

ORIGINAL

IN THE SUPREME COURT OF OHIO

<b>ROSS J. LINERT and</b>	)	
<b>BRENDA LINERT,</b>	)	
	)	Supreme Court Case No. 14-1940
Plaintiffs/Appellees/Cross-	)	
Appellants,	)	
	)	On Appeal from the Mahoning County
v.	)	Court of Appeals, Seventh Appellate District
	)	
<b>FORD MOTOR COMPANY,</b>	)	
	)	Court of Appeals Case No. 11 MA 189
Defendant/Appellant/Cross-	)	
Appellee.	)	

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**RESPONSE TO FORD'S MEMORANDUM IN SUPPORT OF JURISDICTION AND  
MEMORANDUM AND IN SUPPORT OF JURISDICTION FOR THE CROSS-APPEAL  
OF ROSS AND BRENDA LINERT**

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## **EXPLANATION OF PUBLIC OR GREAT GENERAL INTEREST**

Ford has not raised any issue of public or great general interest for this Court to review. The trial court erred by, among others, refusing to instruct the jury regarding Ohio law on post-marketing warning. In reversing, the appellate court followed the express language of Ohio Revised Code section 2307.76(A)(2), reviewed the evidence (some of which the trial court erroneously excluded), and correctly determined that the jury should have heard all of the evidence and decided the issue under the statutory language.

After Ford argued that there must be a “predicate manufacturing defect claim” in order to have a post-sale duty to warn, the appellate court rejected Ford’s invitation to rewrite section 2307.76(A)(2). The statute has no such requirement. For post-marketing warning, the legislature used the word “risk”---not “defect” as Ford argued. Contrary to Ford’s incorrect and unjustified sensationalism, the appellate court did not defer to Black’s Law Dictionary over the statutory language. Rather, the appellate court contrasted the plain meaning of the statutory language (*i.e.*, “risk”) against Ford’s argument. The Linerts presented a submissible case for post-marketing warning claim, but the trial court refused to let the jury hear all of the evidence or decide the issue.

In the event that this Court decides to address any issues in this case, the issues of public and/or great general importance are:

- Whether alleged differences between Ford’s performance standards and the circumstances of the accident preclude an instruction about “performance standards” under R.C. section 23.07.74? In other words, should the jury decide issues of weight and/or credibility regarding the alleged differences between the testing and the accident?

- Whether harmless error exists when the jury found that there was no feasible alternative design because a jury instruction erroneously warned that Federal Motor Vehicle Safety Standards were “restrictions/limitations” on Ford’s ability to design a different product?
- Whether the appellate court’s finding that fire suppression evidence was admissible reversed the failure to warn claim (in addition to the post-marketing warning claim)?
- Whether repetition of the plaintiffs’ burden of proof more than twenty-two times in jury instructions was unreasonable or prejudicial?
- Whether a trial judge’s failure to disclose his ownership of the product at issue and/or recuse himself should require a new trial on all issues?

### **STATEMENT OF THE CASE AND FACTS**

This appeal presents a crashworthiness case. Officer Ross Linert sustained only relatively minor impact-related injuries, but defects in the Ford police cruiser resulted in an intense fire that caused severe and debilitating burn injuries over almost 30% of his body. On October 15, 2008, Linert and his wife Brenda Linert (collectively “plaintiffs”) filed a civil complaint in the Ohio Court of Common Pleas, Case No. 08-CV-3554 against Ford asserting claims for Product Liability, Loss of Consortium, and Actual Malice. Plaintiffs alleged that the fuel tank sender unit in the 2005 CVPI was defective in its manufacture, in its design, and due to inadequate warning of the danger of fire in a rear collision in violation of Ohio Rev. Code §§ 2307.74, 2307.75, 2307.76, and 2307.77.

#### **Ford Knew Vertical Behind the Axle Fuel Tanks Were Unsafe**

The subject CVPI was one of several Ford vehicles manufactured on what is known as the Panther Platform, which includes the Ford Crown Victoria, the Mercury Grand Marquis, and Lincoln Town Car. The Panther Platform utilizes a vertical behind-the-axle fuel tank location.

