

NORTH CAROLINA
NASH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CVS 86

AMOS TYNDALL, as Guardian ad Litem
for CHE-VAL BATTS,

Plaintiff,

vs.

FORD MOTOR COMPANY and
ALEJANDRO ORTIZ RIOS,

Defendants.

COMPLAINT
(COMP)
Jury Trial Demanded

BY

NASH COUNTY, C.S.C.

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FILED

PLAINTIFF Che-Val Batts alleges:

1. Plaintiff Che-Val Batts is a minor, citizen and resident of Nash County, North Carolina.
2. Guardian Ad Litem, Amos Tyndall, is an attorney from Chapel Hill, Orange County, North Carolina.
3. Defendant Ford Motor Company (hereinafter referred to as "Ford") is a Delaware Corporation and was at all material times hereto, doing and transacting business in North Carolina, including Nash County, North Carolina. Defendant Ford's registered agent is CT Corporation System, located at 150 Fayetteville Street, P.O. Box 1011, Raleigh, NC 27601.
4. Defendant Alejandro Ortiz Rios is a citizen and resident of Wake County, North Carolina.

FACTS

5. Plaintiff Che-Val Batts restates, realleges and reavers the allegations contained in Paragraphs 1 through 4 as though set out in full and incorporates the same herein by reference

6. On August 16, 2010, Plaintiff Che-Val Batts was a rear seat passenger in his mother's 1999 Ford Escort (hereinafter "Escort") VIN 1FAFP13P3XW188093, traveling southbound on RP-1150.

7. Plaintiff Che-Val Batts was wearing the available lap belt only restraint provided for center seating in the rear seat of the Escort.

8. At the same time and location, Defendant Rios was stopped at the intersection of RP-1152 and RP-1150.

9. Suddenly and without warning, Defendant Rios pulled out onto RP-1150 directly into the path of and impacted the Escort.

10. The force of the impact resulted in the failure of the rear seat, rear restraint system and component parts.

11. As a direct and proximate result of the poorly designed and/or manufactured rear seat and rear restraint system, Plaintiff Che-Val Batts suffered severe spinal cord and abdominal injuries, rendering him paraplegic.

12. The independent acts and omissions of all Defendants resulted in indivisible injuries to Plaintiff Che-Val Batts and resulting damages to Plaintiff Che-Val Batts, therefore, Defendants are jointly and severally liable for the damages sustained by Plaintiff Che-Val Batts.

COUNT II – NEGLIGENCE
(Defendant Ford)

13. Plaintiff Che-Val Batts restates, realleges and reavers the allegations in Paragraphs 1 through 12 as though set out in full and incorporates the same herein by reference.

14. At all times relevant to this lawsuit, Defendant Ford designed, manufactured, marketed, distributed and sold the Escort in the ordinary course of its business.

15. The Escort then lacked effective and proper occupant protection for the center rear seat occupants and was therefore in a defective condition and unreasonably dangerous when put to a reasonably anticipated use and Defendant Ford was negligent and breached its duty of care in each of the following respects:

- a. Defendant Ford carelessly and negligently designed, manufactured, marketed, distributed and sold the Escort;
- b. Defendant Ford carelessly and negligently failed to give adequate warnings to purchasers and users of the Escort, including Plaintiff Che-Val Batts and/or his mother, about the unreasonably dangerous and defective condition of the Escort, and thereby caused unnecessary and severe injuries to occupants of the Escort.;
- c. Defendant Ford did not give an adequate and effective warning with respect to the dangers associated with lap belts, including instruction to utilize a seat with a three-point restraint when available;
- d. The Escort's rear seat restraint system was designed in such a manner that it failed to adequately protect an occupant in the center seat position of the rear seat during a reasonably foreseeable collision, in a reasonably safe manner, thereby exposing Plaintiff Che-Val Batts to severe impact forces which resulted in his permanent and progressive injuries;
- e. The Escort's center rear seat was equipped with a lap belt only and thus failed to adequately protect an occupant in the center position of the rear seat during a reasonably foreseeable collision, in a reasonably safe

manner, thereby exposing Plaintiff Che-Val Batts to severe impact forces which resulted in his permanent and progressive injuries;

