

**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

EDWIN GURULE, individually,  
and as personal representative of the estate of  
SAMMY GURULE, deceased,

*Plaintiff-Appellee/Cross-Appellant,*

vs.

FORD MOTOR COMPANY,

*Defendant-Appellant/Cross-Appellee.*

No. 29,296

(D. Ct. No. D-0117-  
CV-2007-00214)

COURT OF APPEALS OF NEW MEXICO  
ALBUQUERQUE  
**FILED**

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*Ben M. Martinez*

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Appeal from the First Judicial District Court  
Rio Arriba County, New Mexico

The Honorable Timothy Garcia

**CROSS-APPELLEE'S ANSWER BRIEF**

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## **I. INTRODUCTION**

The trial court granted a directed verdict on Plaintiff's claim for punitive damages for a straightforward and unassailable reason: Plaintiff presented no evidence that Ford acted recklessly – i.e. with “utter indifference” to the risk of roof crush in rollover accidents – in designing the roof of the 1993 Ranger. On the contrary, the only evidence Plaintiff presented about Ford's design decisions regarding the 1993 Ranger roof established that Ford improved and strengthened the roof design and exceeded the federal roof strength standard by almost 50% and over 2,500 pounds. The trial court correctly concluded that this evidence would not allow a reasonable jury to find that Ford acted with “utter indifference” to consequences in designing the 1993 Ranger roof.

As the trial court properly found, Plaintiff's evidence from the 1960s that Ford knew of the importance of roof strength proved nothing about Ford's mental state in designing the 1993 Ranger. Plaintiff introduced no evidence about how this knowledge was considered and used in the 30 intervening years or that it was disregarded in designing the 1993 Ranger roof. Plaintiff also introduced no evidence that Ford ignored the few lawsuits filed alleging excessive roof crush in 1991 and earlier models of the Ranger. On the contrary, Plaintiff's expert admitted that Ford undertook a comprehensive program to increase the roof strength in all of its light pick up trucks beginning with the 1992 model year. This resulted in design

changes to the 1993 Ranger that significantly exceeded accepted federal roof strength standards. Thus, Plaintiff presented “no true issues of fact” to be decided by the jury regarding his claim for punitive damages, and the trial court properly granted directed verdict. That decision should be affirmed.

## **II. SUMMARY OF PROCEEDINGS**

Plaintiff was allowed to introduce evidence of memos written by a Ford engineer in the late 1960s concluding that roof crush causes injury in rollover accidents and purporting to perform a cost-benefit analysis regarding increasing roof strength. As the trial court recognized, however, Plaintiff never introduced any evidence “as to how that was carried forward and what happened. . . . I saw no evidence as to what changes were made in roof structures of trucks from that period until the ’93 Ranger was built.” (Tr. 1053:16-22.)

The trial court also found that the only evidence introduced regarding Ford’s conduct in connection with the design of the 1993 Ranger roof was that Ford took steps to increase roof strength over prior models:

There was evidence that they’d undertook efforts to strengthen the roof in the Ranger in the ’93 platform, which, again, is the only evidence I believe I do have with regard to the vehicle to apply a punitive damages standard toward.

(Tr. 1053:23-1054:2.) Plaintiff’s expert, Dr. Huerta, agreed that Ford had added roof reinforcements to increase the strength of the 1993 Ranger roof:

Q. Mr. O'Neill asked you if Ford had made changes in the roof structure to achieve these results – do you recall that discussion –

A. Yes.

Q. – from the '92 to the '93 model?

A. Yes, I recall that.

Q. All right. Do you know what some of those changes are?

A. Well, in examining the older cab, comparing it to the newer cab, they added some stiffeners in the corners.

Q. Is that those reinforcements that we saw at the bottom of the A pillar?

A. At the top of the A pillar.

Q. Did they also add the reinforcements at the bottom of the A pillar?

A. Yes. I believe they did, yes.

Q. And those are the ones we looked at that go four or five inches up the A pillar?

A. That's correct.

(Tr. 753:5-24.)

Although Dr. Huerta opined that these improvements were still inadequate, he conceded that they increased the roof strength to the extent that the 1993 Ranger roof exceeded the federal roof strength standard by almost 50% and by over 2500 pounds:

Q. Let's focus now on the 1993 Ranger. . . . Do you recall, as we're waiting for that, reviewing these statistics about the testing that was

conducted and the level of performance that was achieved by this roof after it was redesigned in 1992?

