the stability of the Bronco II. Both the trial court and the appeals court determined that Ford's conduct was reprehensible:

[T]he Bronco II's which rolled off the assembly line are dangerous and defective. Ford's knowledge of the defect cannot be reasonably questioned. The continued push to production of this product after all of the internal protestation to the contrary, is the crassest form of corporate indifference to the safety of the ultimate user or consumer and constitutes gross negligence.

Ammerman, *Id* at 557.

B. *Ford Withheld Critical Safety Testing Data from NHTSA During Bronco II Defect Investigation.*

Ford concealed results of routine safety tests from NHTSA, despite "plain English" requests for all safety defect data on the Bronco II. NHTSA's Office of Defects Investigation ("ODI") performed a defect investigation into the Bronco II from 1988 until 1990. The investigation was closed before NHTSA reached a conclusion as to a defect in the vehicle. NHTSA requested that Ford provide all records relating to rollover, stability and performance of the Bronco II. Ford responded, but failed to provide documentation on a series of tests during which the Bronco II tipped up, the outriggers failed, and the vehicle pole-vaulted over. These tests were halted out of concern for the safety of Ford's test drivers. When Ford's omission was brought to NHTSA's attention, NHTSA acknowledged that a "plain English" reading of the NHTSA request would have indicated that the tests were responsive, and "requested that Ford construe ODI's information requests according to their 'plain meaning' in the future." Letter of May 22, 1998 from John Womack to Thomas Saybolt, at 3 (attached as Exhibit F).

After withholding key safety test results from NHTSA during the defect investigation into the Bronco II, Ford proceeded to mischaracterize NHTSA's findings as part of its defense in personal injury cases brought by rollover victims. In defending against claims alleging that the Bronco II was a defective product, Ford claimed that NHTSA had issued a no-defect decision on the Bronco II. On the contrary, while NHTSA did close the defect investigation into the Bronco II, NHTSA reached no conclusion as to the presence of a safety defect in the vehicle. Upon learning of Ford's misrepresentations, NHTSA instructed Ford to stop making the false claim about NHTSA's findings:

[W]e were disappointed to learn that Ford ... products liability counsel have been characterizing ODI's decision to close the Bronco II investigation as a decision that the vehicles under investigation did not contain safety-related defects. As we have repeatedly emphasized to Ford ... ODI does not make "no-defect decisions." ODI specifically did not do so with respect to the Bronco II rollover investigation.

[C]ounsel in product liability cases ... should not characterize NHTSA decisions to close investigations as “no-defect” decisions. I request that Ford take appropriate steps to ensure that this advice is followed....

Id at 4.

II. *Ford Concealed Safety Data Related to the Econoline 350 Van from Courts, Regulators and Consumers.*

Ford employed the same practice of concealing safety-related defect information from consumers and NHTSA with the Econoline 350 vans as it did with the Bronco II. The Bronco II and the Econoline 350 are dangerously similar with respect to the vehicles’ increased rollover propensity. During routine safety testing, the E-350 vans tipped up on two wheels and rolled over. Ford concealed this safety data in the course of litigation brought by rollover victims and during a safety presentation before NHTSA.

A. *Ford Willfully Concealed Evidence in E-350 Van Product Liability Litigation.*

On February 14, 2003, a federal judge in Illinois sanctioned Ford for willfully concealing evidence in an Econoline 350 van rollover case. Ford misrepresented to the court that it did not have any van rollover testing data. Witness depositions revealed, however, that Ford had performed computerized ADAMS testing as well as live on-road testing of the vehicle, and that during both tests, the E-350 tipped up on two wheels or rolled over. After sanctioning Ford for its misconduct, the court declared that Ford’s behavior “almost borders [sic] on criminal to be honest with you,” proclaiming that “[s]omebody is lying here[,] [s]omebody is committing perjury....” Johnson v. Ford, No. 99 Civ. 0509 (W.D. IL) Transcript of Feb. 14, 2003, at 18 (attached as Exhibit G).

