

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

3 -----X
4 TERRY C. MARTIN and :
LORETTA MARTIN, :
: :
5 Plaintiffs, : CIVIL NO. 2:96-1945
: :
6 v. : NOVEMBER 19, 1997
: NOVEMBER 20, 1997
7 FORD MOTOR COMPANY, :
Delaware corporation, :
8 :
Defendant. :
9 :
-----X

10 PARTIAL TRANSCRIPT OF JURY TRIAL
11 EXAMINATION OF DAVID BICKERSTAFF
12 BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.
13 UNITED STATES DISTRICT JUDGE
AND A JURY

14 APPEARANCES:

15 FOR THE PLAINTIFFS: EDGAR F. HEISKELL, III
Charleston, West Virginia
16 HENRY R. GLASS, III
Charleston, West Virginia
17

18 FOR THE DEFENDANT: MICHAEL BONASSO
Charleston, West Virginia
19 PAUL F. HULTIN
EDWARD C. STEWART
20 Denver, Colorado

21 COURT REPORTER: BARBARA A. STEINKE, RMR
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23

24 These proceedings were recorded with use of a stenographic
25 machine and transcribed with use of computer-aided
transcription.

11-19-97

1 THE COURT: December 14, 1992.

2 MR. HEISKELL: No objection, Your Honor.

3 THE COURT: Defendant's 32 is admitted.

4 (Defendant's exhibit 32 was admitted.)

5 THE COURT: Yes, sir.

6 MR. HEISKELL: The plaintiff calls David Bickerstaff
7 as an adverse witness.

8 THE COURT: All right.

9 DAVID J. BICKERSTAFF, PLAINTIFFS' WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. HEISKELL:

12 Q. Good morning, Mr. Bickerstaff.

13 A. Good morning, Mr. Heiskell.

14 Q. Please state your name for the record.

15 A. David John Bickerstaff.

16 Q. Where do you live, Mr. Bickerstaff?

17 A. I live in the United States and I also live part of the
18 time in Europe.

19 Q. And, sir, what is your occupation?

20 A. I am a consultant and mechanical engineer.

21 Q. Sir, who owns David J. Bickerstaff and Associates?

22 A. I do. I own 100 percent of the stock of that company.

23 Q. Have you always owned 100 percent of the stock of that
24 company?

25 A. Yes, since I incorporated in 1986.

1 Q. Mr. Bickerstaff, isn't it true that you were a design
2 engineer at Ford when the Bronco II was being designed and
3 developed?

4 A. Yes, I was.

5 Q. And you participated in the design of the suspension
6 system of the Bronco II; is that correct?

7 A. Yes, I did.

8 Q. And you had several engineers working under you during
9 your participation on the Bronco II project; is that correct?

10 A. Yes, sir.

11 Q. And isn't it true that you authored various memos
12 concerning the stability index while you were working on the
13 Bronco II?

14 A. Yes, I did.

15 Q. Isn't it true that you saw the results of the Arizona
16 Proving Ground testing on the Bronco II in March and April of
17 1982?

18 A. Yes, sir.

19 Q. And you left Ford at the end of July 1982?

20 A. That is correct.

21 Q. And went to work for Ferro Engineering that year, did you
22 not?

23 A. The name of the company was Ferro Manufacturing, yes, I
24 did.

25 Q. And at the time you left Ford, sir, what was your salary

1 or approximate salary?

2 A. If I recall correctly, between 50 and 60 thousand a year,
3 depending on the bonuses.

4 Q. And am I correct that in or about 1984, you left Ferro
5 Manufacturing and formed your own consulting company?

6 A. Yes, sir.

7 Q. And that was David J. Bickerstaff and Associates?

8 A. Correct.

9 Q. Which you then incorporated in 1986.

10 A. Yes, sir.

11 Q. Isn't it true that in 1989 or early 1990, you were
12 notified that you were going to be asked to give a deposition
13 in litigation involving a Bronco II?

14 A. Yes, that is true.

15 Q. And that you would be asked questions about your
16 activities as a design engineering on the Bronco II program?

17 A. I believe that's correct, yes.

18 Q. And that your testimony would be under oath?

19 A. Yes, sir.

20 Q. And do you recall talking with Ford's attorney, Art
21 Anderson, about that deposition on or before June 20th, 1990?