A. I believe that there are two numbers here.

Q. Yes.

A. Yes.

Q. And the Supercab that relates to our vehicle, the design objective specified by this 216 safety standard, not yet applicable, was 6,100 pounds, right?

A. That is correct.

Q. And that represented one-and-a half times the weight of the vehicle, right?

A. That's correct.

Q. And that was the target that had to be met the following year when FMVSS 216 would apply?

A. Yes.

Q. Now, if you move over to the right, you see what was achieved in Ford's test after they redesigned; correct?

A. Is that the 8,800 pound number?

Q. Yes, sir.

A. Yes.

Q. And that's on the front, right? And that's on the front platen test?

A. I believe so, yes.

Q. Okay. And we'll get to some details in a minute, but, number one, you'd agree that the 8,800 fully complied with the [new] standard 216 in terms of resistance to roof crush under federal law.

A. It technically complied, yes.

Q. It not only technically complied, it really complied? It passed the standard, right?

A. Yes, it passed the – technically, it passed the standard.

\* \* \*

Q. What it means is that Ford designed the roof of the 1993 Ranger so that it exceeded the FMVSS 216 safety standard by 47.6 percent, is what that means; right?

A. Yes.

Q. Okay. And so that's a 47.6 margin of safety above the safety standard?

A. That's above – technically, that's – that's correct.

\* \* \*

Q. Okay. Again, in light of that standard and what you've seen from Ford, you see that there was a 47.6 margin of safety above the required standard of force?

A. That's correct.

(Tr. 726:21-728:10; 734:1-12; 735:19-23.)

Plaintiff was allowed to introduce evidence of a few lawsuits filed alleging excessive roof crush in 1991 and earlier models of the Ranger. But Plaintiff's expert, Dr. Huerta, also admitted that Ford undertook a program to further increase



the roof strength of all of its light pick up trucks, including the Ranger, beginning with the 1992 model year:

Q. Okay. And then going on to the "Recent Design Actions," let's review that so the jury has a sense of what occurred. Tell me if I'm reading this correctly. "For the 1992 MY" – and do you know what that refers to in the Ford document world?

A. Yes.

Q. What does it refer to?

A. Model year.

Q. So for the 1992 model year, all light trucks voluntarily strengthened the roof structure through redesign of the A and B pillars and roof headers. Do you see that?

A. Yes. I do.

Q. And so would you understand from that, sir, that work was undertaken so that the 1991 model vehicles and earlier were improved on in the model year 1992?

A. That's what this document seems to say.

(Tr. 725:2-19.) Plaintiff introduced no evidence to show that these design improvements affecting the 1993 Ranger were not actually made or did not increase roof strength.

Having heard all of the evidence presented by Plaintiff, the trial court concluded that there was no evidence from which the jury could find the "culpable mental state" required to impose punitive damages for Ford's design of the 1993 Ranger roof:

I do agree with defendant and grant directed verdict with regard to punitive damages in this matter.

There has been insufficient evidence as to reckless indifference or a culpable mental state in this matter. Whether it be intentional or not, the standard has not been met.

There has been some evidence that may show, especially in the '60's, there were some issues dealing[ ] with roof crush. There was no evidence as to how that was carried forward and what happened and what – effectively what happened. I saw no evidence as to what changes were made in roof structures of trucks from that period until the '93 Ranger was built.

There was evidence that they'd undertaken efforts to strengthen the roof in the Ranger in the '93 platform, which, again, is the only evidence I believe I do have with regard to that vehicle to apply a punitive damages standard toward.

Without sufficient evidence and without sufficient evidence to present to the jury, punitive damages would not go to the jury, punitive damages would not go to the jury with regard to this platform and this vehicle. And that's how it has to apply, not generically to anything Ford produces. The burden is as to this vehicle and its specificity.

Again, there was general evidence with regard to knowledge as to weaknesses in roof structures and to improvements in roof structures, but we didn't have evidence as to how those weaknesses were addressed and how those improvements occurred and how it directly related to – from those vehicles over to the subject vehicle in any manner. That's insufficient to allow the jury to award punitive damages against the company under these scenarios.

(Tr. 1053:9-1054:17.)

