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FILED IN OFFICE
CLERK STATE COURT
GWINNETT COUNTY, GA

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

2018 AUG -9 AM 10: 00

KIM HILL, et al,)
)
Plaintiff,)
)
v.)
)
FORD MOTOR COMPANY, et al.)
)
Defendant.)

RICHARD ALEXANDER, CLERK

Civil Action No. 16-C-04179-S2

NOTICE OF APPEAL

Notice is hereby given that Defendant Ford Motor Company (“Ford”) appeals to the Court of Appeals of Georgia from the Order Granting-in-Part Plaintiffs’ Post-Trial Motion for Sanctions and Assessing Jury Costs Against Defendant, entered on July 19, 2018 (the “Order”). The Order is, in substance, intention, and effect, an order holding Defendant in contempt of the court and is therefore directly appealable pursuant to O.C.G.A. § 5-6-34(a)(2).

Alternatively, Georgia appellate courts are empowered “to consider appeals of interlocutory orders when [the court] disagree[s] with the trial court concerning the need for immediate appellate review of an interlocutory order,” in “exceptional cases that involve an issue of great concern, gravity, and importance to the public and no timely opportunity for appellate review.” Waldrip v. Head, 272 Ga. 572, 575 (2000).

The imposition of impermissible death-penalty contempt sanctions, violating basic due process rights by adjudicating a controversy not based on the merits, constitutes an exceptional case justifying interlocutory review of the Order, particularly in light of the trial court’s blanket *refusal* to certify that or any Order for immediate review—a practice consistently and without exception followed with each and every certificate of immediate review requested by Ford.

As allowed by O.C.G.A. § 5-6-34(d), Ford further appeals all prior orders and rulings that may affect the proceedings below. Those orders include, but are not limited to, all of the following:

- a) Orders parsing what words defense counsel could and could not use and prohibiting any reference to Dr. Joseph Burton before the jury while discussing the secret *ex parte* exhumations and autopsies of the Plaintiffs' parents undertaken and completed by Dr. Joseph Burton and Dr. Jonathan Eisenstat during the pendency of this litigation at the direction of Plaintiffs' counsel, to wit, Orders on Plaintiffs' Motion in *Limine* to Prevent Defense Argument and Insinuations About Exhumations & Autopsies, signed 1/19/2018 and entered on docket 1/22/2018 and signed and entered on docket 2/14/2018;
- b) Orders and rulings limiting the testimony of Dr. Thomas McNish, an Air Force and NASA flight surgeon and renowned biomechanical engineer, with unchallenged experience and training in determining injury causation and cause of death in all manner of accidents, by preventing him from giving a cause of death opinion because he was "not qualified," and then striking the entirety of his testimony and granting a mistrial at Plaintiffs' request when Dr. McNish answered a question, without objection, on whether he agreed with the opinion of Plaintiffs' expert (who performed the secret autopsy) regarding injury causation, to wit, Order Regarding Motions in *Limine* No. 10, signed and entered on docket 2/12/2018 and Oral Order Granting Plaintiffs' Motion for Mistrial, issued at trial 4/06/2018;
- c) Orders excluding the expert testimony of Dr. Roger Nightingale, a Duke University scholar and renowned researcher who, although qualified by education, training, skill and experience to address biomechanics and injury causation in automobile accidents, did not also have a medical license, to wit, Orders Concerning Plaintiffs' Motions in *Limine* Numbers 6 and 11, signed 12/15/2017 and entered on docket 12/18/2017;