22 A. I do recall having conversations with Mr. Anderson, but I
23 don't recall the exact dates.

24 Q. And you know him to be and knew him then to be an attorney
25 for Ford Motor Company; is that correct?

1 A. Yes, I knew him to be an attorney, yes.

2 Q. And you knew him to be an attorney representing Ford Motor
3 Company, did you not?

4 A. Yes, sir.

5 Q. And you knew also that the deposition itself or you
6 learned that the deposition itself was scheduled for July 9,
7 1990?

8 A. I don't remember exactly when it was scheduled, no.

9 Q. Sir, I want to hand you a document that has been marked
10 as plaintiffs' exhibit number 52, and ask whether or not you
11 can identify this document.

12 A. Yes, I can.

13 Q. Isn't it true that on June 20th, 1990, you faxed this
14 document to the office of Ford, attorney Art Anderson?

15 A. Yes, my secretary, Donna Sebastian, did that, yes.

16 Q. And you authored this document, did you not?

17 A. I believe I dictated this to my secretary, Donna, who then
18 sent it to Mr. Anderson.

19 Q. All right. Would you please read the text of the letter
20 to Mr. Anderson for the jury.

21 A. It says: Dear Mr. Anderson:

22 We have attached some copies of purchase orders and
23 invoices which reflect our fees.

24 Our present rate for short-term contracts for new business
25 is \$5,000 dollars per diem and long-term contracts are

1 discounted -- I'm sorry, long-term contracts are \$4,000 per
2 day.

3 I feel I should be reimbursed my current rate. I would
4 suggest you retain our services to assist you in preparing
5 myself, in Ford's favor, as we discussed per our phone
6 conversation of 6-18-90.

7 I believe the fees of \$2,000 per half a diem and \$4,000
8 per diem, plus reimbursement of reasonable expenses, is
9 appropriate based on the evidence attached.

10 Q. And then, sir, what is attached to that letter?

11 A. What is attached is a purchase order from a company called
12 Merriman and another proposed contract from Ford Motor Company
13 dated February 16, 1989.

14 THE COURT: Before you leave that letter, let me ask
15 you about this one word at the end of the first line of the
16 third paragraph. What is that word?

17 THE WITNESS: Excuse me, sir?

18 THE COURT: Do you have it before you?

19 THE WITNESS: Yes.

20 THE COURT: It says, "I feel I should be reimbursed
21 my current rate. I would suggest you retain our services
22 to --

23 THE WITNESS: It's "assist," Your Honor.

24 THE COURT: Thank you.

25 MR. HEISKELL: Your Honor, at this time I would move

1 the admission of plaintiffs' exhibit number 52.

2 MR. HULTIN: No objection.

3 THE COURT: It is admitted.

4 (Plaintiffs' exhibit 52 was admitted.)

5 Q. And isn't it true that this letter went to Mr. Anderson's
6 office via fax on June 20, 1990?

7 A. Yes, I believe it is.

8 Q. And isn't it true that on July 9, 1990, you went into a
9 deposition under oath in the Rosenbusch versus Ford case?

10 A. Yes. I don't remember the exact date, but after this I
11 did give a deposition and a number of depositions.

12 Q. And as far as you know, that next deposition after you
13 sent this letter to Mr. Anderson was on or about July 9, 1990?

14 A. I believe so, Mr. Heiskell.

15 Q. And when you went into that deposition, isn't it true that
16 as of that date, Ford had not agreed to pay you that \$4,000 a
17 day?

18 A. They had not agreed to pay it, but I expected it to be
19 paid, yes.

20 Q. Isn't it true that at that deposition in the case of
21 Rosenbusch versus Ford, you testified under oath that
22 stability index was a major factor in a vehicle's resistance
23 to roll over?

24 A. Yes, I believe that that was part of my testimony. I
25 don't remember exactly, but there was a context associated

1 with that, but yes.

2 Q. All right, sir. And isn't it true that at the time you
3 left Ford in 19 -- let me restate this question. Isn't it
4 true that you testified in that deposition under oath on July
5 9, 1990, that at the time you left Ford Motor Company in 1982,
6 the men working under you were telling you that the Bronco II
7 needed to be improved from a rollover propensity standpoint?