### **III. ARGUMENT**

#### **A. The Trial Court Properly Granted Ford A Directed Verdict On Plaintiff's Punitive Damages Claim Because Plaintiff Failed To Present Sufficient Evidence That Ford Acted With A Culpable State Of Mind.**

##### **1. Standard of review.**

The trial court properly directs a verdict when there are no true issues of fact to present to a jury on a particular claim. Although directed verdicts are generally disfavored, “if the evidence fails to support an issue essential to the legal sufficiency of the asserted claim, there is no right to a jury trial.” *Couch v. Astec Industries, Inc.*, 2002-NMCA-084, ¶ 57, 132 N.M. 631, 53 P.3d 398. Whether there exists sufficient evidence to support a claim for punitive damages is a question of law that this Court reviews de novo. *Id.*

“To be liable for punitive damages, a wrongdoer must have *some* culpable mental state, and the wrongdoer’s conduct must rise to a willful, wanton, malicious, reckless, oppressive, or fraudulent level.” *Clay v. Ferrellgas, Inc.*, 118 N.M. 266, 269, 881 P.2d 11, 14 (1994) (emphasis added) (citation omitted); *see also* UJI 13-1827 NMRA 2002. The alleged “culpable mental state [must be] indivisible from the conduct constituting liability.” *Littell v. Allstate Ins. Co.*, 2008-NMCA-012, ¶ 59, 143 N.M. 506, 177 P.3d 1080 (quoting *Allsup’s Convenience Stores, Inc. v. N. River Ins. Co.*, 1999-NMSC-006, ¶ 53, 127 N.M. 1, 976 P.2d 1).

**2. Plaintiff failed to present evidence that Ford recklessly designed the 1993 Ranger.**

Here, Plaintiff argues that Ford's design of the 1993 Ranger was reckless. Recklessness in the context of punitive damages is defined as "the intentional doing of an act with utter indifference to the consequences." *Couch*, 2002-NMCA-084, ¶ 58 (internal quotation marks & citation omitted); *see also* UJI 13-1827. In granting Ford's motion for a directed verdict on punitive damages, the trial court found insufficient evidence of the requisite culpable mental state. (Tr. 1053:9-1054:19.)

The trial court reasoned that although Plaintiff had presented some evidence that Ford generally knew in the 1960s that roof crush caused injuries in rollovers and that there was a greater risk of fatalities in rollover accidents in light trucks as compared to passenger cars, there was absolutely no evidence that Ford had ignored that knowledge in designing the 1993 Ranger roof. (Tr. 1053:12-1054:19.) The trial court noted that the only evidence about Ford's actions in designing the 1993 Ranger was that Ford, in fact, "undertook efforts to strengthen the roof in the Ranger in the '93 platform." (Tr. 1053:23-1054:2, 722:13-735:23; Pl's Ex. 66.) Plaintiff does not dispute this fact. (Tr. 1049:2-4 ("Ford did try to modify the '93 Ranger to make this roof stronger.")) Plaintiff's expert admitted that these design changes resulted in roof strength that not only met, but significantly exceeded, federal roof strength standards.

The trial court emphasized that Plaintiff's burden to prove a culpable mental state did not apply generally to any design decision Ford had ever made on any vehicle; the alleged culpable mental state had to relate specifically to its design of the 1993 Ranger. (Tr. 1054:6-15.) Plaintiff argues, citing *Clay*, that this was error because "the test of sufficiency does not require the specificity that these comments indicate," as the court must "look to the aggregate conduct of the defendant." (See Cross-Appellant's Brief at 11.) *Clay*, however, was referring to "the cumulative conduct of [defendant's] employees" regarding the particular actions on which liability is based. 118 N. M. at 270, 881 P. 2d at 15. *Clay* did not purport to base punitive liability on the aggregate of corporate conduct as a whole. New Mexico law is clear that punitive damages must be based on a culpable mental state "indivisible" from the conduct constituting liability. See *Littell* 2008-NMCA-012, ¶ 59 (quoting *Allsup's*, 1999-NMSC-006, ¶ 53). Indeed, such a limitation on punitive liability is required by constitutional due process. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003).

Courts have found reckless indifference established in product liability cases where a defendant knew about but failed to warn of the serious risk of blindness associated with a particular use of its product or where a defendant consistently disregarded applicable safety regulations in the handling of explosive gases. See *Gonzalze v. Surgidev Corp.*, 120 N.M. 133, 147, 899 P.2d 576, 590 (1995)

(holding substantial evidence supported punitive damages claim where defendant, knowing of risk of blindness regarding a specific use of its product and knowing that its doctors under-reported the number of complications on follow-up reports, failed to warn patients of well-documented risks of eye-implantation procedure); *Clay*, 118 N.M. at 269-70, 881 P.2d at 14-15 (affirming award of punitive damages where defendant's negligent installation of a propane conversion system in the car, together with its consistent violation of safety regulations, amounted to corporate indifference and reckless conduct).

