

Feb 14, 2003

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by the judge.*

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STATES
DISTRICT
STERN DI
LEY,
EY,

February 14, 2003
2:30 p.m.

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8 FORD MOTOR COMPANY,
9 Defendant.

10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL
BEFORE THE HONORABLE ROBERT W. GETTLEMAN

11 APPEARANCES:

12 For the Plaintiffs:

GOLDBERG, WEISMAN & CAIRO, LTD.
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Chicago, Illinois 60601
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16 1660 Second Street
Cleveland, Ohio 44113-1454
17 BY: MR. JAMES A. LOWE
MR. DENNIS P. MULVIHILL

18 For the Defendant:

DONOHUE, BROWN, MATTHEWSON & SMYTH
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BY: MR. JOHN A. KRIVICICH
MR. JOHN T. COLEMAN

23 Official Court Reporter:

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219 South Dearborn Street
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SUMMARY:

... Page 1 ...

Johnson v. Ford

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1 APPEARANCES (Continued):

2 For the Defendant:

CAMPBELL, CAMPBELL, EDWARDS &
CONROY, P.C.
1265 Drummers Lane, Three
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Wayne, Pennsylvania 19087
BY: MR. WILLIAM J. CONROY

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1 (Proceedings heard in open court:)

2 THE CLERK: 99 c 509, Sheila Johnson versus Ford Motor
3 Company.

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4 THE COURT: Okay.
5 MR. LOWE: Good afternoon, your Honor. I'm James Lowe
6 and with my partner Dennis Mulvihill and with John Kolb and Lisa
7 Spelson from Goldberg, Weisman & Cairo. We're here today on
8 behalf of the plaintiffs.
9 MR. KRIVICICH: Good afternoon, your Honor. John
10 Krivicich on behalf of defendant Ford Motor Company along with
11 my partner John Coleman.
12 And I would like to introduce Mr. Bill Conroy from
13 Philadelphia who has filed an appearance pro hac vice in the
14 last couple of days, your Honor.
15 MR. KOLB: I haven't seen that, your Honor.
16 MR. KRIVICICH: We'll be happy to get Mr. Kolb a copy.
17 THE COURT: Welcome aboard.
18 MR. CONROY: That's what I thought, too, your Honor.
19 THE COURT: I don't know how I want to title this ship
20 though I can think of a few names.
21 This is here for a final pretrial conference. I'm
22 going to tell you what we're not going to do today.
23 We're not going to get into jury instructions. They're
24 a mess. They are a horror. I would not visit jury instructions
25 even a fifth this thick on any jury. So you guys are going to

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1 probably start this trial not having any idea what the jury
2 instructions are. You couldn't agree on anything it looks like
3 or almost anything. So I'm not doing that today.
4 We're not getting into exhibits today. We're not
5 getting into voir dire today. You'll be given the voir dire on
6 the day of trial.

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7 I want to deal with the motions in limine and the
8 motion for reconsideration and a counter motion for sanctions.
9 Why don't we do that first? Mr. Krivicich, you filed a
10 motion for reconsideration. Maybe you should go first.

11 MR. KRIVICICH: Thank you, your Honor.

12 Your Honor, we filed a motion for reconsideration that
13 was based on the depositions of a couple of engineers who Mr.
14 Hayden alluded to at the time that he addressed the Court on
15 January 17th. Those engineers are Mr. Hanson and Mr. Gordon.
16 They filled in, so to speak, the testimony relating to what is
17 and what -- what these ADAMS (phonetic) -- alleged ADAMS E350
18 model is and what it is not.

19 And the evidence is that in the fall of 1999, Mr.
20 Hanson was asked to begin work towards any 350 model, and he
21 took various data sets that were available to him from various
22 E350 production models, different years, and literally cobbled
23 them together.

