

IN THE _____ COURT OF _____ COUNTY,

Petitioner/Plaintiff,

V.

CAUSE NO. _____

COMPLAINT WITH DISCOVERY

COME NOW, _____ and Husband, _____ and _____, and present this their Complaint with Discovery as against the Defendants, _____ and _____, showing as follows:

I.

The Plaintiffs, _____ and Husband, _____, known as _____, are both adult bona fide resident citizens of _____ County, _____.

II.

_____ is a non-resident corporation registered to do business and doing business in the State of _____.

III.

The Defendant, _____, is a non-resident Delaware corporation registered to do business in the State of _____, whose registered Agent for service of process is _____ which may be served at _____, _____.

IV.

_____ is a non-resident Delaware corporation registered to do business in the State of _____ which may be served with _____.

V.

On _____, 20____, the home of the Plaintiffs, _____ and Husband, _____, was burned down in a fire that erupted from the Ford F-150 truck belonging to _____ at a time when it was parked and not running in the carport of the home of the _____ causing the total loss of the dwelling and the vehicle and all of the contents in same.

VI.

From _____ through _____, the Defendant, _____ (_____) manufactured and sold to motorists some 26 million vehicles equipped with a defective ignition switch supplied by Defendant, _____ (_____). Due to defective design, this switch produces an electrical short resulting in the melting and ignition of flammable plastic components located on or near the vehicle's steering column. Thousands of vehicle fires have resulted from the defective ignition switch.

VII.

_____ and _____ learned of the defective ignition no later than the Fall of _____, and by _____, had instituted an extensive redesign of the switch to reduce the risk of fires. _____ and _____ nonetheless knowingly and deliberately concealed this defect from the motoring public and from responsible officials in the National Highway Traffic Safety Administration (HTSA) until _____, _____, when mounting evidence of widespread fires resulting from the defect forced a public recall of some vehicles. One of those recalls was that of the vehicle of the Plaintiff _____, a true and correct copy of the Certificate of Title thereto and the Recall Notice are attached hereto marked Exhibits 'A' and 'B,' respectively, the terms of which are to be _____ hereof by and through incorporation by reference, as if copied fully herein in words and figures.

VIII.

_____ paid a claim for the insureds' losses as to the house and all of its contents, but the claim and the sums paid were inadequate to cover the actual losses involved. The _____ subrogated their rights of recovery to _____ as to anything which the insurance company paid for. The Plaintiffs bring this action against _____ and _____ to assert all of their losses and subrogation rights and to recover sums lost as a result thereof.

IX.

_____ is one of the largest manufacturers of motor vehicles in the world. _____ promotes and markets its vehicle by emphasizing their high quality and its commitment to safety in their design and manufacture. Relying on such advertising, millions of motorists in the United States have purchased and owned _____ vehicles. _____ is one of the principle suppliers of components for _____ vehicles, including the defective ignition switch.

X.

Due to modern technological advances, motor vehicles today are, for the most part, virtually "fire-safe" during ordinary and foreseeable vehicle operation, and the risk of that nature to a modern car or truck is very low. Consumers justifiably expect that motor vehicles purchased either new or used will not catch fire during their useful life.

XI.

Through intensive advertising _____ has encouraged motorists to believe that its vehicles are reliable, safe and free from defects in manufacturing or design. In a wide variety of media, and over a period of many years, _____ has represented the motorists that in designing its vehicles "Quality Is Job One." In recent years _____ has run advertisements in national magazines entitled "Only Your Mother Is More Obsessed With Your Safety." From _____ to _____ _____ conducted extensive advertising campaigns portraying _____ vehicles as "The Highest Quality American Cars and Trucks" or "The Best Built Cars and Trucks in the World." Since _____ has run advertisements in magazines aimed at motoring enthusiasts, such _____ as Motor Trend, describing _____ trucks as "Built _____ Tough." Other advertising issued by _____ states: "Whenever we look at way to improve our cars, safety always gets prime consideration." _____ also ran national advertising asserting that it is a "Safety Leader." Copies of the advertisements are attached hereto marked Exhibit "C," cumulatively pages 1 through 27, the terms of which are considered to be a part hereof by and through incorporation by reference, as if copied fully in words and figures. _____ was aware of the foregoing advertising.