8 A. Yes, sir. There were some individuals that thought making
9 the vehicle wider may be an option.

10 Q. And, sir, isn't it true that within 90 days after you
11 testified in that deposition, the company you owned received
12 from Ford Motor Company a purchase order worth \$100,000?

13 A. I don't remember the exact dates or the purchase orders,
14 but there were purchase orders that my company received for
15 consulting services that were nothing to do with Bronco II.

16 Q. Are you denying, sir, that within 90 days after you
17 testified at that deposition, your company received the first
18 of several \$100,000 checks?

19 A. No, sir. I'm just telling you that I don't recall the
20 exact purchase orders and I'm telling you that they were not
21 related circumstances.

22 Q. Now, sir, isn't it a fact that you received at least four
23 more \$100,000 purchase orders from Ford within the next two
24 years after you gave that first deposition?

25 A. I believe, Mr. Heiskell, that my company did something

1 like 3 million dollars worth of business with Ford Motor
2 Company, again unrelated to Bronco II testimony.

3 Q. My question called for a simple yes or no, sir. Is it not
4 true that within the next two years after you first gave
5 deposition testimony in the Rosenbusch case, that your company
6 received at least four more purchase orders, each in the
7 amount of \$100,000?

8 A. Yes, sir. There were several purchase orders. I know
9 they were over \$100,000, but as I said before, they were not
10 anything to do with Bronco II. They were for consulting
11 contracts.

12 MR. HEISKELL: Your Honor, I'm going to have to ask
13 that the nonresponsive part of the answer be stricken and that
14 the witness be instructed that when the question calls for a
15 simple yes-or-no answer, that the witness answer with a
16 yes-or-no.

17 THE COURT: The court will deny your motion to strike
18 the latter part of his answer, but I will direct the witness
19 when further questions are put to you, simply answer what you
20 are called upon to answer.

21 THE WITNESS: Yes, sir.

22 THE COURT: Please go ahead.

23 Q. Isn't it true, Mr. Bickerstaff, that you have given
24 deposition and trial testimony since that first deposition on
25 July 9, 1990?

1 A. Yes, sir.

2 Q. And the next time you testified under oath and ever since,
3 you have testified that stability index is not a major factor
4 in rollover propensity; is that correct?

5 A. Yes, sir. There has been testimony again relative to the
6 context in which those statements were made.

7 Q. Mr. Bickerstaff, can you not give a simple yes-or-no
8 answer to a question that calls for a yes-or-no answer? I'm
9 going to ask the court reporter to read the question back.

10 (The reporter read the last question.)

11 A. It's not completely correct, no.

12 Q. All right, sir. Isn't it true that at the time you left
13 Ford in July 1982, the men working under you -- let me back
14 up. Isn't it true, sir, that since the time you gave your
15 deposition in July 9, 1990, in the Rosenbusch versus Ford
16 case, you have testified that the men working under you at
17 Ford at the time you left in July of 1982 were not telling you
18 that the Bronco II needed to be improved from a rollover
19 propensity standpoint?

20 A. There has been discussion -- I have given testimony
21 related to that subject and I think the record of what I said
22 speaks for what I said. So I don't remember the exact context
23 under which I may have been discussing that.

24 Q. I'm going to ask the court reporter to read the question
25 back to you, sir, and I believe it calls for a yes-or-no

1 answer.

2 ((The reporter read the last question.))

3 A. Okay. It is true, yes, that some of the men, that we felt
4 the vehicle could be improved further and that some of the
5 men --

6 MR. HEISKELL: Your Honor --

7 A. -- but not the men that worked for me, not all of the men.

8 THE COURT: Let's put the question once more and
9 simply answer that question if you would, please, and do not
10 expand on it, unless the court gives you permission to do so.
11 Put the question again.

12 A. Yes, sir.

13 Q. Thank you, Mr. Bickerstaff. And is it not true that since
14 that first deposition in July of 1990, Ford and its lawyers,
15 the law firms representing Ford, have paid you and the company
16 you own more than 3.5 million dollars?