The Panther Platform behind-the-axle fuel tank location was initiated in 1979. However, every new platform of vehicle that Ford has manufactured since 1981 the fuel tank location was been placed forward of the rear axle. The 2005 CVPI has a vertical behind-the-axle fuel tank location. A vertical behind-the-axle fuel tank location is in the “crush zone” of the vehicle during a rear impact, “the area of the vehicle that’s being deformed.” According to Ford, Police vehicles are a thousand times more likely to be involved in high-speed rear impacts. The 2005 CVPI was the only vehicle manufactured by any automobile manufacturer that was manufactured for police use that has a vertical behind-the-axle fuel tank location.

In 2002, Ford developed the 75-mile-an-hour crash test. Ford designed and tested the 2005 CVPI according to its safety design guidelines that require that there are no punctures or continuing leakage in gas tanks on vehicles involved in 75-mile-an-hour rear impact and rear offset crashes. Furthermore, Ford advertised that the 2005 CVPI was designed and tested to withstand a 75-mile-an-hour rear offset crash with no puncture to the fuel tank and no continued leakage. Rear offset crash tests are more severe then rear inline crash tests.

### **The Fuel Tank and Sender Unit**

The subject fuel tank and sender unit on the 2005 CVPI was manufactured by Ford on May 2, 2005 at the Ford Dearborn Engine and Fuel Tank plant. The fuel tank on the 2005 CVPI has a fuel delivery module, or sender unit that delivers fuel to the engine and sends a signal to the gas gauge so that one knows how much fuel is in the in the tank. The sender unit plate is bolted to a sender ring, and the sender unit is secured to the fuel tank by crimping sheet metal over the top of the sender ring. Crimping the sender ring to the fuel tank is the only feature on the tank that acts to restrain the sender unit from being dislodged. With more crimp overlap, the sender unit is less likely to separate from the fuel tank.

Ford developed an Engineering Specification for the fuel tank and sender unit that contained specific dimensional information and tolerances. However, Ford's Engineering Specification for fuel tanks and sender units does not contain a specific dimension for crimp overlap, but it does contain other dimensional information and tolerances from which the crimp overlap can be scaled. According to Plaintiffs' expert, and Ford itself, Ford's Engineering Specification calls for a crimp overlap of 4.3 mm.

### **Crimp Overlap Diminishes Over Time Until the Crimp Improvement Project**

The crimp overlap that retains the fuel sender unit on Panther Platform vehicles began to diminish over time. As tooling for the tanks wore, the crimp overlap was no longer as robust as initially intended and manufactured. Plaintiffs' experts measured the crimp overlap on several CVPI fuel tanks by using calipers on x-ray radiographs. From the manufacture of the 2005 CVPI fuel tank until the fuel tanks that were manufactured before the Crimp Improvement Project described in greater detail below, the fuel tanks had a crimp overlap that measured: May 5, 2005 (1.73 mm); June 2, 2005 (1.45 mm); June 3, 2005 (1.35 mm); June 17, 2005 (1.26 mm). Fuel tanks that were manufactured before the fuel tank on the 2005 CVPI was manufactured had greater crimp overlap: May 8, 1998 (2.74 mm); June 1, 1998 (2.85 mm); June 15, 1998 (2.35 mm); Dec. 7, 2004 (2.56 mm.); Feb. 24, 2005 (1.94 mm); March 22, 2005 (1.61 mm); March 23, 2005 (1.52 mm); April 1, 2005 (1.40 mm); April 11, 2005 (1.58 mm); April 18, 2005 (1.40 and 1.72 mm); April 29, 2005 (1.35 mm). Fuel tanks that were manufactured after the Crimp Improvement Project had a much greater crimp overlap: Nov. 1, 2007 (4.45 mm); April 28, 2008 (3.76 mm); May 15, 2008 (3.79 mm).

Furthermore, Plaintiffs' experts conducted push/load testing on the above fuel tanks to quantify the strength of the sending unit ring crimp on CVPI fuel tanks. Push/load testing is used

to measure the amount of force required to push the retaining ring out of the crimp. Not surprisingly, these tests showed that much greater force was required to push the retaining ring out of the crimp when the crimp had greater overlap.