XII.

In reality and in sharp contradiction to the foregoing promotional statements the defective ignition switch installed on 26 million _____ vehicles renders these vehicles dangerous, unsafe and unacceptably susceptible to fires, and one of those was the vehicle of the Plaintiff _____. The ignition switch consists of several copper terminals attached to a plastic base together with flat copper sliders that move across the top of these terminals, thereby completing various circuits. When this switch is turned to the "Start" position the slider moves across the positive "B+" terminal and connects with the ground terminal powering the engine. In the defective switch in issue here, the "B+" terminal and the ground terminal are separated by an air gap and plastic partition that together are only a few hundredths of an inch wide. Due to wear and tear and/or degradation of the plastic partition, an electrical short develops between the "B" terminal and the ground, thereby melting and igniting flammable, plastic components placed near the switch. An igniting may occur either when the motor is running or when it is turned off and the vehicle is unattended. (Emphasis added.) The defective switch installed on all vehicles subject to this defect is the same or substantially similar, and such a defective switch was installed on the vehicle of _____, Plaintiff.

XIII.

The defective ignition switch supplied by _____ and installed by _____ causes the vehicles containing this defect to suffer fires at rates far above the average for comparable vehicles.

XIV.

Beginning in _____, NHTSA made the defective ignition switch the subject of no less than four separate investigations, designated PE91-128, PE92-069, PE94-34 and PE94-078. The last of these investigations, PE94-078, was upgraded by NHTSA to an engineering evaluation, designated EA95-002. In _____, 20____, to forestall a mandatory recall ordered by NHTSA, _____ and _____ undertook the largest automotive recall in the United States history, involving some 7.9 vehicles. Despite the size of this recall, it encompassed only a fraction of the 26 million Ford vehicles containing the defected ignition switch. It was too late for the vehicle of _____, which had already burned in the carport, burning the house down at a time when the vehicle's motor was not running, turned off and unattended.

XV.

_____ and _____ became aware of the ignition switch defect promptly after vehicles containing this defect reached the market, as a result of the _____ dealers and from motorists who experienced fires. By Fall, _____, before _____ had purchased his vehicle, _____ and _____ had received numerous reports of ignition switch fires, and were actively investigating these _____ investigation quickly confirmed the existence of this defect and made _____ and _____ aware of the specific respects in which this switch was defective. By _____, _____ and _____ instituted an extensive redesign of the defective switch for the express purpose of avoiding fires. Production and sale of vehicles containing the defective switch ceased in late _____ or early _____.

XVI.

Despite there knowledge of the defective switch _____ and _____ concealed existence of this defect from the motoring public and from NHTSA, and withheld information concerning the defective switch from persons owning vehicles containing this defect. Moreover, even after learning of the defect, UTA continued to supply the defective switch to _____, and _____ continued to manufacture and sell vehicles containing this known defect, for at least another four years. During this period while the defect was well known to the Defendants, neither _____ nor _____ disclosed the existence of the defect to the motorists purchasing the affected vehicles.

XVII.

In the numerous investigations that NHTSA instituted with respect to the defective switch, Defendants withheld information requested by this agency and made incomplete and misleading statements designed to mislead NHTSA into closing its investigations without taking

action. For example, written statements that Defendants submitted to NHTSA as part of its investigations in PE91-128, PE92-069, PE94-034 and PE94-078 falsely asserted, as late as _____, _____, that there existed no common source or cause explaining the steering column fires investigated by NHTSA. As shown by internal documents, the Defendants were well aware in making these statements that this assertion was false. Moreover, the Defendants falsely represented the NHTSA that their redesign of the ignition switch in _____-_____ had been motivated by reasons unrelated to any concern over fires resulting from the ignition switch even though the true purpose of this design change was precisely to avoid such fires. Through their deceptive conduct, Defendants _____ NHTSA to close each of the first three investigations instituted to investigate the ignition switch defect, delaying for nearly five years the public disclosure of this defect and the recall of affected vehicles that took place in _____, _____. Moreover, because submissions made to NHTSA are, with limited exceptions, freely available to the public news media, Defendants' conduct was intended to, and did deprive motorists purchasing and operating _____ vehicles of the ability to learn of the defect, and more so particularly that of the Plaintiffs herein.

