

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

KIMBERLY ELAINE BANKS, Individually, )  
PATRICK DEAN BANKS, Individually, and )  
RUTHANN P. LACEY, as Guardian of the )  
Property of KAYLA BANKS, a minor, )

Plaintiffs, )

v. )

FORD MOTOR COMPANY, )

Defendant. )

CIVIL ACTION FILE  
NO.: 2000-A-7538

**FIFTH AMENDED COMPLAINT**

Kimberly Elaine Banks, Individually, Patrick Dean Banks, Individually, and Ruthann P. Lacey, as Guardian of the Property of Kayla Banks, a minor, Plaintiffs in the above-captioned matter, for their Fifth Amended Complaint against the above-named defendant, hereby strike all prior complaints and insert in lieu thereof, the following allegations:

**PARTIES, JURISDICTION AND VENUE**

1.

Plaintiffs Kimberly Elaine Banks, Individually, Patrick Dean Banks, Individually, and Ruthann P. Lacey, as Guardian of the Property of Kayla Banks, a minor, (collectively "Plaintiffs"), and Kayla Banks, a minor, are residents and citizens of the State of Georgia. Plaintiffs' claims in this action are the result of injuries sustained by Kayla Banks while riding in a defective Ford Escort

manufactured by Defendant Ford Motor Company, which was involved in a motor vehicle collision in Jackson County, Georgia on September 29, 2000.

2.

Plaintiff Kimberly Elaine Banks and Plaintiff Patrick Dean Banks, wife and husband, are the parents of Kayla Banks, a minor, and reside in Jackson County, Georgia.

3.

Plaintiff Ruthann P. Lacey was appointed Guardian of the Property of Kayla Banks, a minor, by the Probate Court of Jackson County, Georgia, on August 31, 2001.

4.

Defendant Ford Motor Company ("Ford") is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of Michigan, with a registered agent for service of process in the State of Georgia, Corporation Process Company, 180 Cherokee Street, NE, Marietta, Cobb County, Georgia 30060, upon whom a Summons and copy of the original Complaint in this action were served. Ford Motor Company has filed an Answer in this action and, therefore, may be served by mailing a copy of this Fifth Amended Complaint to its counsel of record. Ford Motor Company is subject to the jurisdiction of this Court. Venue is proper.

### **FACTUAL ALLEGATIONS**

5.

At approximately 3:00 p.m. on or about September 29, 2000, Kayla Banks was riding in the rear seat on the driver's side of a 1989 Ford Escort bearing Georgia license plate number 897 WLW, having Vehicle Identification Number 1FAPP9597KT160566, and being driven by Regina Ann Pilgrim. Kayla Banks was properly positioned in the rear seat and was properly wearing the lap-only seat belt provided by Ford for rear seat occupants. The 1989 Ford Escort was traveling East on GA 124 approaching the intersection with Creek Nation Road in Jackson County.

6.

At the same date, time and place, a 1995 Dodge Ram pick-up truck towing a trailer, being owned by Price Communications, and being driven by Robert Steven Price was stopped at the stop sign on Creek Nation Road at its intersection with GA Route 124.

7.

At the same date, time, and place, suddenly and without warning, Robert Steven Price drove the Dodge Ram pick-up truck towing the trailer into the intersection with GA Route 124, without yielding the right-of-way to the oncoming Ford Escort being driven by Regina Ann Pilgrim.

8.

The 1989 Ford Escort collided with the trailer being towed by the 1995 Dodge Ram pick-up truck.

9.

Kayla Banks suffered serious injuries in the collision, including injuries to the spinal cord, resulting in permanent paralysis.

10.

As a result of the injuries she sustained in the collision, Kayla Banks has endured, and will continue to endure, intense physical and mental pain and suffering and substantial expenses for medical care. Her injuries have severely disabled her and have substantially diminished her enjoyment of life.

11.

As a result of the injuries sustained by their minor daughter, Kayla Banks, in the collision, Kimberly Elaine Banks and Patrick Dean Banks have sustained and will continue to sustain substantial expenses for the care of Kayla Banks as well as loss of services.

12.

The subject collision and the personal injuries and damages sustained by Kayla Banks and Plaintiffs were a proximate result of the tortious conduct of Ford, without any carelessness, negligence, or wrongful conduct, on the part of Kayla Banks or Plaintiffs.

**COUNT I - DEFECTIVE DESIGN/NEGLIGENCE AGAINST**

**FORD MOTOR COMPANY**

13.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in Paragraphs 1 through 12 of the Fifth Amended Complaint.

14.

The 1989 Ford Escort in which Kayla Banks was riding when she suffered her injuries was designed, manufactured, assembled and placed in the stream of commerce by Ford. The 1989 Ford Escort was defectively designed, manufactured and assembled by Ford in that it was not crashworthy and subjected Kayla Banks to an unreasonable risk of enhanced injuries in the event that it was involved in a foreseeable collision, such as occurred. Specifically, the seat and occupant restraint system for the outboard rear seat passengers in the 1989 Ford Escort was defective in that it, among other things, did not have a shoulder harness. The restraint system for the outboard rear seat passengers was further defective in that it was not designed to stay on the pelvis in a collision.

15.