24 That work was then shelved, and Mr. Gordon picked up
25 the ball, so to speak, in the year 2000, and, at that point, he

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1 did more work on that model. And as I think his testimony is
2 uncontradicted, that at no point was the model complete, was it
3 corroborated, was it verified, and I believe he likened it to
4 being 20 to 25 percent complete at the time that he left it, and
5 he also departed from that scene sometime in the year 2000.

6 All that testimony is offered to your Honor relative to
7 the issue of whether or not Ford deliberately misled or intended
8 to mislead anyone when it represented to the Court that there
9 was no ADAMS E350 model for the subject vehicle, the subject

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10 vehicle being the 1995 E350 involved in this case or the VM 127
11 platform as it's -- excuse me, the VM 158 platform of Econoline
12 E350, otherwise known as the 1992 through 1996 model vehicle.

13 The testimony is otherwise set forth in the motion for
14 reconsideration. It reiterates some of the points that your
15 Honor has heard relative to the initial -- relative to the
16 renewed motion for sanctions. It also reiterates, I believe,
17 the lack of any prejudice to the plaintiffs, and it establishes
18 that Ford had a reasonable good faith belief for its statements
19 that no ADAMS model for the E350 Super Club wagon existed
20 because the modeling that was being attempted and that has been
21 testified to by both Mr. Hanson and Mr. Gordon was not complete
22 but was only the beginning of work on such a model, and it
23 didn't represent any existing E350 production vehicle.

24 So the statements of Mr. Danke (phonetic) and Mr.
25 Darryl (phonetic) upon which I relied, that there was no ADAMS

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1 E350 model relative to the subject vehicle or the platform in
2 question, were correct when viewed in connection with the
3 judgment of these engineers who are, after all, the ones that
4 the lawyers are consulting with. And those representations were
5 then communicated to the Court through me based on the affidavit
6 of Mr. Danke and the deposition testimony of Mr. Darryl.

7 So we're asking that the Court revisit the issue of the
8 appropriateness of a sanction in this case with the
9 understanding that given your Honor's ruling on January 21, the
10 instruction that your Honor is being asked -- or your Honor has
11 ruled will be given to the court really represents a fiction.
12 There is no computerized handling and stability completed

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13 testing of a production E350 vehicle. And to instruct the jury
14 that Ford's testing in that regard represents testing of such a
15 vehicle, and that that testing further shows that the vehicle is
16 not safe and defective in handling and stability, is not only
17 not accurate but a sanction out of all proportion to the
18 mistake, and, I think, a mistake that was made in not initially
19 identifying the existence of this testing.

20 So we're asking that your Honor reconsider the issue.

21 THE COURT: All right.

22 MR. LOWE: Thank you, your Honor. If the Court
23 please --

24 THE COURT: Wait one moment. I want you to wait a
25 minute. Steve is going to look for something.

7

1 (Pause.)

2 THE COURT: Okay. Go ahead.

3 MR. LOWE: Thank you again, your Honor.

4 Perhaps it is as striking to your Honor as it is to us
5 that Mr. Hayden, who is central to this issue of the motion for
6 reconsideration and plaintiffs' third motion for sanctions, did
7 not even come here today. Instead, we see a new lawyer, one who
8 has not appeared at any time in this case up until today. And
9 it's very telling because Mr. Conroy's presence here today is
10 absolutely related to plaintiffs' third motion for sanctions.

11 We spent in our brief approximately nine pages
12 responding to defendant Ford's motion for reconsideration only
13 to make sure that the record was clear that there is a response
14 to all of the points that they raised.

15 But there was nothing new in the motion for
Page 6

FORDdefaultfinaloat1

16 reconsideration that they hadn't argued to this Court repeatedly
17 on January 17th and January 21st before this Court made its
18 decision.

19 They have always argued that this wasn't relevant, that
20 it was a mistake, that it's a box on wheels or a cobbled
21 together vehicle, never dealing with the truth of the matter
22 which was this was used by their employee Jeffery Gordon and
23 actually run as part of his analysis on the stability of the
24 E350.

