

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR OSCEOLA
COUNTY, FLORIDA

REYNEL SANTANA for CARLOS PAZ-ORJALES, CASE NO: 492017CA001158PL Div 20

Plaintiff,

v.

FORD MOTOR COMPANY, YOKIEL ARENCIBIA,
and YOUNES INVESTMENTS, INC. D/B/A
YOUNES AUTO SALES, a Florida corporation,

Defendants.

AMENDED COMPLAINT

COMES NOW, the Plaintiff, Carlos Paz-Orjales through Reynel Santana, who has litigation authority via a power of attorney for Carlos Paz-Orjales, and hereby sues Defendants Ford Motor Company, Yokiel Arencibia, Younes Investments, Inc. d/b/a Younes Auto Sales, Inc., and further alleges as follows:

JURISDICTION, PARTIES, AND VENUE

1. This is an action for damages in excess of fifteen thousand dollars, exclusive of attorneys' fees, interest, and costs.
2. At all times material hereto, Plaintiff, Carlos Paz-Orjales, was and is a resident of Lee County, Florida, and is otherwise *sui juris*.
3. At all times material hereto, Plaintiff, Reynel Santana, was and is a resident of Miami-Dade County, Florida, and is otherwise *sui juris*.

4. At all times material hereto, Plaintiff, Reynel Santana, had and/or has a durable power of attorney granting him litigation authority on behalf of Plaintiff, Carlos Paz-Orjales. Plaintiff, Reynel Santana, brings this lawsuit in that capacity, only.

5. At all times material hereto, Defendant, Ford Motor Company, was and is a Delaware corporation with its principal place of business located in Dearborn, Michigan, with a registered agent located at 1200 South Pine Island Road, Plantation, Florida.

6. Defendant Ford Motor Company is subject to jurisdiction in the State of Florida because it: (1) operated, conducted, engaged in, or carried on business in Florida; (2) committed a tortious act in Florida; (3) caused injury to persons or property in Florida at or about the time that it was engaged in solicitation or services activities within Florida, at or about the time products or materials it manufactured were used or consumed within Florida in the ordinary course of commerce, trade, or use; or (4) engaged in substantial and not isolated activity within Florida.

7. At all times material hereto, Defendant, Yokiell Arencibia, was and is a resident of Palm Beach County, Florida.

8. At all times material hereto, and upon information and belief, Defendant, Younes Investments, Inc. d/b/a Younes Auto Sales, Inc., (hereinafter referred to as "Younes Auto Sales") is a Florida corporation with its principle address and registered agent located at 2780 N. Orange Blossom Trail, Kissimmee, Florida 34744.

9. Venue is appropriate in Osceola County, Florida.

10. All conditions precedent to filing this action have been met or waived.

GENERAL ALLEGATIONS

11. On or about December 20, 2016, Plaintiff, Carlos Paz-Orjales, was a fully seat-belted front seat passenger in a Ford Super Duty Truck (VIN # 1FTWW31P45ED05257), which was being driven by Defendant, Yokiell Arencibia, and was heading north on Florida's Turnpike.

12. During the course of that trip, Defendant, Yokiell Arencibia, lost control of the Ford Super Duty Truck and it rolled-over.

13. During the accident, the roof on Defendant, Ford Motor Company's, Super Duty Truck collapsed severely injuring Plaintiff, Carlos Paz-Orjales, rendering him a quadriplegic.

COUNT I: NEGLIGENCE AGAINST FORD MOTOR COMPANY

14. The Plaintiffs incorporate paragraphs 1 – 13, above.

15. At all times material hereto, Defendant, Ford Motor Company, had a duty to use reasonable care in the design, development, manufacture, assembly, testing, marketing, distribution, sale, and placement into the stream of commerce of said truck so as to avoid exposing Plaintiff, Carlos Paz-Orjales, to unreasonable and unnecessary risks.