17 A. Yes, sir, my company has been paid by Ford Motor Company
18 those amounts.

19 Q. And you now get paid more than \$8,000 per day to testify
20 for Ford Motor Company in these cases; is that not true?

21 A. Yes, sir.

22 MR. HEISKELL: Thank you. I have no further
23 questions.

24 THE COURT: How lengthy will your examination be?

25 MR. HULTIN: Your Honor, I think it will take us into

1 the period where we have traditionally broken for lunch.

2 THE COURT: So you'll be more than just ten minutes?

3 MR. HULTIN: I think we'll be twenty to thirty
4 minutes on these subjects, Your Honor.

5 THE COURT: All right. I think what we'll do is just
6 recess at this point and have the jury back at 1:30. We will
7 be in recess until 1:30 and resume with this witness'
8 testimony at that time. Thank you.

9 MR. HULTIN: Thank you.

10 (At 12:15 p.m. there was a recess until 1:36 p.m.)

11 MR. HULTIN: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. HULTIN:

16 Q. Mr. Bickerstaff, I'm handing you what has been admitted in
17 evidence as plaintiffs' exhibit 52. I have a couple of
18 questions about that. Mr. Bickerstaff, I believe there is a
19 contract with Ford that is attached to that letter that
20 preexisted June 20th of 1990; is that correct, sir?

21 A. Yes, sir.

22 Q. And what was the amount of that contract?

23 A. \$57,500.

24 Q. Okay. Mr. Bickerstaff, and I think there was one other
25 contract; is that right?

1 A. Yes.

2 Q. And what was the per diem rate that you received for that
3 contract, Mr. Bickerstaff?

4 A. It was \$10,000 for two days seminar.

5 Q. Okay. Mr. Bickerstaff, I believe that exhibit 52 states
6 that you felt you should be reimbursed at your current rate.
7 Were you asking Ford for payment beyond what you charged other
8 clients at this point in time?

9 A. No, I was not.

10 Q. Have you ever asked Ford to pay you more than you asked
11 other clients to pay you?

12 A. No.

13 Q. Mr. Bickerstaff, exhibit 52, which is the fax that you
14 sent to Mr. Anderson, said that -- suggested that you be paid
15 your current rate to assist you in preparing you, David
16 Bickerstaff, in Ford's favor. What did you mean by "in Ford's
17 favor"?

18 A. I meant that I would be testifying on behalf of Ford Motor
19 Company.

20 Q. Okay. Is this an assignment that you sought out, Mr.
21 Bickerstaff?

22 A. No, it is not.

23 Q. Okay. What -- please describe briefly for the jury your
24 most recent consulting project.

25 A. I'm working with a company that is based in Italy that

1 makes body automation and was having some problems at BMW and
2 I was in Germany at BMW.

3 Q. Okay. And what was your payment for that work, Mr.
4 Bickerstaff?

5 A. \$40,000.

6 Q. And how long did that consulting assignment take, how many
7 days?

8 A. I got there on Thursday and completed most of the work on
9 Friday and wrote a report for them on Monday and delivered it
10 on Tuesday.

11 Q. Okay. Mr. Bickerstaff, Mr. Heiskell asked you some
12 questions that -- about what engineers who work for you were
13 recommending to you regarding widening the track of the Bronco
14 II in the spring and early summer of 1982. Do you recall
15 that?

16 A. Yes.

17 Q. Were all of the engineers that were working for you
18 recommending that you make the track of the Bronco II wider?

19 A. No.

20 Q. What were other options that were being considered at that
21 time?

22 A. We were principally looking at changing the stabilizer
23 bars, the front and rear stabilizer bars to increase roll
24 stiffness and we were comparing those to other alternatives.

25 MR. HULTIN: Okay. Thank you. No further questions,

1 Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HEISKELL:

4 Q. Just a couple of follow-up questions, Mr. Bickerstaff. At
5 the time of those contracts with Ford that Mr. Hultin just
6 asked you about, Ford was already under investigation by NHTSA
7 for the Bronco II at that time -- at the time of those
8 contracts, were they not?