25 But it didn't have to do with that. And this Court

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1 recognized that it didn't have to do with whether or not this
2 was a good or not a good E350 ADAMS model. The question was
3 whether or not it was a willful and reprehensible effort to
4 conceal those documents during discovery when they should have
5 been produced.

6 Mr. Hayden said I think your Honor hit the nail on the
7 head exactly in the December hearing where you said there is a
8 difference between talking about the fact that there is no such
9 thing as an E350 model and disclosing the fact that there is
10 something out there that we really don't think is E350 modeling.

11 He's saying that's not the way we should be practicing,
12 and he's absolutely right. It is not the way that Ford should
13 be practicing or any participants in the discovery process in
14 litigation should be practicing.

15 But now they come in arguing once again the exact same
16 thing they've argued to your Honor before, that because this
17 isn't really a good ADAMS model, their willful concealing of it
18 throughout four years of having been asked for it should be

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19 excusable.

20 And they then compound it with one lie -- and there is
21 no other reason to call it something it is not -- and another
22 one that we discovered which is the basis for our third motion
23 for sanctions.

24 The first that I'm going to point out to your Honor has
25 really no prejudice to the plaintiffs. But it reflects a

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1 contempt for the entire judicial process, for the plaintiffs in
2 this case, for the plaintiffs in other litigation with Ford
3 Motor Company and for this Court personally because Mr. Hayden
4 stood before you, your Honor, and said, in defense of Ford, in
5 mitigation of what sanction Ford should have known was coming
6 down because of what you had told him on Friday, watch yourself,
7 Mr. Hayden, think about what you're saying to this Court, think
8 about what representations your counsel over the years have made
9 to the plaintiffs and to this Court and then come back Monday --
10 perhaps it was Tuesday -- the 21st, and tell us what you want to
11 say.

12 So he comes back on the 21st of January, your Honor,
13 and he says, "The thing that troubles me the most, of course, is
14 what I said at the outset of my remarks on Friday, your Honor,
15 that all of this could have been avoided simply by providing
16 this information."

17 THE COURT: What are you reading from?

18 MR. LOWE: The transcript on pages 10 and 11 from the
19 hearing of January 21st.

20 THE COURT: Tab number. Tab number what? The tab
21 number you're reading from.

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22 MR. LOWE: Oh, yes. It would be Tab Number 16, your
 23 Honor, transcript pages 10 and 11. And I started reading at the
 24 bottom of page 10. And actually I made earlier reference also
 25 to a quote from him on page 10.

10

1 Again, by way of background, he's saying, Judge, please
 2 don't punish us, as Mr. Krivicich has now asked your Honor
 3 today, to consider this all a mistake. We had nothing to hide
 4 here. We could have easily provided this information.

5 And then he goes on, and I quote, and this is what he
 6 said to your Honor, "It was something that was provided
 7 voluntarily in the McGuire deposition. It was something we
 8 weren't really intending on hiding at all. It was just simply a
 9 question of somebody saying it wasn't relevant."

10 Well, the plaintiffs did not know as we sat here and
 11 listened to that argument, and I'm quite certain this Court did
 12 not know as we sat here and listened to Mr. Hayden say those
 13 words, that they were utterly false, that, in fact, Ford had not
 14 voluntarily produced Mr. McGuire or any aspect of his
 15 deposition. In fact, Ford had filed -- and that is Tab Number
 16 18 -- a motion for protective order in the Baker case to protect
 17 Mr. McGuire from being deposed at all on any subject.

18 And it was argued strenuously in the Georgia Court that
 19 there was nothing that Mr. McGuire or any of the other witnesses
 20 sought to be deposed in the Baker case could possibly offer. At
 21 most, Mr. McGuire knew something about a press release or a
 22 meeting with NHTSA in August of 2001 that had absolutely nothing
 23 to do with the crash in the Baker case, and he couldn't possibly
 24 offer any other testimony that could be relevant to any other

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25 subject because he didn't have any knowledge on any other

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1 subject that could possibly be relevant.