### **Ford's Crimp Improvement Project**

Ford's Corporate Representative, Jon Olsen, currently a design analysis engineer, testified that, after seeing real world incidents involving the CVPI where the crimp securing the sender ring had failed, he went to engineers to ask them to review Ford's manufacturing process. The outcome of that review was Ford's Crimp Improvement Project, initiated in January of 2007 and implemented in October of 2007. From 2005 to October of 2007 (implementation of the Crimp Improvement Project), Ford never sent a warning or notification regarding fuel tank sender unit failures or the crimp safety issue.. Furthermore, Ford never sent a warning to owners of a CVPI that in high-speed, high-energy rear impacts that the fuel tank has been known to puncture and cause fire. However, after the sale of the subject CVPI but before Mr. Linert's accident, Ford undertook a massive retooling project to address insufficient crimp of the fuel sender unit.

In January 2007, the Ford Dearborn Engine Plant initiated a Crimp Improvement Project that was implemented on October 21, 2007. *According to Ford's corporate representative*, the purpose of the Crimp Improvement Project was to "refurbish the tooling used to crimp the sender ring in the top panel of the EN/FN [Ford Crown Vic] fuel tank to maintain product quality and robustness," or to get "more metal folded over the top of the sender ring." The Crimp Improvement Project increased the "metal folded over the top of the sender ring" by a "millimeter to a millimeter and a half." It was important to have "more metal folded over the top of the sender ring" because it made the sender unit attachment to the fuel tank stronger, safer,

and more crashworthy. After the Crimp Improvement Project was implemented, test results improved indicating that the increased crimp made the joint stronger. In fact, since the implementation of the Crimp Improvement Project there has not been a single instance whereby the fuel tank sender unit has failed.

### **The Accident**

Linert was a police officer with the Austintown Township Police Department until November 11, 2007. On that date, while driving a 2005 CVPI, Mr. Linert suffered severe burn injuries over nearly 30% of his body when the fuel tank sender unit dislodged from the fuel tank in his CVPI creating an intense, gasoline fed fire. Linert was traveling on North Meridian Road in the left-hand lane at approximately 30-35 miles-per-hour when the 2005 CVPI that he was driving was struck from behind by a 1995 Cadillac DeVille (“1995 Cadillac”) being driven by Adrien Foutz (“Foutz”). Foutz was operating the 1995 Cadillac in excess of 100 miles-per-hour before she struck the 2005 CVPI. The closing speed, between 70 and 75 miles-per-hour, was within Ford’s 75 mph test. The 2005 CVPI exploded and inside of the vehicle was engulfed in flames. When the 2005 CVPI came to rest, Linert exited the driver side door of the vehicle while he was still burning.

### **ARGUMENTS AGAINST APPELLANT’S PROPOSITIONS OF LAW**

**Ford’s Proposition of Law No. 1 & 4: The appellate court’s reversal on post-sale duty to warn comports with Section 2307.76 and properly considers the role of “risk” in determining what a reasonable manufacture might warn against, and no separate finding of a “predicate manufacturing defect” is required.**

Plaintiffs’ claim for inadequate warning is a statutory claim pursuant to R.C. § 2307.76 which expressly provides that a product may be defective based on a manufacturer’s inadequate post-marketing warning or instruction. In its Propositions of Law No. 1 and No. 4, Ford argues that there must be an underlying defect prior to finding any failure to warn. The statute contains

no such requirement.

The appellate court's ruling that the trial court erred failing to instruct on Ford's post-marketing duty to warn under Ohio Revised Code section 2307.76(A)(2) is correct and should not be disturbed. Ford's argument is an invitation to rewrite rather than interpret the language of the statute and, as such, the invitation should be declined. Ford's claim that the appellate court failed to look at the statutory language and somehow deferred to Black's Law Dictionary is incorrect and unjustified sensationalism. It was Ford whose argument to the appellate court ran from the language of the statute and asked the Appellate court to hold that there must be a "predicate manufacturing defect claim" in order to have a post-sale duty to warn claim under Ohio Revised Code section 2307.76(A)(2), but there is no language supporting this idea. Instead, the legislature wrote that a product might become defective after a sale where there is a "risk" and the manufacturer fails to take reasonable action to warn. Thus the appellate court's opinion rightly contrasted the plain meaning of the language in the statute, ie. "risk," against the "manufacturing defect" that Ford urged them to require. The rationale of the appellate court was sound in refusing to require a "predicate manufacturing defect" where the statutory language of Ohio Revised Code section 2307.76(A)(2) has no such requirement and speaks only to a "risk."