XVIII.

By means of their misleading and deceptive conduct, the Defendants knowingly and intentionally succeeded in concealing the facts giving rise to claims herein. Due to such concealment, Plaintiffs failed to discover their causes of action in a timely basis in the losses incurred. Defendants' actions constituted actual malice, or at a minimum gross negligence which evidences willful, wanton or reckless disregard for the safety of others and/or actual fraud giving rise to not just actual damages that the Plaintiffs are entitled to against the Defendants, but also punitive damages so as to punish the Defendants herein who are wrongdoers, and deter similar misconduct in the future by the Defendants and others in addition to the actual compensatory damages due to the Plaintiffs, just to make them hold.

XIX.

When a vehicle fire occurs, _____ rarely, if ever, concedes that the fire resulted from a defect in its vehicle. Even when _____ was forced to acknowledge that the ignition switch defect existed as a result of government and public pressure requiring a recall campaign, _____ instructed its dealers to refer motorists complaining of fire to their insurer.

XX.

The vehicle of the Plaintiff _____, was defective because _____ contained adequate warnings or instructions, and was designed in a defective manner and breached the express warranties of the manufacturer and the implied warranties of fitness and merchantability, and failed to conform to the express factual representations upon which the Plaintiffs justifiably relied in electing to purchase and use the motor vehicle, and the defective condition rendered the product unreasonably dangerous to the user and consumer, and more particularly to the Plaintiffs, _____, and this defective and unreasonably dangerous condition proximately caused the damages to the Plaintiffs for which the recovery is sought. The numerous _____ vehicles sold

and particularly that of _____ lacked warnings and instructions required to reduce the risk of the fire that did occur.

XXI.

The numerous _____ vehicle sold and particularly that of the Plaintiff _____, lacked warnings and instructions required to reduce the risk of the fire that did occur. The fire caused by this defect in the absence of necessary warnings has obliged the Plaintiffs to suffer the losses they claim herein.

XXII.

Defendants knew, or should have known, that the vehicles equipped with the defective ignition switch contained design and manufacturing defects likely as the results of the fire. Defendants also knew, or should have known, that these vehicles lacked warnings and instructions required to reduce the risk of fires and the losses proximately stemming therefrom. Defendants acted negligently or recklessly in manufacturing and distributing the affected vehicles without correcting these decisions.

XXIII.

Even after a given vehicle is sold Defendants remain under a continuing _____ both State Law and 49 USC Section 30118 to warn motorist of any defects which they become aware that create an undue risk of injury or property damage. Defendants breached this duty with respect to the vehicles equipped with the defective ignition switch, and more particularly that of the vehicle of _____.

XXIV.

Due to Defendants' wrongful conduct Plaintiffs have been obliged to suffer the losses they claim herein, and more particularly the loss of the house, the contents and the vehicle. The Plaintiff, _____, paid over to the Plaintiffs, _____ and _____, the sum of \$_____, which did not cover all of their actual losses as to the contents and the deductible, which was \$_____.

XXV.

Each _____ vehicle is sold with the express written warranty issued by _____. By its terms _____'s warranty extends to each person owning or leasing the vehicle while the warranty is in effect.

XXVI.

In this express warranty _____ warrants that its vehicle is free from defects in design or manufacture of any kind, and it conforms in all applicable respects to industry standards and government regulations. _____'s warranty includes a comprehensive "bumper to bumper" warranty, covering all the vehicles components and systems and extending for a defined number of years or miles driven by the vehicle, together with additional, more specific warranties applicable to specified components or systems of the vehicle, such as the power train. _____, in addition undertakes an additional expressed warranty through its advertising of promotional vehicles and by the authorized conduct of its dealers, including affirmations, promises and description of the vehicle that become part of the basis for bargain.

