

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.

PRETRIAL ORDER

Pursuant to the provisions of Rule 16 of the North Carolina Rules of Civil Procedure and Rule 7 of the General Rules of Practice a pretrial conference was held on February 5, 2015. Plaintiff is represented by Kent Emison, Hoyt G. Tessener, and Huntington M. Willis. Defendant Ford is represented by Sandra G. Ezell, Nate Colarusso, Kirk Warner and Christopher Kiger. Defendant Rios is represented by Kevin Lewis.

1. It is stipulated that all parties are properly before the Court and that the Court has jurisdiction of the parties and of the subject matter.

2. It is stipulated that all parties have been correctly designated, and that there is no question as to misjoinder or nonjoinder of parties.

3. In addition to the stipulations contained herein, the parties stipulate and agree to the following undisputed facts:

- a. On August 16, 2010, Plaintiff Che-Val Batts was a center rear seat passenger in his mother's 1999 Ford Escort (hereinafter "Escort") VIN 1FAFP13P3XW188093, traveling southbound on RP-1150.
- b. Plaintiff Che-Val Batts was wearing the available lap belt only restraint provided for center seating in the rear seat of the Escort.
- c. At the same time and location, Defendant Rios was stopped at the intersection of RP-1152 and RP-1150.
- d. Suddenly and without warning, Defendant Rios pulled out onto RP-1150 directly into the path of and impacted the Escort.

- e. As a direct and proximate result of the center seat lap belt, Plaintiff Che-Val Batts suffered severe spinal cord and abdominal injuries, rendering him paraplegic.
- f. Che-Val Batts incurred \$528,890.26 in medical bills from August 16, 2010 until August 21, 2014 as a result of his injuries.
- g. Che-Val Batts was 11 years old at the time of the collision. Che-Val Batts birthday is December 28, 1998. Che-Val is now 16 years old. His current life expectancy according to the North Carolina Mortality Tables is 60.7 years.

4. The following is a list of all known exhibits that Plaintiff may offer at trial:

See Attachment A.

5. It is stipulated and agreed that each of the exhibits identified by Plaintiff are genuine and authentic and if relevant and material may be received in evidence without further identification or proof.

6. It is stipulated and agreed that defense counsel has been furnished with a copy of each exhibit identified by the Plaintiff, or in the case of poster size exhibits, defense counsel has had the opportunity to see and examine the exhibits.

7. The following is a list of all known witnesses that Plaintiff may offer at trial:

See Attachment B.

8. The following is a list of all known exhibits that Defendant Ford may offer at trial:

See Attachment C.

9. It is stipulated and agreed that each of the exhibits identified by Defendant Ford is genuine and authentic and if relevant and material and may be received in evidence without further identification and proof.

10. It is stipulated and agreed that Plaintiff's counsel has been furnished with a copy of each exhibit identified by Defendants, or in the case of poster size exhibits, Plaintiff's counsel has had the opportunity to see and examine the exhibits.

11. The following is a list of all known witnesses that Defendant Ford may offer at trial:

See Attachment D.

12. The following is a list of all known exhibits that Defendant Rios may offer at trial:

See Attachment E.

13. It is stipulated and agreed that each of the exhibits identified by Defendant Rios is genuine and authentic and if relevant and material and may be received in evidence without further identification and proof.

14. It is stipulated and agreed that Plaintiff's counsel has been furnished with a copy of each exhibit identified by Defendants, or in the case of poster size exhibits, Plaintiff's counsel has had the opportunity to see and examine the exhibits.

15. The following is a list of all known witnesses that Defendant Rios may offer at trial:

See Attachment F.

16. Plaintiff contends that the issues are:

- a. Did the Defendant Ford act unreasonably in designing the 1999 Ford Escort and its parts, proximately causing injury to Che-Val Batts?
- b. Did Defendant Ford impliedly warrant to the Plaintiff that the Ford Escort was merchantable?
- c. Did Defendant Ford's implied warranty of merchantability extend to the Plaintiff?
- d. Did Defendant Ford breach the implied warranty of merchantability made to the Plaintiff?
- e. Did Defendant Ford impliedly warrant to the Plaintiff that the Ford Escort was fit for a particular purpose?
- f. Did Defendant Ford's implied warranty of fitness for a particular purpose extend to the plaintiff?
- g. Did Defendant Ford break the implied warranty of fitness for a particular purpose made to the Plaintiff?
- h. Was Che-Val Batts injured by the negligence of Defendant Alexander Ortiz Rios?
- i. What amount of damages is the Plaintiff entitled to recover for the injuries to Che-Val Batts?
- j. Is the Defendant Ford liable to the Plaintiff for punitive damages?

k. What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff?

17. Defendant Ford contends that the issues are:

18. Defendant Rios contends that the issues are:

19. The probable length of this trial is estimated to be fifteen days.

20. Counsel for the parties represent to the Court that, in advance of the preparation of this Order, there was a full and frank discussion of settlement possibilities. Counsel for Plaintiff will immediately notify the clerk in the event of any material change in settlement prospects.

This the ____ day of February, 2015.

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APPROVED AND ORDER FILED:

_____, 2015.

Superior Court Judge Presiding