- d) Orders excluding commonly-admitted, peer-reviewed, published crash testing and other testing demonstrating what happens in a rollover accident and when it happens, because under O.C.G.A. § 24-4-403 the science would be unduly prejudicial to the Plaintiffs' case, to wit, Orders Excluding and Limiting Evidence, Defense, Argument, or Reference to "Malibu" and "CRIS" Testing, signed on 12/15/2018 and entered on docket 12/18/2017, and signed and entered on docket 2/14/2018, Order Regarding Motions in *Limine*, signed and entered on docket 2/12/2018, and Order Granting Plaintiffs' Motion in *Limine* to Exclude Evidence, Defense Argument, or Reference to Ford's So-Called "Drop Tests" and "ROCS Tests," signed and entered on docket 2/12/2018;
- e) Orders misconstruing O.C.G.A. § 40-8-76.1(d), inserting words not found in that statute, to wit, Orders Granting Plaintiffs' Motion in *Limine* to Exclude Any Argument, Questioning or Evidence About Alleged Seatbelt Use and Plaintiffs' Motion in *Limine* to Exclude Argument or Testimony Concerning the Hills' Allegedly Not Wearing Their Shoulder Belts Properly, signed 1/19/2018 and entered on docket 1/22/2018, and signed 3/16/2018 and entered on docket 3/20/2018;
- f) Orders and rulings refusing to apply O.C.G.A. § 51-12-33, which requires the jury to apportion fault whenever the "plaintiff is to some degree responsible for the injury or damages claimed," and excluding evidence that the driver's toxicology tested positive for numerous prescription drugs with significant side effects, the driver was driving above the speed limit and too fast for conditions, violated warnings in the owner's manual by putting the wrong load range tire on his truck (which, according to Plaintiffs' experts, caused a tire failure), and failed to properly control his vehicle following a tire failure, to wit, Order Regarding Motions in *Limine*, signed and entered on docket 2/12/2018;

- g) Orders accepting only one party's description of events even after it was proven to be utterly false and steadfastly refusing to hear or consider anything to the contrary, to wit, Order on Plaintiffs' Emergency Motion for Sanctions, signed 3/16/2018 and entered on docket 3/20/2018;
- h) Orders refusing to let another judge even hear Ford's Motion to Recuse which met all the requirements for assignment and then refusing to certify that refusal for immediate interlocutory appellate review, to wit, Order Denying Motion to Recuse the Honorable Shawn F. Bratton *nunc pro tunc* to June 7, 2018, signed 6/15/2018 and entered on docket 6/18/2018;¹
- i) Orders and rulings allowing the admission of photographs and occupant names from 64 other accidents, occurring almost entirely outside of Georgia and merely depicting a Ford Super Duty truck that had been involved in a severe rollover accident, to wit, Order on Ford Motor Company's Motion in *Limine* to Exclude All Other Similar Incident (OSI) Evidence, signed and entered on docket 2/13/2018;
- j) Orders allowing a failure to warn claim to be tried that was unsupported by evidence and duplicative of the design defect claim, to wit, Order Denying Ford Motor Company's Motion for Partial Summary Judgment on Plaintiffs' Failure to Warn Claims, signed 12/15/2017 and entered on docket 12/18/2017;
- k) Orders rejecting the Eleventh Circuit's holding in Ivy v. Ford Motor Company for when a repose-barred claim—or any punitive damages claim for that matter—can survive summary judgment under Georgia law, to wit, Order Denying Ford Motor Company's

¹ This order replaced the Court's June 7, 2018 Order Denying Motion to Recuse the Honorable Shawn F. Bratton, which was vacated in an order signed 6/15/2018 and entered on docket 6/18/2018.

Motion for Partial Summary Judgment — Statute of Repose and Claims for Recovery of Punitive Damages, signed 12/15/2017 and entered on docket 12/18/2017;

- l) Orders allowing a purported expert to opine about alternative roof designs without any concrete specifications of those designs and without any scientific basis to opine that a differently-designed roof would have changed the outcome in this case, to wit, Order Denying Defendant Ford Motor Company's Daubert Motion to Exclude the Testimony of Brian Herbst, signed 12/15/2017 and entered on docket 12/18/2017;
- m) Orders excluding as both irrelevant and unduly prejudicial a case study conducted in accordance with standard NHTSA protocols and based upon data relied upon by the NHTSA and the automotive industry, merely because it appeared to involve statistics, to wit, Order Granting Plaintiffs' Motion in Limine to Exclude Ford Expert Michelle Vogler's Statistical Analysis of Dissimilar Accident Data, signed 12/15/2017 and entered on docket 12/18/2017;
- n) The Court's signing of an *ex parte* consent judgment (signed and entered on docket 3/16/2018) dismissing a settling defendant on the Friday before trial, and then denying Ford's request that Plaintiffs produce the terms and conditions of the settlement that prompted that "consent judgment," to wit, the rulings during trial denying Ford's motion to compel production of the "Pep-Boy's release."

