

CAUSE NO. 02-61182-2

NUECES COUNTY, TEXAS, §

IN THE COUNTY COURT

Plaintiff §

VS. §

FORD MOTOR COMPANY, §

CHARLIE THOMAS' COURTESY §

FORD, INC. F/K/A COURTESY §

FORD MOTORS, INC., CHARLIE §

THOMAS' COURTESY FORD, INC. §

D/B/A PADRE FORD-MAZDA, AND §

TRADEWINDS FORD SALES, INC. §

F/K/A CROSSTOWN FORD SALES, §

INC.; BOB LACY FORD, INC. §

Defendants §

AT LAW NO. 2

NUECES COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

Nueces County, Plaintiff, brings this lawsuit complaining of Ford Motor Company, Charlie Thomas' Courtesy Ford, Inc. f/k/a Courtesy Ford Motors, Inc., Charlie Thomas' Courtesy Ford, Inc. d/b/a Padre Ford-Mazda, Tradewinds Ford Sales, Inc. f/k/a Crosstown Ford Sales, Inc., and Bob Lacy Ford, Inc., Defendants, and as grounds allege as follows:

**I.**

**Request for Discovery Control Plan**

1.1 Pursuant to Tex. R. Civ. P. 190.1, Plaintiff requests that discovery be conducted under Level 3, Tex. R. Civ. P. 190.4. Further, Plaintiff moves for an order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of this specific case, pursuant to Rule 190.4(a).

FILED - OSCAR SOLIZ  
CLERK - DISTRICT COURTS  
NUECES COUNTY, TEXAS  
BY OS  
2002 JUL -2 4:8:31  
DPTV

## **II. Parties**

2.1 **Nueces County, Texas** is a governmental entity, specifically a political subdivision of the State of Texas, which is the owner of approximately 106 Ford Crown Victoria Police Interceptor vehicles manufactured and sold during model years 1993-2001, which it provides for law enforcement usage of the Sheriff of Nueces County, to the several Constables of Nueces County, and to other agencies of the county with law enforcement responsibilities.

2.2 Nueces County sues individually and as a representative of a class consisting of all counties, municipalities and other political subdivisions within the state of Texas which have purchased and own Ford Police Interceptors which are provided to law enforcement agencies and officers for use as law enforcement vehicles.

2.3 **Ford Motor Company** designed, manufactured and sold into commerce the Ford Crown Victoria Police Interceptors in question in this suit. Ford Motor Company is a foreign corporation licensed to and doing business in the State of Texas. Defendant may be served through its registered agent for service, CT Corporation System, 350 N. St. Paul, 350 N. St. Paul, Dallas, Texas 75201.

2.4 **Charlie Thomas' Courtesy Ford, Inc. f/k/a Courtesy Ford Motors, Inc.** sold Ford Police Interceptors to Nueces County, Texas in 1993, 1995, 2000 and 2001, thereby placing said vehicles into the stream of commerce in Nueces County, Texas.

Charlie Thomas' Courtesy Ford, Inc. f/k/a Courtesy Ford Motors, Inc., is here sued under its common or assumed name pursuant to Rule 28 of the Texas Rules of Civil Procedure. Defendant may be served by serving its registered agent for service, CT Corporation System, 350 N. St. Paul, Dallas, Texas 75201.

**2.5 Charlie Thomas' Courtesy Ford, Inc. d/b/a Padre Ford-Mazda** sold Ford Police Interceptors to Nueces County, Texas in 1996, 1997, 1998, 1999, 2000 and 2001, thereby placing said vehicles into the stream of commerce in Nueces County, Texas. Charlie Thomas' Courtesy Ford, Inc., d/b/a Padre Ford-Mazda, is here sued under its common or assumed name pursuant to Rule 28 of the Texas Rules of Civil Procedure. Defendant may be served by serving its registered agent for service, CT Corporation System, 350 N. St. Paul, Dallas, Texas 75201.

**2.6 Tradewinds Ford Sales, Inc. f/k/a Crosstown Ford Sales, Inc.** sold Ford Police Interceptors to Nueces County, Texas in 1995, 1999 and 2000, thereby placing said vehicles into the stream of commerce in Nueces County, Texas. Tradewinds Ford Sales, Inc., f/k/a Crosstown Ford Sales, Inc., is here sued under its common or assumed name pursuant to Rule 28 of the Texas Rules of Civil Procedure. Defendant is a corporation licensed in Texas and doing business in Texas. Service of process may be had on said Defendant by serving its registered agent for service Andrew J. Lehrman, 1200 American Bank Plaza, Corpus Christi, Texas 78475.