XXVII.

_____ breached its express warranties with respect to the vehicle to _____ by selling same in a defective condition likely to cause fires and by its failure to provide warnings and instructions required to reduce the risk of the fire that did occur, and _____ is liable therefor.

XXVIII.

_____ has been notified of and received an opportunity to cure its breach of express warranty, but has failed to do so. Second, as to any incident to which notice was not otherwise given, _____ was put on notice as to the defects and breach of warranty complained of herein by the myriad of vehicle fires as to which notice was given. Finally in any event _____ has long been aware of this defect and other breaches of warranty and has chosen to take no action to remedy them at least on a timely basis.

XXIX.

By reason of _____'s breach of express warranties Plaintiffs have been obliged to pay the claims herein and suffer the losses described herein.

XXX.

By its conduct alleged above _____ has violated the Federal Magnuson-Moss Act, 15 U.S.C. Section 2301 ETC and State Law, as codified in the _____ in Section _____ of the _____ Code _____ and Section _____ of the _____ being part of the _____.

XXXI.

The Plaintiffs repeat _____ has breached implied warranties imposed by law that are applicable to its vehicles, in particular the vehicle of _____, including the implied warranty of merchantability and implied warranty of fitness for a particular purpose pursuant _____ of Sections _____ and _____ of the _____ Code _____, being parts of the _____.

XXXII.

_____ is a merchant as to its motor vehicles. Pursuant to the implied warranty of merchantability covering the sale of this vehicle _____ warrants without limitations that this vehicle is fit for the ordinary purpose for which they are sold, conformed to affirmations mainly in labeling and sales literature, and are freed from defects so as to pass without objection in the trade.

XXXIII.

When placing the vehicle of _____ in the stream of commerce _____ was well aware that _____ when acquiring this vehicle expected it to be safe and free from defects in its ordinary foreseeable operation, but the facts give rise to an implied warranty of fitness for a particular purpose with respect to _____'s vehicle.

XXXIV.

_____ has breached the implied warranties applicable to this vehicle by selling or leasing the vehicle in a defective condition likely to cause the fire that did occur and makes the failure to provide the warnings and instructions required to reduce the fire thus proximately causing the damages and losses herein.

DAMAGES

XXXV.

The Plaintiffs suffered a loss of household goods, furnishings, appliances and all matters therein of \$_____, as a result of the fire proximately caused by the vehicle manufactured by the Defendant, _____, and were compensated by the Co-Plaintiff, _____, for the contents of \$_____, being the policy limits of _____ and husband, _____, also had a reduction therein of \$_____, for the deductible. The Plaintiffs, _____ and husband, _____, suffered a loss in actual damages for which they should be compensated by the Defendants of \$_____. The Plaintiff, _____, has suffered damages proximately caused by the burning of the vehicle manufactured by the Defendant in the amount of \$_____, for the dwelling and \$_____, for the contents for a total of \$_____, that the Defendants should be required to pay the Plaintiff _____. The Plaintiffs, _____ and husband, _____, were dispossessed of their home for quite a considerable period of time and suffered extreme emotional anguish and distress, and for that reason and the reasons given above they should be awarded punitive damages in the amount of \$_____ being one hundred times the value of their actual losses, plus reasonable attorney's fees.

DISCOVERY

Pursuant to the terms and provisions of the _____ Rules of Civil Procedure the Plaintiff propounds unto the Defendant the following Discovery in the form of Interrogatories, Requests for Production and Requests for Admissions, all of which must be answered under oath

within thirty (30) days from the date hereof or as to the Requests for Admissions be deemed answered or responded to:

INTERROGATORIES

INTERROGATORY NUMBER 1: Please identify by name and address all persons having knowledge of any discoverable matter not privileged which is relevant to the issues raised by the Complaint and any subsequent Defenses, Answer or Responsive pleadings which may be filed hereafter by the Defendant or by the Plaintiff.

Respectfully submitted,