Plaintiff tries to analogize this case to *Gonzalez* and *Clay* by arguing that "Ford knew that roof of the Ranger was weak and dangerous." (Cross-Appeal Brief at 1.) But Plaintiff introduced no evidence that Ford knew the 1993 Ranger roof was weak or dangerous, particularly after the significant roof strength improvements it made in the 1992 model year. Rather, Plaintiff relies on his expert's opinion that the roof was unreasonably dangerous based on different testing and different roof strength standards than applied by Ford or the federal government. (*Id.* at 4.) The issue for purposes of punitive damages, however, is Ford's mental state, not that of Plaintiff's expert. There was no evidence that Ford knew or believed that a roof that provided a "margin of safety" of almost 50% over federal roof strength standards failed to provide adequate protection in rollover accidents.

This case is more like *Couch*, in which this Court affirmed directed verdict on the plaintiff's punitive damages claim because there was insufficient evidence of the requisite culpable mental state. 2002-NMCA-084, ¶¶ 58-61. In *Couch*, this Court held that expert opinions about certain unsafe features in the defendant's recycling plant alone did not give rise to an inference that the defendant had been "cavalier" about the plant's safety, particularly where the defendant presented evidence regarding the steps it had taken to address safety concerns. *Id.* at ¶¶ 59-61. Similarly, here, Plaintiff's expert's opinions about the alleged defect alone are insufficient to prove that Ford recklessly disregarded passenger safety in designing the 1993 Ranger, and the evidence of Ford's improvements to the 1993 Ranger roof, which significantly exceeded accepted federal roof strength standards, otherwise precludes finding any culpable mental state. *See id.* at ¶ 59-60.

Plaintiff argues, though, that the necessary culpable mental state could be inferred from evidence that: (1) Ford knew of several lawsuits based on deaths in rollover accidents involving 1991 and earlier model Rangers; (2) Ford did not design the 1993 Ranger roof in the same manner as that of the 1994 Mustang; and (3) Ford failed to follow its own 1960s cost-benefit analysis by spending up to \$100 per vehicle to increase roof strength. (Cross-Appeal Brief at 9-10.)

As already discussed, the lawsuits involving 1991 and earlier Rangers were irrelevant to Ford's mental state regarding the 1993 Ranger roof given the roof

strength improvements made beginning with the 1992 model year. Although Plaintiff's expert opined that the design of the 1994 Mustang roof was superior to that of the 1993 Ranger, Plaintiff presented no evidence that the Mustang roof actually provided better protection in rollover accidents. Plaintiff's expert conducted no tests at all on the 1994 Mustang roof. (Tr. 690: 7-19.)

As to the 1960's cost-benefit analysis, Plaintiff presented no evidence of how much Ford had spent on improving roof design in the almost 30 years since that analysis was performed. It was undisputed, moreover, that Ford did institute design changes to increase the roof strength of the 1993 Ranger roof. Plaintiff presented no evidence about the cost of those design changes, or that they did not cost \$100 or more per vehicle. A cost-benefit analysis from the 1960s had no relevance to Ford's mental state in 1993. But, even if it did, the premise of this argument – that Ford failed to spend as much on roof strength improvements as an engineer recommended in the 1960s – was not supported by any evidence.

Although the jury ultimately determined that Ford should have designed the Ranger differently, there was no evidence presented to show that Ford's failure to do so was the result of the culpable mental state necessary to support an award of punitive damages. *See Couch*, 2002-NMCA-084, ¶¶ 58-61. Therefore, the trial court properly granted a directed verdict in favor of Ford.

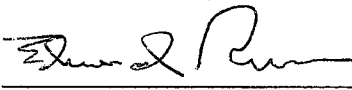


#### **IV. CONCLUSION**

For these reasons, Ford respectfully requests that this Court **AFFIRM** the district court's grant of a directed verdict in favor of Ford on Plaintiff's punitive damages claim.

Respectfully submitted,

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I certify that a true copy of the foregoing was served by first-class mail to the following counsel of record this 3<sup>rd</sup> day of November, 2009.

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