- f. Defendant Ford designed, manufactured, assembled, inspected, tested, distributed and/or sold the Escort including, its rear seat restraint system, including the seat belt, constructed with materials and components that were inadequate to withstand the foreseeable forces of impact and failed during the course of the impact described herein, exposing Plaintiff Che-Val Batts to excessive impact forces;
- g. The Escort was in a defective and unreasonably dangerous condition by reasons of the defects in its design, manufacture, assembly, inspection, warning and testing of the rear seat system, including but not limited to, the seating mechanism, seat pan, seat angles and geometry, bracketing, seat belt restraint system, anchoring system, and retractor systems, in that it failed to adequately protect an occupant in the rear seat during a reasonably foreseeable collision, in a reasonably safe manner, thereby exposing Plaintiff Che-Val Batts to severe impact forces which resulted in his permanent and progressive injuries;
- h. The Escort was in a defective and unreasonably dangerous condition by reasons of the defects in its design, manufacture, assembly, inspection, warning and testing of the rear seat during a reasonably foreseeable collision and in a reasonably safe manner because it failed to protect occupants from impact forces from objects and cargo in the trunk of the vehicle;

- i. The Escort was in a defective and unreasonably dangerous condition by reasons of the defects in its cargo retention system located in the trunk of the vehicle;
- j. The Escort was designed and manufactured in such a manner that it failed to adequately protect an occupant in the rear seat during a reasonably foreseeable collision and in a reasonably safe manner thereby exposing Plaintiff Che-Val Batts to severe impact forces which resulted in his permanent and progressive injuries;
- k. Should Defendant Ford argue that the collision forces are primarily from the side, then the Escort was designed and manufactured in such a manner that it failed to adequately protect an occupant in the rear seat during a reasonably foreseeable collision and in a reasonably safe manner, thereby exposing Plaintiff Che-Val Batts to severe impact forces which resulted in his permanent and progressive injuries;
- l. The Escort's occupant compartment interior, including the trim panels in the rear of the vehicle and the interior portions of the side windows, were unreasonably dangerous in that they failed to adequately protect an occupant that would come into forceful contact with the same under reasonably foreseeable circumstances, thereby exposing such occupant to an unjustifiable risk of permanent and progressive injury; and
- m. Defendant Ford was negligent in failing to retrofit the Escort with a safer rear seat belt.

16. The Escort was expected to reach and did reach the hands of Plaintiff Che-Val Batts and/or Plaintiff's mother without substantial change in the condition in which it was designed, manufactured, assembled, distributed and/or sold and was being used by Plaintiff Che-Val Batts and/or Plaintiff's mother in the manner intended by Defendant Ford.

17. The Escort was used in a manner reasonably anticipated and for the use intended.

18. The Escort was not crashworthy during a reasonably foreseeable collision.

19. The defective nature of the Escort and the negligence of Defendant Ford directly and proximately caused or contributed to cause Plaintiff Che-Val Batts to sustain severe and permanent injuries.

20. As a direct and proximate result of the negligence of Defendant Ford Motor Company, Plaintiff Che-Val Batts sustained damages in excess of ten thousand dollars (\$10,000.00).

COUNT II – BREACH OF IMPLIED WARRANTY
(Defendant Ford)

21. Plaintiff Che-Val Batts restates, realleges and reavers the allegations in Paragraphs 1 through 20 as though set out in full and incorporates the same herein by reference.

22. Defendant Ford sold and delivered the Escort in the State of North Carolina and, therefore, impliedly warranted that the vehicle was merchantable and reasonably fit for the purpose for which it was sold.

23. Due to the defects detailed above, the Escort was not merchantable, was not reasonably fit for foreseeable use, and was not reasonably crashworthy.

24. The defects detailed above were present at the initial sale of the Escort.

25. The Escort did not meet the reasonable expectations of Plaintiff Che-Val Batts as a user and consumer of the vehicle.

26. The defects detailed above directly and proximately caused or contributed to cause Plaintiff Che-Val Batts to sustain severe and permanent injuries.

27. As a direct and proximate result of the negligence of Defendant Ford Motor Company, Plaintiff Che-Val Batts sustained damages in excess of ten thousand dollars (\$10,000.00).