Under the facts of this case, it was critical to instruct the jury on post-marketing defects in warning or instruction because there was ample evidence that, after the sale of the subject CVPI but prior to the accident, Ford continued to learn about the (1) increased risk of fire in the CVPI and/or (2) increased risk of sender unit failure from insufficient crimp on the sender ring, and, failed to provide any post-marketing warning or instruction, even though a reasonable manufacturer would have issued a warning. There is extensive testimony in this case that Ford itself determined that CVPI tanks were being manufactured with insufficient crimp and

undertook a Crimp Improvement Program to correct the issue. Even so, Ford never warned the drivers of the vehicles or police agencies who purchased units pre-crimp improvement.

Ford's Corporate Representative, Jon Olsen, currently a design analysis engineer, testified that, *after seeing real world incidents involving the CVPI where the crimp securing the sender ring had failed*, he went to engineers to ask them to review Ford's manufacturing process. The outcome of that review was Ford's Crimp Improvement Project, initiated in January of 2007 and implemented in October of 2007. Admittedly, the purpose of the Crimp Improvement Project was to "refurbish the tooling used to crimp the sender ring in the top panel of the EN/FN [Ford Crown Vic] fuel tank to maintain product quality and robustness," or to get "more metal folded over the top of the sender ring." Per Ford's own employees, it was important to have "more metal folded over the top of the sender ring" because it made the sender unit attachment to the fuel tank stronger, safer, and more crashworthy. Had Ford taken the steps a reasonable manufacturer would have taken to warn its customers regarding the risk it had discovered, the fire would more likely than not have been prevented.

Ford now claims that there was no different or additional evidence regarding the risk of harm after the sale of the subject CVPI, but that is just not accurate. Among other evidence, appellate court focused on the fact that Ford knew of sender unit dislodgements (and those incidents continued to accrue post sale), Ford looked into the issue, and Ford undertook the Crimp Improvement Project. Specifically, the appellate court relied upon Ford engineer Steven Haskell who stated that prior to 2007, he believed the crimp was approximately "three to three-and-a half millimeters." Thus, Ford accrued additional actual knowledge post-sale which could be evaluated differently by the jury. Further, the trial court excluded evidence that Ford was developing a fire-suppression system for the CVPI (the only vehicle in history that has required

such a system), which the appellate court has ruled was admissible to Plaintiffs' failure to warn claims both pre- and post-sale.

By failing to advise the jury that it could, if the elements were met, find that Ford's failure to provide a proper post-marketing warning or instruction, the court improperly narrowed the scope of the jury's inquiry to Ford's pre-sale knowledge only. Under Ohio law, the jury could have found a post-marketing defect based on the evidence before it, but the instructions to the jury in this case advised the jury, contrary to Ohio law, to determine Ford's duty only at the time the CVPI left the manufacturer's control. The inadequate instruction was prejudicial to the plaintiffs and the appellate court correctly reversed on this issue.

**Ford's Proposition of Law No. 2: A product manufacturer's implementation of a post-marketing product improvement may, along with other evidence, trigger a post-sale duty to warn.**

Neither the plaintiffs nor the appellate court have suggested that every instance of post-marketing product improvement will trigger post-marketing duty to warn. However, an investigation and manufacturing overhaul such as the one that Ford undertook in this case, coupled with real-world failures causing burning injuries and/or death, may certainly be some evidence that a jury may consider in reaching a decision that a reasonable manufacturer would have provided some warning to its consumers. As detailed in the section above, the Crimp Improvement Program and the internal investigation leading up to it, were just one part of evidence. In this case, there continued an accrual of failures and apart from the Crimp Improvement Program Ford was separately developing a fire suppression system to protect against the inherent risk of fire with the CVPI during the relevant period. Neither the parties nor the appellate court has suggested that mere post-sale product improvement, as a bright line test,

triggers a post-sale duty to warn, and this case does not present that factual scenario. Ford's straw-man argument does not justify accepting the case for review.