2 And the judge in that case said -- and the transcript
3 is completely provided here for your Honor to review -- the
4 Court said, "I'm not accepting your arguments. I'm denying your
5 motion. And I'm not limiting the deposition to the subjects
6 that you say we should limit it to."

7 In other words, the judge allowed McGuire to be deposed
8 on all subjects. And it was only because of that ruling adverse
9 to Ford that we got the McGuire admission that, yes, there is an
10 ADAMS E350 model. And that was June 28, 2002. For the first
11 time, it slipped out of Ford's corporate mouth. And they had
12 hid it successfully in our case from 1999 to that date.

13 And then there was something else. And this one goes
14 to prejudice, your Honor.

15 That doesn't prejudice us. It's just consistent with
16 Ford's misrepresentations to the Court and to the plaintiffs,
17 and it's reprehensible in and of itself.

18 But now to something that absolutely relates to
19 discovery in this case and was to the prejudice of plaintiffs.
20 And I would start, I guess, with going to -- I guess we have to
21 start with Tab 13, your Honor, and the transcript of Donald
22 Thrasher's testimony which is at the beginning of Tab 13, the
23 transcript starting at the top of page 82.

24 Just to set the context up with you, I was deposing Mr.
25 Thrasher as Ford's 30(b)6 witness on the issue of driving

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1 testing. He was a fellow who said that he had done testing
2 pursuant to Ford's P6101 methodologies for making sure that
3 their vehicles were safe and stable vehicles, and that he had
4 personally done these kinds of things.

5 And you'll recall, your Honor, that we have complained
6 bitterly that there is not a piece of paper from all of those
7 development tests that they supposedly did during the
8 development, not only of the VM 58 E350, but of the VM 127 E350
9 15-passenger van either. There isn't a piece of paper relating
10 to their development tests on this vehicle. And I'm talking
11 about the P6101 tests that require approximately 50 different
12 maneuvers of one kind or another.

13 And you'll recall that as part of a litigation strategy
14 Ford hired their expert Don Tandy, a former Ford employee, to go
15 out and not re-create the tests that they did, but to
16 demonstrate P6101 maneuvers, and he videotaped them and
17 instrumented them. And, of course, the suggestion to the jury
18 would be this is how it looked back in the development of the VM
19 58, and this is what we did, and the idea was it's going to
20 convey to the jury that this is somehow a re-creation of some
21 documents that were mysteriously but unfortunately lost. The
22 plaintiffs have not accepted that whatsoever.

23 But, in any event, we have these videotapes from Don
24 Tandy which showed various P6101 maneuvers, one of which was a
25 slalom test. So during the course of Mr. Thrasher's deposition,

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1 we put the P6101 videos into a VCR, and I asked Mr. Thrasher

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2 questions about them. And we got to the one dealing with what's
3 called a slalom test.

4 THE COURT: When were these tests conducted?

5 MR. LOWE: 1998 by Ford and strictly for litigation,
6 not at all for development of any product whatsoever, and that's
7 in the testimony. They were done strictly as part of their
8 defense of E350 litigation.

9 So I'm asking Mr. Thrasher about what we're seeing on a
10 video. And we're looking at a slalom test. And a slalom test
11 is nothing more than what this Court, I would assume, envisions.
12 The vehicle goes between and around cones in a serpentine
13 maneuver. And I was asking him questions, which we begin on the
14 top of 82, about --

15 THE COURT: I've read it.

16 MR. LOWE: Okay.

17 If you've read it, you know that I said did it -- did
18 you ever have any problem? You didn't use outriggers? No, we
19 didn't use outriggers. Well, did you ever have any problem?
20 Did you ever experience two-wheel lift? No, we never
21 experienced two-wheel lift which is incipient rollover. Did you
22 ever have a rollover? Did anything ever happen bad to any of
23 the drivers during any of this P6101 testing?