COUNT III – NEGLIGENCE
(Defendant Rios)

28. Plaintiff Che-Val Batts restates, realleges and reavers the allegations in Paragraphs 1 through 27 as though set out in full and incorporate the same herein by reference.

29. Defendant Rios failed to operate his vehicle in a careful and prudent manner by failing to exercise the highest degree of care and was thereby negligent in the following respects, to wit:

- a. Defendant Rios failed to keep a careful or reasonable lookout;
- b. Defendant Rios operated a motor vehicle without keeping it under proper control;
- c. Defendant Rios failed to yield the right-of-way;
- d. Defendant Rios made a turn directly into the path of the Escort; and
- e. Other ways to be determined through discovery and trial.

30. As a direct and proximate result of the aforesaid negligence of Defendant Rios, his vehicle collided with the Escort causing the collision forces which interacted with the negligent design, manufacture and product defect of the Escort to produce injuries and damage to Plaintiff Che-Val Batts.

31. As a direct and proximate result of the negligence of Defendant Alejandro Ortiz Rios, Plaintiff Che-Val Batts sustained damages in excess of ten thousand dollars (\$10,000.00).

COUNT IV – COMPENSATORY DAMAGES
(Defendant Ford and Defendant Rios)

32. Plaintiff Che-Val Batts restates, realleges and reavers the allegations in Paragraphs 1 through 31 as though set out in full and incorporate the same herein by reference.

33. As a direct and proximate result of Defendant Rios' negligence and Defendant Ford's negligence, Plaintiff Che-Val Batts:

- a. received serious, painful and permanent bodily injuries, including paraplegia;
- b. experiences great pain and suffering in his body and mind;
- c. incurs reasonable medical and other expenses for medical treatment, rehabilitation and adaptation;
- d. will likely experience a decreased earning capacity; and
- e. experiences great discomfort and distress in performing his day to day activities.

COUNT V – PUNITIVE DAMAGES
(Defendant Ford)

34. Plaintiff Che-Val Batts restates, realleges and reavers the allegations in Paragraphs 1 through 33 as though set out in full and incorporate the same herein by reference.

35. In addition to the negligence and breaches of warranties alleged above, Plaintiff Che-Val Batts alleges that Defendant Ford is liable to Plaintiff Che-Val Batts for punitive damages.

36. Defendant Ford was reckless, willful, wanton, and intentional in failing to design and manufacture a safe rear seat for the 1999 Escort to withstand a foreseeable collision.

37. Defendant Ford knew or should have known such conduct was likely to result in serious injury to consumers and passengers.

38. Defendant Ford became aware of the design defect of the back seat in the 1999 Escort, and the company knew or should have known that as significant number of injuries such as those which Plaintiff Che-Val Batts experienced in this case would occur.

39. Notwithstanding Ford's prior knowledge of the Escort seat back design defect and the likelihood that severe injuries to occupants of the Escort would occur as a result of that design, Ford, in a pursuit of its goals of minimizing costs and maximizing profits, failed to employ a feasible safer alternative design and deliberately placed the vehicle into production and marketed, distributed and sold the Escort.

40. In selling the vehicle with the previously described defect and failing to retrofit the Escort, Defendant Ford purposefully and recklessly chose to disregard the safety of individuals occupying such seats in a collision.

41. The egregious conduct of Defendant Ford as described above was willful and wanton and demonstrated a conscious and reckless disregard of an indifference to the rights and safety of others, including Plaintiff Che-Val Batts.

42. As a result of the willful and wanton misconduct of Defendant Ford, Plaintiff Che-Val Batts is entitled to recover punitive damages in an amount to be determined by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Che-Val Batts respectfully prays this Court for relief against Defendant Ford Motor Company and Alejandro Rios, jointly and severally, as follows:

1. Compensatory damages in an amount to be determined by the jury with interest as allowed by law;
2. Punitive damages in an amount to be determined by a jury with interest as allowed by law;
3. The costs of this action;
4. Trial by jury on all issues so triable; and
5. Such other and further relief as the Court may deem just and proper.

This 17th day of January, 2011.

Respectfully submitted,

MARTIN & JONES, P.L.L.C.

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