16. At all times material hereto, Defendant, Ford Motor Company, breached its duty in one or more of the following ways:

a. The Ford Super Duty Truck's passenger restraint system and its component parts were defective in design, manufacture, assembly and warnings because they failed to provide adequate and reasonable protection and restraint for occupants exposed to foreseeable crash forces in a collision, including, but not limited to, remaining latched in a foreseeable rollover collision.

b. The Ford Super Duty Truck was not equipped with side curtain airbags even though they were technologically feasible, in use within the industry, and sold on other vehicles designed and manufactured by the Defendant.

c. The design of the Ford Super Duty Truck and its component parts failed to integrate the various occupant restraint and occupant protection components in such a way that would reasonably protect occupants in foreseeable rollover collisions.

d. The Ford Super Duty Truck roof structure and related component parts were defectively and/or inadequately designed, tested, manufactured, assembled and installed without adequate strength to protect vehicle occupants and/or to prevent unreasonable roof crush or deformation in a foreseeable rollover collision.

e. The Ford Super Duty Truck was not reasonably crashworthy.

f. The Ford Super Duty Truck and its component parts were defective due to the Defendant's failure to test or adequately test the vehicle and its parts to ensure they were reasonably safe and suitable for their intended purpose and use and to ensure that they would provide adequate occupant protection in a collision.

g. By negligently designing the vehicle from a handling and stability standpoint;

h. By negligently failing to adequately test the vehicle's handling and stability characteristics;

i. By negligently designing and manufacturing the vehicle with inadequate rollover resistance;

j. By negligently designing the vehicle from an occupant protection standpoint;

k. By negligently designing the vehicle with a poor roof structure thus causing the roof structure to fail to maintain its integrity during a reasonably foreseeable rollover;

l. By negligently designing the subject vehicle's restraint systems, in particular the lap belt, shoulder belt, locking mechanism, anchorages and latch configuration thus failing to fully restrain Carlos Paz-Orjales in his seat and thus allowing him to move towards the roof structure during the rollover;

m. By failing to adequately warn foreseeable users of the unreasonable dangerous and defective condition(s) of the vehicle despite that Ford knew or should have known the unreasonably dangerous condition(s).

n. By negligently designing and manufacturing the canopy system;

o. By negligently designing the vehicle from a marketing standpoint;

p. By failing to meet or exceed internal corporate guidelines;

q. By failing to inform the consumer, including Carlos Paz-Orjales, of information that Ford knew about rollover and roof crush risks in the subject vehicle, thus depriving Carlos Paz-Orjales of the right to make a conscious or free choice in light of the known risks of operating the subject vehicle;

r. By failing to comply with reasonable and necessary Federal Motor Vehicle Safety Standards;

s. By failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

t. By failing to recall the vehicle or alternatively retrofitting the vehicle to enhance safety; and

17. Defendant, Ford Motor Company, is vicariously liable for the negligence of its employees and/or agents under *respondent superior*.

18. As a direct and proximate cause, Plaintiff, Carlos Paz-Orjales, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition.

19. The losses suffered by the Plaintiff are either permanent or continuing and Plaintiff, Carlos Paz-Orjales, will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for any and all compensatory damages allowable by law against the Defendant, Ford Motor Company, together with any and all post-judgment interest, and taxable costs allowable by law.

COUNT II: STRICT LIABILITY AGAINST FORD MOTOR COMPANY

20. The Plaintiffs incorporate paragraphs 1 – 19, above.

21. At all times material hereto, Defendant Ford Motor Company, designed, developed, manufactured, assembled, tested, marketed, distributed, sold and placed into the stream of commerce the Ford Super Duty Truck.

22. At all times material hereto, the Ford Super Duty Truck question was unreasonably dangerous and defective because:

a. The Ford Super Duty Truck's passenger restraint system and its component parts were defective in design, manufacture, assembly and warnings because they failed to provide adequate and reasonable protection and restraint for occupants exposed to foreseeable crash forces in a collision, including, but not limited to, remaining latched in a foreseeable rollover collision.

b. The Ford Super Duty Truck was not equipped with side curtain airbags even though they were technologically feasible, in use within the industry, and sold on other vehicles designed and manufactured by the Defendant.

c. The design of the Ford Super Duty Truck and its component parts failed to integrate the various occupant restraint and occupant protection components in such a way that would reasonably protect occupants in foreseeable rollover collisions.

d. The Ford Super Duty Truck roof structure and related component parts were defectively and/or inadequately designed, tested, manufactured, assembled and installed without adequate strength to protect vehicle occupants and/or to prevent unreasonable roof crush or deformation in a foreseeable rollover collision.

e. The Ford Super Duty Truck was not reasonably crashworthy.

f. The Ford Super Duty Truck and its component parts were defective due to the Defendant's failure to test or adequately test the vehicle and its parts to ensure they

were reasonably safe and suitable for their intended purpose and use and to ensure that they would provide adequate occupant protection in a collision.