24 And we're particularly looking at a slalom test which
25 becomes all the more amazing in light of later testimony.

14

1 Your testimony is that to the best of your knowledge --
2 this is on page 83 of that transcript -- none of the Ford test
3 drivers has been involved in a rollover accident with any of the
4 light trucks at Ford? Answer: Not as it relates to this, no.

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I said, well, how does it relate to anything else? He
6 said broken pieces. I said, oh, but not -- not as to just going
7 out and performing any kind of test evaluations on light trucks?

8 THE COURT: What did you understand he meant by broken
9 pieces?

10 MR. LOWE: I guess, you know, you could have a crash
11 into something and maybe something would happen. That's how I
12 sort of interpreted it. I didn't know what he meant actually,
13 and I still don't. But I think that may be what he meant.

14 Anyway, and then he added very gratuitously after he
15 said correct, we never had a rollover. He said our vehicles
16 don't roll over. And I moved to strike it as being gratuitous,
17 but now we've got it.

18 THE COURT: Should I strike it?

19 MR. LOWE: No. Please don't.

20 Because now we only -- your Honor knows that by
21 ourselves we would surely have sunk in the sea that has been
22 created out of this litigation by Ford Motor Company. And the
23 only reason that we are able to even stand here today is really
24 on the shoulders of other lawyers like Mr. Davidson sitting in
25 the back of this courtroom and Prince and Williams down in

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1 Georgia, in Hinesville, Georgia, and Liberty County.

2 I mean, we're not powerful people here, Judge. We are
3 trying to represent people who have legitimate claims, and we're
4 trying to prove our cases, and we can't do it against the likes
5 of them unless they play by the same rules we're forced to play
6 by.

7 And so when a 30(b)6 witness comes in and he says, no,

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8 we've never had a rollover, no, our vehicles don't roll over, we
9 believe that because it's under oath, and it's Ford's testimony
10 under oath.

11 So now, thanks to other lawyers, we find out that
12 there's a fellow by the name of Richard Shetler (phonetic).
13 Richard Shetler is a 65-year-old man who has been working for
14 Ford Motor Company for a lot of years. But in 1990 or 1991, he
15 had been a test driver for Ford for a grand total of about a
16 year. And Richard Shetler test drove, guess what, the VM 58
17 E350 15-passenger wagon loaded with water dummies like we say
18 you should when you test one of these things at gross vehicle
19 weight. He goes out, and in a slalom test, what happens to him?
20 He rolls over. When do we find out about this? In December or
21 January of this year. Just now. He was deposed January 22nd or
22 23rd of 2003, I mean, long after we could have presumably gone
23 out and asked every single driver if Ford's testimony was or was
24 not truthful. We had no reason to think that they had lied to
25 us under oath about this.

16

1 But Richard Shetler, deposed on January 22nd, says not
2 only did he roll one of these at 40 miles an hour on road in a
3 slalom test, but guess who was there watching him? Donald
4 Thrasher. So not only can they not claim that Mr. Thrasher was
5 a 30(b)6 witness but he couldn't really have all of the
6 knowledge of Ford Motor Company, they can't even claim that he
7 didn't have personal knowledge.

8 He told Mr. Shetler not to file a report. He told Mr.
9 Shetler it was his fault that he didn't know how to correct the
10 steering. And Mr. Shetler, by the way, buys into it lock, stock

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11 and barrel. Mr. Shetler says it was all my fault.
12 what did Mr. Thrasher -- this is on page 59 of
13 Shetler's testimony at Tab 14 -- what did Mr. Thrasher tell you
14 to avoid rolling over of the vehicle in the future? Answer:
15 Mr. Thrasher told me nothing to avoid rolling it over. Mr.
16 Thrasher corrected my driving by saying that you hit your gate.
17 If you start missing your gate, that the air compounds with each
18 successive gate of the serpentine maneuver, which I dramatically
19 proved out. And he says on page 57 just before that, well, as I
20 said, it wasn't the vehicle's fault. It was mine.
21 Now, this is a test driver, and I suspect he's had a
22 little more experience in a year of test driving the E350 than
23 Duane RUSH (phonetic) did on the morning of July 5th, 1996.
24 But it really isn't about them. What it's really about
25 is another lie that goes directly to the heart of the discovery

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1 that the plaintiffs could have created. And so, your Honor,
2 at -- we have asked you before, and we are asking you again to
3 make this right. We need for you, as our conscience of the
4 judicial process, to make this right and to not let Ford get any
5 benefit whatsoever from their deceit in this case in the
6 discovery process.