**Ford's Proposition of Law No. 3: Appellant's claim that Linerts' evidence failed to prove all the required elements of his claim is without support in law for facts.**

For this proposition, Ford asserts, without legal support, that there are certain elements of a post-marketing failure to warn claim that were not met in this case. However, Ford has not provided the Court or Appellees any case law from which we might evaluate its legal claims. Ford's claim that a plaintiff must propose the specific warning or the warning that a reasonable manufacturer might have provided seems particularly suspect given that Ford provided no warning at all. Where a defendant has provided no warning at all, a plaintiff need not parse the precise language that should have been given. Where a jury determines that a warning was required and none was given, the elements of the claim are met: "[t]he claim has three elements, each of which must be satisfied: (1) a duty to warn against reasonably foreseeable risks; (2) breach of this duty; and (3) an injury that is proximately caused by the breach." Graham v. Am. Cyanamid Co., 350 F.3d 496, 514 (6th Cir. 2003)

**ARGUMENT IN SUPPORT OF  
APPELLEES'/CROSS-APPELLANTS' PROPOSITIONS OF LAW**

**Proposition of Law No. 1: The trial court failed to properly instruct the jury that the CVPI could be defective because it deviated from Ford's performance standards.**

Plaintiffs' claim for manufacturing defect is a statutory claim pursuant to R.C. § 2307.74 which provides that "[a] product is defective in manufacture or construction if . . . it deviated in a material way from the design specifications, formula, *or performance standards* of the manufacturer." (emphasis added). Contrary to R.C. § 2307.74, Instruction 27, as given by the trial court, improperly restricted the jury's inquiry on manufacturing defect to whether the CVPI's fuel tank "failed to meet Ford's design specifications." Instruction 27, fails to include

any reference to a deviation from a manufacturer's performance standards.

That the subject CVPI, as manufactured, failed to meet the performance standards applicable to the vehicle, in particular the 75 mph crash testing. Further, the 75 mph crash test was no mere internal check for Ford. To the contrary, the 75 mph crash test was touted to prospective police agencies in Ford's CVPI Sales Brochure. Both the government agencies who investigated the accident and the plaintiffs' experts testified that the closing speed in this accident was less than 75 mph. If the fuel tank in this CVPI were the same as those that passed Ford's 75 mph crash testing, the fire would not have occurred. There was ample evidence to support an instruction that the jury could find that the CVPI was defective because it failed to meet performance standards:

Ordinarily requested instructions should be given if they are correct statements of the law applicable to the facts in the case and reasonable minds might reach the conclusion sought by the instruction.

Murphy v. Carrollton Mfg. Co., 61 Ohio St.3d 585, 591, 575 N.E.2d 828 (Ohio 1991), quoting Markus & Palmer, Trial Handbook for Ohio Lawyers (3 Ed.1991) 860, Section 36:2. Failure to instruct on a theory supported by the evidence is reversible error. Murphy, 61 Ohio St. 3d at 591.

**Proposition of Law No. 2: The jury instructions given improperly cast the governing federal regulations as "limitations" and "constraints" on Ford's ability to build a safer vehicle rather than as minimum standards.**

All parties acknowledge that there are federal regulations that govern the subject CVPI involved in this case, as they do all motor vehicles offered for sale in the United States. However, the jury instructions given in this case misled the jurors as to the effect of such statutes. This jury was also instructed that federal regulations were "limitations," "requirements," and "constraints" on Ford's ability to design a non-defective fuel system; in

other words, that compliance with federal regulations might excuse an otherwise defective product.

The National Traffic and Motor Vehicle Safety Act of 1966 ("Safety Act"), itself provides that it is but a minimum standard. The Safety Act, by its own terms, was enacted to "reduce traffic accidents and deaths and injuries resulting from traffic accidents." 49 U.S.C. §30101. The Safety Act defines a "motor vehicle safety standard" as "a minimum standard for motor vehicle or motor vehicle equipment performance." 49 U.S.C. §30102(a)(9). "Such a standard is no more than a minimum, and it does not necessarily preclude a finding that the actor was negligent in failing to take additional precautions." Prosser and Keeton on Torts, § 36, at 233. See also Restatement (2d) Torts, § 288C ("Compliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable man would take additional precautions."). See also, Nelson v. Ford Motor Co., 108 Ohio App.3d 158, 162-3, 670 N.E.2d 307(Ohio App. 11 Dist.,1995)("compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law particularly those relating to warranty, contract, and tort liability").

In this case, there was no evidence that federal regulations prevented Ford from altering or avoiding the defects claimed by the plaintiffs. Whatever regulatory limitations or constraints might govern the CVPI fuel system, they did not prohibit Ford from addressing the defects claimed by Plaintiffs, and as such, did not justify an instruction suggesting that compliance with the regulations could excuse a defective product.