Ford's actions in designing, manufacturing, assembling, and placing in the stream of commerce the 1989 Ford Escort evidence willful, reckless, and/or wanton disregard for life because of Ford's actual and/or constructive knowledge of the unreasonably dangerous condition of the 1989 Ford Escort. Ford's actions in designing, manufacturing, assembling and placing in the stream of commerce the 1989 Ford Escort further constitute conduct which manifests a willful, reckless, or wanton disregard for life because the design of the Ford Escort was known by Ford to be dangerous to passengers, at odds with industry practice and

the state-of-the-art, in violation of Ford's own internal standards and/or in violation of Federal regulations. Furthermore, Ford failed to correct the known defects in the 1989 Ford Escort in order to protect its profits and/or preserve its production schedule at the expense of the safety of rear seat passengers of the 1989 Ford Escort, conduct which likewise manifests a willful, reckless, or wanton disregard for life.

16.

Ford failed to recall the 1989 Ford Escort from the market or take other action after the sale of the Escort in order to remedy the defective condition. Ford's failure to recall the 1989 Ford Escort or otherwise remedy the defective condition after the time of sale, through September 29, 2000 and to the present, violates its duties under Georgia law and constitutes conduct which, given Ford's knowledge of the defects and consequences, manifests a willful, reckless, or wanton disregard for life.

17.

The seat and occupant restraint system for the left rear passenger of the 1989 Ford Escort was in the same condition prior to the collision on September 29, 2000 as it was when it left the control of Ford, ordinary wear and tear accepted.

18.

For these reasons, the 1989 Ford Escort was not merchantable and reasonably suited to the use intended when sold by Ford.

19.

The defective and unreasonably dangerous 1989 Ford Escort proximately caused the serious injuries and damages sustained by Kayla Banks and Plaintiffs.

**COUNT II - FAILURE TO WARN AGAINST FORD MOTOR COMPANY**

20.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in Paragraphs 1 through 19 of the Fifth Amended Complaint.

21.

Ford had actual and/or constructive knowledge of the unreasonably dangerous and defective condition of the 1989 Ford Escort at the time of its original sale. Ford knew, prior to the sale of the 1989 Ford Escort, that rear seat occupants, who were properly wearing the lap-only seat belt provided by Ford, would receive serious, permanently debilitating, or fatal injuries in foreseeable collisions such as occurred in the subject incident. Ford's actual and constructive knowledge of the unreasonably dangerous and defective condition of the 1989 Ford Escort arose from, among other things, crash testing, sled testing, research and literature available to the automotive industry, government studies, consumer complaints, lawsuits and claims, actual field experience, and statistical databases and analysis.

22.

Furthermore, Ford continued to receive knowledge from the above-described sources regarding the defective and unreasonably dangerous condition of the 1989 Ford Escort after the time of sale and up through September 29, 2000.

23.

The 1989 Ford Escort was further defective in that Ford failed to warn the owners and occupants of the vehicle of its unreasonably dangerous and defective condition.

24.

Ford was negligent in failing to warn owners and occupants of the 1989 Ford Escort of its unreasonably dangerous and defective condition both at the time of sale and continuing in the months and years following sale, through September 29, 2000 and to the present.

25.

Ford's failure to adequately warn owners and occupants of the 1989 Ford Escort of its unreasonably dangerous and defective condition proximately caused the serious injuries and damages sustained by Kayla Banks and Plaintiffs.

**COUNT III - PUNITIVE DAMAGES AGAINST FORD MOTOR COMPANY**

26.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in Paragraphs 1 through 25 of the Fifth Amended Complaint.

27.

The design and manufacture of the 1989 Ford Escort was inherently dangerous as a result of the lap-only seat belts described above. This defect presented a substantial likelihood that occupants such as Kayla Banks would receive serious, permanently debilitating, or fatal injuries in foreseeable collisions such as occurred in the subject incident. Despite knowledge of these hazards on the part of Ford, derived from, among other things, crash testing, sled testing, research and literature available to the automotive industry, government studies, consumer complaints, lawsuits and claims, actual field experience, and statistical databases and analysis, Ford failed to modify the defective design, recall or remedy the defective design, or to warn the public in general, and Plaintiffs in particular, of the hazards presented by the 1989 Ford Escort. As a result of such wilful misconduct, wantonness, and entire want of care, which would raise the presumption of conscious indifference to consequences, Plaintiffs are entitled to an award of punitive damages against Ford pursuant to O.C.G.A. § 51-12-5.1(b).

WHEREFORE, Plaintiffs Kimberly Elaine Banks, Individually, Patrick Dean Banks, Individually, and Ruthann P. Lacey, as Guardian of the Property of Kayla Banks, a minor, demand the following relief:

- (1) Trial by jury;
- (2) Judgment against all Ford Motor Company in such amount as the Court and jury find will fully compensate them for the injuries and damages suffered by Kayla Banks, including medical and other reasonable expenses past, present, and future, permanent injuries,

physical pain and suffering past, present, and future, mental and emotional distress and pain and suffering, past, present, and future, all economic losses, including lost income and the lost capacity to labor, and the damages sustained by Kimberly Elaine Banks and Patrick Dean Banks, including medical and other expenses past, present, and future, and loss of services, as a result of Ford's wrongful acts and omissions;

- (3) Judgment against Ford Motor Company for punitive damages and an award of an amount in punitive damages sufficient to punish and deter such willful misconduct, wantonness, and entire want of care;
- (4) That the costs of this action be taxed against the Defendants;
- (5) Such other and further relief as the Court deems just and proper.

This \_\_\_\_ day of June, 2002.

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that I have this \_\_\_\_ day of July, 2002, served a copy of the foregoing **FIFTH AMENDED COMPLAINT** on all interested parties in this action via U.S. Mail as follows:

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