7 It goes beyond anything I've ever seen, and I suspect
8 it goes beyond anything this Court has ever seen, and it
9 shouldn't stand.

10 Thank you, your Honor.

11 MR. KRIVICICH: Mr. Hanson is apparently a liar in
12 terms of the purpose of his work for Ford Motor Company when he
13 was asked to make efforts towards an ADAMS E350 model for a

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14 future model year Econoline.

15 Mr. Gordon is apparently a liar when he testified that
16 the work was terribly incomplete, an unverified, uncorroborated
17 model.

18 Mr. Thrasher is a liar when he recalls or makes
19 statements about observing the vehicles and their performance on
20 the test track.

21 Mr. Shetler is a liar.

22 They're all liars, aren't they?

23 Well, that's the gist of their argument. At best, what
24 you have here is fodder for some cross examination at trial.
25 Sanctions are not imposed because there's conflicts in the

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1 evidence.

2 Mr. Lowe has not challenged anything about the veracity
3 or the truthfulness of what Mr. Hanson said or Mr. Gordon said
4 about the incompleteness of the model upon which Mr. Danke and
5 Mr. Darryl were relying in making the statements they did, upon
6 which the office of the general counsel was relying in making
7 the statements that they did about the existence of ADAMS
8 modeling, upon which I was relying when I made representations
9 to your Honor that this did not exist for the subject E350.

10 Only if we are taking the assumption that everybody is
11 operating with ill motive, that everybody is operating with the
12 intent to deceive this Court do you come to the conclusion that
13 the plaintiffs have.

14 If their proof is so strong, if their proof is so good,
15 then let them put it to the test in front of a jury, and let's
16 see what the jury does with the testimony of Mr. Shetler and the

17 testimony of Mr. Thrasher and the conflict between those two
18 gentlemen and the testimony of Mr. Gordon and Mr. Hanson as to
19 what this ADAMS model truly is.

20 THE COURT: I'm sorry, Counsel. I would love to
21 believe you. I would love to think that litigants come before
22 this Court and have honest disagreements about discovery
23 disputes and recollections of what is and what isn't and what
24 may be.

25 But I'm really disturbed by this as you know. I was

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1 disturbed the last time we were together, and I'm even more
2 disturbed now than I was then.

3 I've rejected Ford's position that this was some
4 innocent mistake. I believe from what I've seen -- and I don't
5 know whether I have a totally complete record at the time. But
6 if that's your response, that's your response. From what I've
7 seen, it appears that Ford, as a corporation, uses people and
8 lawyers to take certain positions.

9 Mr. Krivicich, I have no reason to doubt you believed
10 what you said to me when you said it. I'll accept that. But in
11 that case, you're being used by your client because it wasn't
12 true. It wasn't true when you told me over and over again there
13 were no ADAMS testing models when we know for a fact, and this
14 was established last time, that we have ADAMS testing models
15 existing throughout this period that you said there were none.
16 That they weren't done because the vehicles were over a certain
17 weight. We know that's not true. That they weren't done for
18 model years after a certain date. We know that isn't true.
19 That these latest revelations are just putting nails in the

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20 coffin here.

21 whether or not Mr. Hayden knew that McGuire was
22 proffered, I don't know. Maybe he thought he was voluntarily
23 submitted. Maybe he didn't know whether -- was he involved in
24 that Georgia case at all?

25 MR. LOWE: No. But I can tell you Mr. Conroy's partner

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1 was the lawyer.