B. *Ford Withheld Safety Testing Data from NHTSA During 15-Passenger Van Safety Presentation.*

In August 2001, Ford misled NHTSA by omitting critical safety data from a presentation given to NHTSA regarding the safety of Ford’s E-series of 15-passenger vans. In response to NHTSA’s Consumer Advisory of April 2001 regarding the increased rollover risk of 15-passenger vans, Ford gave a presentation to NHTSA to demonstrate the safety of its vans. Prior to this presentation, it was revealed in litigation that Ford had conducted ADAMS testing in which the E-350 van tipped up and rolled over, as well as a live on-road P6-101 test in which a van tipped up on two wheels and rolled over. See Affidavit of Dr. Thomas Wielenga, at ¶¶ 9-11, and Deposition of Richard Schettler, at 16-23 (attached as Exhibits H & I). The ADAMS rollover occurred on March 19, 2001, and the P6-101 rollover occurred in early 1990. See *id.* This rollover information came to light in the Johnson v. Ford case in 2003, two years after the NHTSA presentation. During the presentation to NHTSA, Ford challenged the validity of VDANL computer-simulated tests used by NHTSA and presented videos and testing results from on-road P6-101 tests. Ford’s materials

made no mention of either the ADAMS model testing or on-road P6-101 tests during which the vehicle had tipped up and rolled over. Both of these tests were undoubtedly relevant to the issue of the safety of the E-series 15 passenger vans, yet Ford misled NHTSA by omitting these testing results from its presentation materials.

III. *Courts have Sanctioned Ford and Public Officials Have Admonished Ford for Concealing Safety Data.*

A. *Ford Concealed Data from Accident Victims in Personal Injury Litigation.*

State courts hearing personal injury cases involving Ford vehicles have sanctioned Ford or entered judgment against Ford as a result of the company's practice of willfully concealing safety data during litigation brought by accident victims. In 1997, a Michigan court ordered a default judgment against Ford in a lawsuit brought on behalf of an infant who suffered permanent injuries after her parents' Ford was rear-ended. The court found that a default judgment against Ford was appropriate because Ford's flagrant refusal to turn over key safety data so prejudiced the plaintiff that a trial on the merits was impossible. The court declared:

For over two years, Ford had concealed very significant documents and information, and, worse, had blatantly lied about those documents and the information in them; any word other than 'lied' would understate what Ford did.

Traxler v. Ford, 576 N.W. 2d 398, 400 (Mich. 1997) (attached as Exhibit J). In 2001, another Michigan court imposed a \$546,836 sanction against Ford for its failure to turn over safety testing data that was critical to a seatbelt failure case. See Wiitala v. Ford, 2001 Mich. App. LEXIS 2009, No. 214444 (Oct. 5, 2001) (attached as Exhibit K).

B. *Ford Misled Police About the Safety of the Crown Victoria.*

In the case of Ford's Crown Victoria, state and municipal officials have spoken out against Ford for making misrepresentations regarding the safety of police cruisers. Several police officers burned to death in rear end collisions in Crown Victoria police cars. Ford agreed to install fuel tank shields, which it claimed would withstand impacts at speeds of up to 75 miles per hour. To the contrary, Ford's engineers' deposition testimony later revealed that the tank shields failed a Ford crash test miserably, leaking more than 40 times the maximum federal limits for fuel tank leaks. The Dallas City Attorney, Madeline Johnson, who is suing Ford in efforts to determine whether Ford's cruiser is safe, remarked, "[i]nstead of the success Ford claimed it was, the crash test obviously was an abject failure, and calls seriously into question Ford's claims that the new fuel tank shields are enough to solve Crown Vic fuel tank safety problems," further stating that Ford will "say one thing in public, and another in sworn testimony." February 28, 2003 Press Release, "Ford Admits Crown Vic Failed Crash Test," Dallas City Attorney's Office (attached as Exhibit L). In efforts to address the safety concern surrounding the Ford Crown Victoria, the

Louisiana Attorney General, Richard Ieyoub, has called for a state-wide moratorium on the purchase of these vehicles, and has publicly requested that Ford "answer truthfully what they have known about these risks." January 16, 2003 Press Release, "Atty. Gen. Richard Ieyoub Wants Ford to Fix Fire-Prone Cars Killing Law Officers," Louisiana Attorney General's Office (attached as Exhibit M).

IV. *EWG Calls on the Department of Justice to Investigate Possible Criminal Violations by Ford Motor Company in Concealing Safety Data about the Bronco II and the Econoline 350 Van from Courts, Regulators and Consumers.*

Ford is an automobile manufacturer that has demonstrated blatant disregard for motor vehicle safety, consumer protection, judicial authority and regulatory procedure. Ford paid at least one witness millions to lie in rollover cases, and a federal court found that Ford's conduct constituted a conspiracy to commit fraud. Ford misled courts and victims by withholding critical safety data. Ford concealed information from NHTSA and misled courts about NHTSA findings. To date, however, Ford has not faced criminal prosecution for this misconduct and is likely to continue its obstructive practices. In order to put an end to this insidious abuse, we seek a United States Department of Justice Criminal Division investigation into Ford Motor Company's pattern and practice of concealing safety data from courts, regulators and consumers, and upon a finding of criminal misconduct, prosecution of Ford to the fullest extent of the law.

Respectfully Submitted,

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Environmental Working Group