2.7 **Bob Lacy Ford, Inc.** sold Ford Police Interceptors to Nueces County, Texas in 1995, 1998 and 2001, thereby placing said vehicles into the stream of commerce in Nueces County, Texas. Bob Lacy Ford, Inc., is here sued under its common or assumed name pursuant to Rule 28 of the Texas Rules of Civil Procedure. Defendant may be served by serving its registered agent for service, Bob Lacy, Sr., Hwy 44, Avenue A , Robstown, Texas 78380.

2.8 Defendants Charlie Thomas' Courtesy Ford, Inc. f/k/a Courtesy Ford Motors, Inc., Charlie Thomas' Courtesy Ford, Inc. d/b/a Padre Ford-Mazda, Tradewinds Ford Sales, Inc. f/k/a Crosstown Ford Sales, Inc., and Bob Lacy Ford, Inc., will collectively be referred to as the Selling Dealers.

### **III. Venue**

3.1 Venue is proper in Nueces County, Texas, because at all times relevant to the instant cause of action, at least one of the Defendants resided in or maintained its principal place of business there, and because all or a substantial part of the events or omissions giving rise to the claims occurred and/or accrued in Nueces County, Texas.

### **IV. Nature of Action**

4.1 This is an action for declaratory relief pursuant to Chapter 37 of the Texas Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code Ann. Ch. 37 (Vernon

1987).

4.2 This is an action for injunctive relief pursuant to (sections 1747 and 17.48(b)) the Texas Deceptive Trade Practices Act.

4.3 Plaintiff further seeks class certification pursuant to Texas Rule of Civil Procedure 42(b)(2).

4.4 Plaintiff does not seek monetary damages by this action.

**V.  
Background Facts**

5.1 Nueces County, Texas is a political subdivision with the responsibility for providing vehicles for use for law enforcement purposes to the Sheriff of Nueces County and his deputies, the Constables of Nueces County and their deputies, and other county agencies having law enforcement responsibilities. To fulfill this responsibility, the County periodically purchases vehicles which have been specially equipped for use as police vehicles and provides such vehicles to the sheriff and other agencies within its responsibility. In this respect, Nueces County is typical of hundreds of local governmental entities which collectively own and operate approximately twenty-five thousand speciality police vehicles in Texas.

5.2 Ford Motor Company is engaged in the business of designing, manufacturing and selling automobiles, including Ford Crown Victoria Police Interceptor vehicles. For many years, Ford has offered “police special” vehicles for law enforcement

purposes. Beginning with the 1997 model year, the Ford Crown Victoria Police Interceptor was the only available full size police speciality vehicle being sold in the United States market, giving Ford an effective monopoly position in that market.

5.3 Ford does not sell Police Interceptors directly to law enforcement agencies.

5.4 Rather, authorized Ford dealers generally bid for the right to supply Police Interceptors to governmental entities for use by law enforcement officers and agencies.

5.5 Defendants, the Selling Dealers, each, at various times, successfully bid for the opportunity to supply Police Interceptors to Nueces County for use by law enforcement officers.

5.6 The Ford Crown Victoria Police Interceptor uses a “vertical-behind-the- axle fuel tank which was first introduced by Ford in the 1965 Ford Galaxie.

5.7 In 1978, Ford developed field data on the real world performance of its vehicles showing that, with respect to the risk of rear end collision fatalities associated with fuel-fed-fires, the vertical behind-the-axle tank showed a disproportionately high risk of such fire fatalities in comparison with competitive vehicles.

5.8 In 1989, Ford developed additional data showing that the vertical behind-the-axle fuel tank, as actually in use in its Panther platform vehicles, had a disproportionately high rate of rear impact fatalities associated with fuel-fed-fire, actually double the risk of the competitive full size General Motors vehicles. In 1992, this data

was specifically called to the attention of Ford's Vice-President for Safety and Environmental Affairs, and to its Office of General Counsel.

5.9 From 1965 through 1992, Ford documented 428 rear impact collisions involving fuel-fed-fires in its vehicles using fuel tanks located behind the rear axle in which the occupants suffered burn injuries or death, involving a total of 394 deaths and 368 burn injuries. In at least three lawsuits, *Grimshaw v. Ford* [Cal. 1978], *Stubblefield v. Ford* [Ga. 1983] and *Durrill v. Ford* [Tex. 1983], jury verdicts, later affirmed on appeal, found that Ford acted with gross negligence in locating the tanks behind the rear axle without taking other needed precautions, such as providing shields, bladders or other devices to protect against fuel leakage.