9 A. I was not aware of that at the time, Mr. Heiskell.

10 Q. Well, you're aware now that that investigation began in
11 August of 1988; isn't that correct?

12 A. I don't know when that investigation began.

13 Q. All right, sir. And you knew, didn't you, you do know
14 that the Rosenbusch case and other Bronco II litigation was
15 under -- already underway at the time that you got those other
16 contracts with Ford; isn't that true?

17 A. I knew there were one or two cases, but I didn't know much
18 else.

19 Q. All right, sir. And you say you didn't seek this
20 assignment. The fact is, isn't it, Mr. Bickerstaff, that you
21 were simply a fact witness at that first deposition, were you
22 not?

23 A. I believe I was a fact witness, yes.

24 Q. All right. And a fact witness is somebody who observes
25 things happening, such as someone standing on a street corner

1 watching an accident; isn't that right?

2 A. If I understand you correctly, yes.

3 Q. All right, sir. And do you think a fact witness in this
4 country has the right to ask for payment of \$4,000 a day to
5 come into court and give a rendition of the facts as he saw
6 them?

7 A. I -- my opinion is that a person should be compensated
8 based on what the loss is to their business for giving
9 testimony. That was -- I don't know what the law is, but that
10 was my -- my opinion.

11 Q. I see. So that if a doctor, for example, happened to
12 witness an accident down here at the corner of Capitol Street
13 and Virginia Street, and a person -- a child was killed and
14 there had to be litigation arising out of that, that to have
15 the doctor come to testify that he saw this child step out in
16 front of a car and was going to be gone from his office all
17 afternoon, that he would have a right to charge the parties
18 three or four thousand dollars to -- for the loss of his time?

19 A. Mr. Heiskell, you're asking for my opinion?

20 Q. I'm asking you if you think that's right.

21 A. I think that the -- if there is a lawsuit involving a
22 doctor in that case, my opinion would be that the hospital
23 should be compensated for the loss of that doctor's services
24 somehow.

25 Q. And so that is what you based your expectation of \$4,000 a

1 day when you went in to testify as to what had happened at
2 Ford when you were simply there as a design engineer; is that
3 correct?

4 A. No, that's not correct.

5 Q. All right. Explain to the jury then what you were
6 thinking about?

7 A. Well, I certainly didn't think about a doctor. I just was
8 looking at that I thought my company should be compensated for
9 my time taken away from my company and the income generated by
10 myself for my company that would pay the employees and also
11 generate the income that would otherwise have derived to my
12 company had I not been giving testimony.

13 Q. At that Rosenbusch deposition, sir, that very first
14 deposition at which you gave testimony, did you or anyone
15 representing Ford, specifically Art Anderson or Doug Seitz,
16 notify the parties of the other side or the court that you had
17 asked to be paid \$4,000 a day?

18 A. I don't know, sir.

19 MR. HEISKELL: Thank you. I have no further
20 questions.

21 MR. HULTIN: Nothing further, Your Honor.

22 THE COURT: May Mr. Bickerstaff be excused from this
23 trial?

24 MR. HULTIN: No, Your Honor. We brought him here at
25 Mr. Heiskell's request for this testimony, and when we get to

1 our case, we will be calling Mr. Bickerstaff as an expert,
2 Your Honor.

3 THE COURT: All right. As I understand it, Mr.
4 Bickerstaff, you're not excused from the trial, but you'll be
5 called at a later stage.

6 THE WITNESS: May I leave, sir?

7 THE COURT: Thank you.

8 THE WITNESS: Thank you.

9 MR. HEISKELL: Your Honor, may we approach?

10 THE COURT: All right.

11 (At side bar.)

12 MR. HEISKELL: Your Honor, there are just -- there's
13 just one remaining witness that we know is available tomorrow
14 and that is Errol Sadlon, our rehabilitation specialist. By
15 agreement with the other side, they have agreed that we can
16 bring him in during their case.

17 The only remaining issue relative to a witness is that
18 with Dr. Vogler that we more or less argued yesterday, and we
19 would propose to put her on by deposition if she is not
20 available today, and then Mr. Glass has just one issue
21 relative to an exhibit and we are done.

22 THE COURT: All right. What is the exhibit?

23 MR. GLASS: Your Honor, defendant's exhibit 43, the
24 videotape of the Failure Analysis intentional rollover
25 testing, at some point during the proceedings -- and my