2 THE COURT: Well, but he didn't make the
3 representations.

4 MR. LOWE: I don't know whether he was.

5 THE COURT: But that's the problem I'm having here,
6 Gentlemen and Ladies. I'm having the problem that one lawyer
7 tells me one thing, and the facts are another. And then another
8 lawyer tells me something, and the facts are another.

9 And I don't want to believe lawyers would come and risk
10 their licenses and livelihoods and professional reputations by
11 making false statements to a court, but that's what is
12 happening. Whether they're being set up by their client to do
13 it, you know, it's a big company, and maybe they can do that
14 sort of thing and hope they get away with it.

15 But what happened here it appears to me is that the
16 plaintiffs either serendipitously or through great coordination
17 among each other in separate cases got together and put the
18 pieces of the puzzle together, and the picture that they paint

19 is a very disturbing one and a very serious one. It almost
20 borders on criminal to be honest with you.

21 Somebody is lying here. Somebody is committing perjury
22 it appears to me or at least may be committing perjury. When a

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23 witness in my case says we don't have rollovers, and then
24 there's another witness -- I haven't had an evidentiary hearing.
25 Nobody has put this to a jury. Nobody has put this to a judge

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1 on an evidentiary hearing basis. But I have a deposition where
2 this guy says -- this test driver says he rolled the vehicle and
3 Mr. Thrasher was present and talked to him about it, and then
4 Thrasher says we don't have rollovers? What's going on here?

5 Can you tell me, Mr. Krivicich, what is going on here?

6 MR. KRIVICICH: Your Honor, the first I read that
7 testimony was this morning.

8 THE COURT: Well, you tell me. What conclusion would
9 you draw if you were sitting in my shoes right now?

10 MR. KRIVICICH: At best, your Honor, I think you need
11 to assess the credibility of these gentlemen before you and then
12 draw that conclusion.

13 THE COURT: I'm not going to have this type of fight in
14 a trial on liability here about who's lied and who's committed
15 perjury in discovery. That's not what cases are about. What
16 cases should be about is whether this vehicle was safe or not.
17 Instead, we're getting into discussions about who was telling
18 the truth in discovery to mislead a litigant and to bury
19 evidence, and that's what's happened here.

20 I can't tell you strongly enough how disturbing that is
21 to a judge who wants to believe that people present things the
22 way they see them. We have people taking different factual
23 positions every day at trials. I don't have to tell you that.
24 It doesn't mean they're committing perjury. It means they look
25 at it in their own enlightened self-interest and sometimes not

1 so enlightened, and people view facts differently sometimes.
2 Sometimes they're lying. Sometimes they're just mistaken.
3 Sometimes they're skewed so much by their own self-interests
4 that they really believe something is true that's not true.

5 That's not what I'm seeing here. I'm seeing a
6 deliberate pattern. And, believe me, it took years for me to
7 buy into this group of plaintiffs. I was giving them a lot of
8 trouble. I bent over backwards in a sense. Well, maybe that's
9 an overstatement. I was very skeptical of their continued
10 complaints for years in this case about documents they weren't
11 getting, including, particularly, the ADAMS model, but also
12 these P6101 tests that disappeared after they have -- now it
13 appears after there's a rollover, these documents disappear, and
14 people are denying that it happened. And if weren't for this
15 case in Georgia, we never would know about it. And what's to --
16 what if we had tried this case last fall and this comes out now?

17 No, this isn't the kind of thing that goes to a jury.
18 This isn't fodder for cross-examination. I respectfully
19 disagree with you, Mr. Krivicich. And I mean respectfully
20 because I don't have any reason to believe that you purposely
21 did it, that you purposely engaged in misconduct as a lawyer.

22 This is the stuff of Rule 37. That's what Rule 37 is
23 for.

24 And I want to think about this a little bit because I
25 am very, very close to granting the plaintiffs' request to

1 instruct the jury that Ford is liable in this case and this is a
2 case of damages only.