g. By negligently designing the vehicle from a handling and stability standpoint;

h. By negligently failing to adequately test the vehicle's handling and stability characteristics;

i. By negligently designing and manufacturing the vehicle with inadequate rollover resistance;

j. By negligently designing the vehicle from an occupant protection standpoint;

k. By negligently designing the vehicle with a poor roof structure thus causing the roof structure to fail to maintain its integrity during a reasonably foreseeable rollover;

l. By negligently designing the subject vehicle's restraint systems, in particular the lap belt, shoulder belt, locking mechanism, anchorages and latch configuration thus failing to fully restrain Carlos Paz-Orjales in his seat and thus allowing him to move towards the roof structure during the rollover;

m. By failing to adequately warn foreseeable users of the unreasonable dangerous and defective condition(s) of the vehicle despite that Ford knew or should have known the unreasonably dangerous condition(s).

n. By negligently designing and manufacturing the canopy system;

- o. By negligently designing the vehicle from a marketing standpoint;
- p. By failing to meet or exceed internal corporate guidelines;
- q. By failing to inform the consumer, including Carlos Paz-Orjales, of information that Ford knew about rollover and roof crush risks in the subject vehicle, thus depriving Carlos Paz-Orjales of the right to make a conscious or free choice in light of the known risks of operating the subject vehicle;
- r. By failing to comply with reasonable and necessary Federal Motor Vehicle Safety Standards;
- s. By failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;
- t. By failing to recall the vehicle or alternatively retrofitting the vehicle to enhance safety; and

23. The unreasonably dangerous defects were present in the Ford Super Duty Truck when it was placed into the stream of commerce by Defendant, Ford Motor Company, and the product did not undergo material change or alteration up to and including the time the injuries suffered by Plaintiff, Carlos Paz-Orjales.

24. As a direct and proximate cause, Plaintiff, Carlos Paz-Orjales, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition.

25. The losses suffered by the Plaintiff are either permanent or continuing and Plaintiff, Carlos Paz-Orjales, will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for any and all compensatory damages allowable by law against the Defendant, Ford Motor Company, together with any and all post-judgment interest, and taxable costs allowable by law.

COUNT III: NEGLIGENCE AGAINST DEFENDANT YOKIEL ARENCIBIA

26. The Plaintiffs incorporate paragraphs 1 – 13, above.

27. At all times material hereto, Defendant, Yokiél Arencibia, had a duty to operate the Ford Super Duty Truck in a reasonably careful and safe manner.

28. At all times material hereto, Defendant, Yokiél Arencibia, breached that duty by losing control of the Ford Super Duty Truck and crashing.

29. As a direct and proximate cause, Plaintiff, Carlos Paz-Orjales, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition.

30. The losses suffered by the Plaintiff are either permanent or continuing and Plaintiff, Carlos Paz-Orjales, will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for any and all compensatory damages allowable by law against the Defendant, Yokiél Arencibia, together with any and all post-judgment interest, and taxable costs allowable by law.

COUNT IV: VICARIOUS LIABILITY AGAINST YOUNES AUTO SALES, INC.,

31. The Plaintiffs incorporate paragraphs 1 – 13, 26 – 30, above.

32. At all times material hereto, Defendant, Younes Auto Sales, upon information and belief, owned the Ford Super Duty Truck.

33. At all times material hereto, Defendant, Yokiell Arencibia, operated the motor vehicle that he was driving with the knowledge and/or implied and/or express consent of its owner, Defendant, Younes Auto Sales.

34. Defendant, Younes Auto Sales, as the vehicle's owner, is vicariously liable for the actions of the vehicle's driver, Defendant, Yokiell Arencibia.

35. As a direct and proximate cause, Plaintiff, Carlos Paz-Orjales, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition.

36. The losses suffered by the Plaintiff are either permanent or continuing and Plaintiff, Carlos Paz-Orjales, will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for any and all compensatory damages allowable by law against the Defendant, Younes Auto Sales, together with any and all post-judgment interest, and taxable costs allowable by law.

DEMAND FOR JURY TRIAL

The Plaintiffs demand a jury trial on all issues so triable as a matter of right.

Dated: May 16, 2017.

Respectfully submitted,

s/Theodore J. Leopold
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