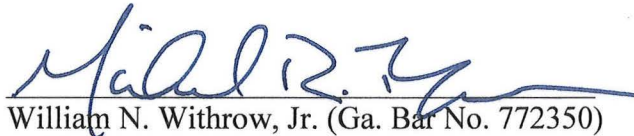
Many of the foregoing orders and rulings were the subject of requests for certificates of immediate review, none of which were allowed.

Pursuant to O.C.G.A. § 5-6-34(a) and (d), the Order and rulings described herein, and many others, are reviewable in the same manner as a final order.

Ford respectfully requests that the clerk omit nothing from the record on appeal. Ford designates all transcripts, pleadings, papers, exhibits, depositions, and other materials to be filed as part of the record on appeal.

The Court of Appeals, rather than the Supreme Court, has jurisdiction over this appeal because this case does not involve matters within the exclusive jurisdiction of the Supreme Court of Georgia.

Respectfully submitted, this 9th day of August, 2018.



William N. Withrow, Jr. (Ga. Bar No. 772350)

william.withrow@troutman.com

Pete Robinson (Ga. Bar No. 610658)

pete.robinson@troutman.com

James B. Manley, Jr. (Ga. Bar No. 469114)

jim.manley@troutman.com

TROUTMAN SANDERS LLP

600 Peachtree Street N.E. Suite 3000

Atlanta, Georgia 30308-2216

Telephone: (404) 885-3000

Michael R. Boorman (Georgia Bar No. 067798)

mboorman@huffpowellbailey.com

Philip A. Henderson (Georgia Bar No. 604769)

phenderson@huffpowellbailey.com

HUFF, POWELL & BAILEY, LLC

999 Peachtree Street, N.E., Ste. 950

Atlanta, Georgia 30309

Telephone: (404) 892-4022

Paul F. Malek, Esq.

Admitted Pro Hac Vice

D. Alan Thomas, Esq.

Admitted Pro Hac Vice

HUIE, FERNAMBUCQ & STEWART, LLP

2801 Highway 280 South, Ste. 200

Birmingham, Alabama 35223-2484

Michael W. Eady, Esq.
Admitted Pro Hac Vice
THOMPSON COE COUSINS & IRONS
701 Brazos, Suite 1500
Austin, Texas 78701

Attorneys for Defendant
Ford Motor Company

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing Notice of Appeal upon all parties by depositing a copy in the United States mail, with adequate first-class postage affixed thereto, addressed as follows:

James E. Butler, Jr., Esq.
Brandon L. Peak, Esq.
David T. Rohwedder, Esq.
Chris B. McDaniel, Esq.
BUTLER WOOTEN & PEAK, LLP
105 13th Street
Post Office Box 2766
Columbus, Georgia 31902

Michael D. Terry, Esq.
Frank Lowrey VI, Esq.
BONDURANT MIXSON & ELMORE
1201 W. Peachtree Street NW Suite 3900
Atlanta, Georgia 30309

Gerald Davidson, Jr., Esq.
MAHAFFEY PICKENS TUCKER, LLP
1550 North Brown Road
Suite 125
Lawrenceville, Georgia 30043

Ramsey B. Prather, Esq.
BUTLER WOOTEN & PEAK, LLP
2719 Buford Highway NE
Atlanta, GA 30324

Michael G. Gray, Esq.
WALKER, HULBERT, GRAY & MOORE,
LLP
909 Ball Street
P.O. Box 1770
Perry, Georgia 31069

This 9th day of August, 2018.


Michael R. Boorman (Georgia Bar No. 067798)