5.10 By the early 1980s, Ford engineers concluded that the safest location for fuel tanks, to protect from the danger of fuel spillage in collisions from all directions, was forward of the rear axle, within the most rigid portion of the vehicle. Beginning with the Taurus platform vehicles which were introduced in model year 1986, Ford has located the fuel tanks on all "new" vehicle designs forward of the rear axle. This has included not only front wheel drive vehicles but also "new" rear wheel drive vehicles, such as the 1987 Thunderbird and the recent Lincoln LS/Jaguar vehicles.

5.11 Ford research into the danger of rear impact fuel-fed-fires showed the probability of fire occurring goes up rapidly with increased collision severity.

5.12 For many years, Ford has used fuel tank shields to prevent punctures of fuel tanks when needed to pass either Federal Government requirements or Ford internal safety guidelines. Such shields were designed for use as early as the 1969 Maverick, were used in the retrofitting of Pintos during the recall of 1978, and are presently used on vehicles including the Police Interceptor (in specific locations) and the Ford Mustang.

5.13 For many years, Ford has tested devices such as bladders to provide additional margins of safety for high speed impacts. In the 1995 model year and again in 2000, Ford released a bladder-lined fuel tank in its Mustang Cobra R street-legal race car to provide additional safety for high speed rear impacts.

5.14 For many years prior to design, manufacture, and sale of the “Ford Police Interceptors in question,” Ford has known and understood that police vehicle usage involves special risks and requirements, special equipment, and precautions to render the vehicles both safe and effective for their intended usage.

5.15 Special usage of police vehicles includes an increased exposure to high speed rear impacts which occurs for several reasons, all of which have long been known to Ford:

- a. Increased hours of daily usage, compared to average civilian vehicle usage;
- b. Increased usage on and around high speed highways;
- c. Increased usage stopped on the shoulders of high speed highways,



either making arrests, writing traffic citations, or assisting stranded motorists;

- d. Increased usage stopped in the main travel lanes of high speed highways, providing “point security” for collision sites, and
- e. High speed chase conditions.

5.16 As a result of all of the above facts, Ford has admittedly known that police usage involves an increased exposure to high speed rear impacts at speeds admittedly up to and including 75-90 m.p.h.

5.17 Ford, in its advertising literature and conduct, has described its Ford Police Interceptors as:

- a. Unique purpose vehicles;
- b. Bigger;
- c. Stronger;
- d. Durable;
- e. Severe driving conditions;
- f. Nothing small; and
- g. A real Police Car.

5.18 Reinforcing the image of the stronger, unique special purpose vehicles built to withstand severe conditions are specific features advertised as included in the vehicles:

- a. 140 m.p.h. calibrated speedometer;

- b. Speed calibrated engine;
- c. Speed rated tires;
- d. Heavy duty suspension;
- e. Special stabilizer bars;
- f. Heavy duty frame;
- g. Heavy duty brakes;
- h. Heavy duty cooling system; and
- i. Unique VIN.

5.19 Such descriptions of the vehicles are contained within advertising literature mailed to Nueces County and other class members, or delivered by Ford's designated "Police Vehicle Engineer."

## **VI. The Vehicles in Question**

6.1 This case involves Ford Police Interceptors for model years 1992-2002.

6.2 In 1990, Ford management decided to devote special resources to marketing the Police Interceptor as a specialty vehicle, effective for the 1992-1/2 model year.

6.3 Notwithstanding Ford's knowledge of the increased danger of fire-related rear impact fatalities for police vehicles, involving highway speeds in the 75-80 m.p.h. range, the vehicle program (approved by upper-level management) did not include increased fuel system safety to protect against the increased risk.

6.4 For the period 1992 through 2002, all model years Police Interceptors have used standard civilian fuel tanks with no increased protection.

6.5 For the period 1992 through 2001, fuel system integrity crash testing was conducted at a top impact speed of 50 m.p.h. for civilian vehicles.

6.6 50 m.p.h. car-to-car testing was not conducted on any Ford Police Interceptor until after 2000.

6.7 During the development of the 1992 Panthers, Ford experienced considerable difficulty in getting the vehicles to pass the 50 m.p.h. fuel system test. Testing revealed that the fuel tank was sometimes punctured by suspension components, and that it forcefully contacted the differential in a manner forecasting the crushing of the tank at higher speed impacts.