3 I don't know any other appropriate sanction. I can't
4 think of one right now that would fit the purposes of our
5 discovery rules, that would uphold the integrity of the judicial
6 system and the Court's orders and the manner in which cases
7 should be litigated.

8 I come to this conclusion -- I said it last time --
9 with great reluctance. Great reluctance. Because I don't want
10 to believe that lawyers misrepresent things to me. I don't want
11 to believe a corporation like Ford does stuff like this. I
12 don't want to believe it. I'm being convinced against my own
13 instincts.

14 So I want to sleep on this over the weekend, and I'll
15 let you know next week. I'm going to have to set this for a
16 date. I'm still on trial in this case. It should be over -- it
17 should go to the jury on Wednesday, and I will have Thursday at
18 least relatively free, and that's the way it looks right now,
19 and we'll have to come back and revisit this.

20 But that's where I'm leaning right now. I'm telling
21 you. If there is an explanation for this, I'd like to know it,
22 but I haven't seen it.

23 I know that they just filed their objections or their
24 response to your motion to reconsider, which may have been
25 ill-advised, yesterday. But if that's your -- if the response

24

1 is what you just told me, well, everybody is a liar, maybe
2 you're right. Maybe everybody is a liar. Or at least enough
3 of -- nobody is saying the test driver is a liar. Maybe they
Page 21

FORDdefaultfinaloat1

4 are liars. Maybe there is a corporate collective responsibility
5 here that has to be shouldered.

6 But it almost doesn't matter. If a litigant like Ford
7 has engaged in this type of misrepresentation up to now, what am
8 I supposed to do? Adjourn the trial and let them follow these
9 leads?

10 I'm not going to do that. I told you. These people
11 have been injured a long time ago, and it's time for them to get
12 their day in court. I've set aside three weeks for this case,
13 and I'm not going to change the trial date.

14 I am just astounded -- astonished to find that even at
15 this late date I am learning that factual predicates on which I
16 have based my discovery rulings and on which the plaintiffs have
17 based their discovery pursuits is incorrect. I'm just
18 flabbergasted. So I'm going to sleep on it, and we can deal
19 with a couple of other minor things today.

20 But if you have a better response, I'm going to give
21 you one more chance on this, to convince me, to proffer
22 something to me to explain this. And don't try to say they
23 didn't ask for it. They asked for it. And don't try to say you
24 didn't tell me that there were -- that you told me there were
25 incomplete ADAMS testings or unverified ADAMS testings. You

25

1 told me there were no ADAMS testings, and we know that those
2 were just wrong. You also told me that these documents were
3 destroyed. But then you have somebody saying, well, they were
4 destroyed because our vehicles don't roll over in these tests.

5 It's a sad day, Mr. Krivicich. It really is. If it's
6 a sad day in my view, it's a very sad day.

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7 So if you want to file something Tuesday before I see
8 you back here on Thursday, go ahead, and we'll have it out on
9 Thursday, and I'll make a definite decision. And that's the way
10 this case will proceed.

11 It will either proceed based -- your motion to
12 reconsider is denied. The renewed motion for sanctions will be
13 taken under advisement until I see you next. But it will either
14 proceed, as I said before, with the type of instruction -- by
15 the way, I thought Ford's instruction -- if I go that route, if
16 I don't go all the way on this, I thought Ford's suggested
17 instruction on the type of instruction I would give to the jury
18 was more correct than yours. I'm not going to tell the jury you
19 hid documents or anything like that. I'm just going to tell
20 them you're instructed that there were tests that show it was
21 unsafe.

22 But my thinking right now is beyond that, and the
23 burden is on Ford, once again, to convince me why I shouldn't
24 give them the relief that they seek in this renewed motion for
25 sanctions.

26

1 It's breathtaking. It is literally breathtaking. All
2 right. Enough.

3 There's two motions in limine here that I can deal with
4 now. It's almost in scope rather de minimis considering the
5 other.