**Proposition of Law No. 3: The jury instructions unnecessarily emphasized the plaintiffs' burden of proof by a preponderance of evidence by repeating it twenty two separate times in seventy one pages of instruction.**

In this case the trial court properly gave instructed the jury that "[t]he person who claims

that certain facts exist must prove them by a preponderance of the evidence. This duty is known as the burden of proof.” Instruction 4 described what “preponderance of the evidence” means. However, after having so instructed the jury, the jury instructions repeated the charge at least once in every instruction providing elements of plaintiffs’ claims and twice in each (repetitive) proximate cause instruction. Over plaintiffs’ objection, the phrase “preponderance of evidence” was repeated 22 times in the jury charge. In the critical instructions setting up the issues in the case, the repetition was relentless. The phrase was repeated twelve times over the course of only six different instructions. Twice, the phrase was repeated three times in the same instruction.

Stating of the burden of proof and the accompanying message that failure to so find means that “you must find in favor of Ford” was unnecessarily repetitious and placed undue emphasis on the plaintiffs’ burden of proof. Pizza v. Wolf Creek Ski Development Corp., 711 P.2d 671, 680 (1985)(“We have held in the past that it is error to give two instructions, virtually the same, which would tend to confuse the jury by overly emphasizing a defense”); Podoba v. Pyramid Elec., Inc., 281 Ill.App.3d 545 (1996)(error to supplement and amplify pattern instruction with repetitive instructions placing undue emphasis on defenses); Alexander v. Sullivan, 334 Ill.App. 42, 78 N.E.2d 333 (Ill.App. 3 Dist. 1948)(repetition of the burden of proof 21 times in instructions wholly unnecessary and prejudicial).

**Proposition of Law No. 4: The trial court erroneously failed to recuse himself, or at minimum, to advise the parties that he drove a Panther Platform vehicle.**

It was not until the middle of the trial of this matter that counsel for the plaintiffs learned that the trial court was in fact driving a Panther Platform vehicle to court each day. After the trial court referred to plaintiffs’ expert testimony as “junk science,” despite the fact that no Daubert challenge was made to Mr. Arndt or at issue at the time, counsel raised the trial court’s failure to disclose that he was driving a version of the subject vehicle of the case to court each

day without having disclosed it to the parties. In the course of the discussion, the trial court denied any knowledge that his Mercury Grand Marquis the same fuel tank design or part of the Panther Platform. This denial was despite days of testimony that preceded it explaining just such a relationship.

Code of Jud. Conduct Rule 2.11, Disqualification, provides that personal knowledge of the facts at issue is sufficient to warrant disqualification:

[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or *personal knowledge of facts that are in dispute* in the proceeding. (emphasis added)

In this case, it is reasonable to conclude that, as the owner and driver of a Panther Platform vehicle, the trial court had reached his own opinions as to the safety of the vehicle. Under Rule 2.11(c), the trial court could have presented the issue to the parties and given them the option of waiving the disqualification, but that did not occur in this case. Instead, the trial court never disclosed that he was driving one of the vehicles that contained the same design feature at issue in the case before him. Indeed, the vehicle was driven to court in full view of the jurors.

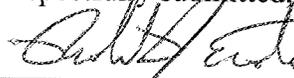
The trial court's use of a Panther Platform vehicle in full view of the jury tacitly endorsed the product, and the fact that he did so without making it known to the parties call his bias into question on all the issues decided by him, specifically including each issue raised before the appellate court. Each and every discretionary ruling by the trial court is tainted by his failure to recuse himself, or at least advise the parties of the issue. The appellate court claimed that they were without authority to disqualify the trial court or reverse on that basis, but the facts giving rise to the issue were not known to counsel until the middle of trial. Under Rule 60(B)(5),

plaintiffs are entitled to relief from the unjust operation of the judgment against them.  
Volodkevich v. Volodkevich, 35 Ohio St.3d 152, 518 N.E.2d 1208 (1988).

### CONCLUSION

For the foregoing reasons, the Court should refuse jurisdiction and let this matter be remanded to the trial court for proceedings consistent with ruling of the appellate court. However, if Ford's appeal is allowed, the Linerts' cross-appeal should proceed as well.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served by regular U.S. Mail this 9th day  
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