6.8 For the 1998 Model year, Ford revised the rear suspension, introducing a “Watts” suspension which utilizes a “short arm-long arm” (“SLA”) rear suspension geometry. Ford was never able to demonstrate by crash testing that the 1998 model year vehicles comply with the 50 m.p.h. Safety Segment Guidelines. The inline test listed in the certification package leaked in excess of the allowable limits. After repeated efforts to pass offset tests with failures including leakage of “more than one gallon,” Ford internally certified the vehicle based on “engineering judgement.” In fact, the vehicle was unable to pass the internal Safety Segment Guidelines.

6.9 In actual usage, when vehicles with Watts rear suspensions are impacted in excess of 50 m.p.h., the impact forces the axle forward, the geometry of the SLA suspension causes the axle to rotate in such a fashion that the suspension members stab the fuel tank causing massive leakage. Officer Steve Agner (Madison County, Fla. Sheriff's Department), Officer Skip Fink (Arizona Highway Patrol) and Officer Lynn Ross (Tennessee Highway Patrol) met their deaths from this mechanism in July 1999, February 2000, and July 2000.

6.10 Since the early 1970s, Ford had been aware of the danger of objects in a trunk puncturing the fuel tank directly forward on the trunk. Nevertheless, Ford continued to manufacture and sell the vertical behind-the-axle fuel tank directly forward of the deep well trunk. In 2000, the deaths of Officers Skip Fink and Lynn Ross both involved penetration of the thin sheet metal of the trunk and fuel tank by police objects in the deep well trunk, such as vehicle jacks stored in the trunk, or police radio equipment. Such penetration could have been prevented by a simple shield.

6.11 In August 1999, the Florida Highway Patrol became concerned over the law enforcement burn death and injuries. It prepared and presented to Ford a Rear End Collision Study of the law enforcement burn deaths and injuries and in a series of letters, the Florida Highway Patrol requested Ford's help in reducing or eliminating the recurring deaths and injuries.

6.12 For approximately 18 months, until October 2001, Ford took no action to improve the safety of the vehicles.

6.13 While Ford was inactive, the tragedy continued to mount:

- a. Officer Alan Neel – Texas, 2000 (injury from smoke inhalation and burns);
- b. Officer Skip Fink – Arizona, 2000 (Death);
- c. Officer Lynn Ross – Tennessee, 2000 (Death);
- d. Officer Gerald Shea – Massachusetts, 2001 (civilian burns);
- e. Officer Jason Schechterle – Arizona, 2001 (burns);
- f. Officers Colburn & Noel – Arizona, 2001 (leakage; no fire); and
- g. Officer Robert Nielsen – Arizona, June 12, 2002 (Death).

6.14 Following the severe burns to Officer Jason Schechterle (City of Phoenix, Arizona) in March 2001, and the tank puncture (but, fortunately no ignition and no fire) involving Officers Colburn and Noel (City of Tempe, Arizona) in May 2001, Arizona law enforcement agencies demanded that Ford development modifications for the vehicles. The agencies themselves began to replace a sharp-edged headed, “hostile” parking brake cable bolt which had punctured the fuel tanks of Officer Juan Cruz (Arizona Highway Patrol, Death, December 1998), and Officer Schechterle, with a smooth rivet before Ford acted.

6.15 Finally, in October 2001, Ford, belatedly and inadequately, acted by issuing a Technical Service Bulletin (TSB). The TSB covers all 1992-2001 Ford Crown Victoria, Mercury Grand Marquis and Lincoln Town Car vehicles, but focuses on dangers related to police usage. The TSB:

- (a) Recognizes the potential for catastrophic fuel-fed-fire as the result of highway speed rear impacts;
- (b) Recognizes the increased exposure to such impacts by law enforcement vehicles;
- (c) Falsely implies that such events have occurred only at impact speeds above 80 m.p.h. (In fact, law enforcement reconstruction of the impact speed for Officer Juan Cruz' fatal fire in December 1998, was 63-65 m.p.h. Others have also been substantially below 80 m.p.h.);
- (d) Recommends two modifications to the vehicles:
  - (1) Replacement of the parking brake cable bolt which punctured the tanks of the Cruz and Schechterle vehicles;
  - (2) Grinding away of an unnecessary and sharp metal tab from a sway bar bracket.
- (e) Provides that the work involved will be covered by the vehicle bumper-to-bumper warranty, if the vehicle is still in warranty.

6.16 Attached hereto as Exhibit A is a true copy of the Technical Service Bulletin issued by Ford.

6.17 As required by law, Ford notified the National Highway Traffic Safety Administration (NHTSA) of the issuance of its TSB. It also indicated to NHTSA that,

while refusing to recall the vehicles, it would widely publicize the TSB within the law enforcement community.

6.18 In fact, Ford has given minimal notice of the TSB to law enforcement agencies, and has not communicated the TSB to Nueces County. Such conduct constitutes an unlawful failure to disclose information in violation of Sec. 17.46(24), Tex. Bus. & Comm. Code.

6.19 Ford Motor Company, from time to time, sends notices of necessary repairs to the Purchasing Agent of Nueces County, Texas, with respect to Ford vehicles owned by Nueces County, Texas. However, Ford Motor Company did not send the Technical Service Bulletin to the Purchasing Agent of Nueces County, Texas, nor did Ford Motor Company, or the Selling Dealers, send any other information to Nueces County advising it of the information contained within the Technical Service Bulletin, or of the recommendations for repairs made by the Technical Service Bulletin.

6.20 Additionally, Ford has issued statements discouraging agencies from obtaining the repairs recommended by the TSB, and implying that the TSB repairs are not needed. For example, Ford posted on its website, statements dealing with the issue of Ford Crown Victoria Police Interceptor fuel system integrity, which did not mention the Technical Service Bulletin, or the need to make repairs recommended by the Technical Service Bulletin, but re-assured readers of the safety of the vehicle. See Exhibit B

attached hereto. In addition, Ford made other public statements, reported in the news media, to the effect that the vehicles were not defective, which failed to include the need to make recommended design changes, and which tended to imply that the design changes recommended by the Technical Service Bulletin are not necessary. See Exhibit C attached hereto. Such conduct constitutes knowingly making false and misleading statements regarding the need for repairs in violation of Sec. 17.46(13) Tex. Bus. & Comm. Code.

6.21 The TSB does not:

- (a) Provide any remedy for the massive suspension punctures of the tanks due to rotation of the axle by the Watts SLA suspension in the 1998-2002 vehicles;
- (b) Provide any remedy for punctures of the tank due to objects stored in the trunk of the vehicle.

6.22 The modifications recommended by the TSB have not been tested for effectiveness.

## **VII. Breach of Warranty**

7.1 Breach of Express Warranty – Under the provisions of the Uniform Commercial Code (Tex. Bus. & Comm. Code Sec. 2.313), by their affirmations of fact regarding the vehicles, and their description of the vehicle characteristics, Ford and the Selling Dealers (acting independently of Ford) expressly warranted the vehicles to be



suitable for use as police vehicles, i.e. that the Police Interceptors were suitable (including reasonable safety with respect to crashworthiness) for their particular usage as law enforcement vehicles.

7.2 Law enforcement usage entails an increased exposure to highway speed rear impacts, which in turn carry a dramatically increased likelihood of loss of fuel system integrity and fuel-fed-fire. Accordingly, there is a warranty that the vehicle provides reasonable safety from such increased risk.

7.3 Such warranty was breached by failure of the vehicles to provide any increased protection from such dangers over and above that provided by civilian vehicles.

7.4 Law enforcement usage entails an increased likelihood of high speed usage in a high speed environment, and, therefore, an increased likelihood of collisions involving high speeds and comparative high collision forces, and increased need for crashworthiness protection for the occupants of the vehicles for such increased dangers. Accordingly, there is an express warranty that the vehicle provides reasonable safety from such increased risk.

7.5 Such warranty was breached by failure of the vehicles to provide any increased protection from such dangers over and above that provided by civilian vehicles.

7.6 Ford and the Selling Dealers (acting independently of Ford) further expressly warranted the vehicles to be unique, speciality vehicles, stronger, more durable

and better able to withstand severe events (such as high speed crashes), due to such features as a heavy duty frame, and to be uniquely and specially safe for use in a high speed environment.

7.7 Such warranty was breached because, as related to the well-recognized danger of rear impact fuel-fed-fires, which are related to highway speed collisions, the vehicles are neither special nor unique. In fact, as relates to the dangers in question, the Ford Police Interceptors in question are identical to civilian vehicles. As relates to all crashworthiness protection characteristics, the Ford Police Interceptors in question are identical to civilian vehicles. The alleged heavy duty frame is, in fact, a standard Ford Crown Victoria frame with minor reinforcements.

7.8 Ford Motor Company is liable for breach of express warranty as set forth above.

7.9 Each of the Selling Dealers, independently of Ford, is liable for breach of express warranty as set forth above for the specific vehicles sold and/or delivered by that Selling Dealer.

7.10 Breach of the Implied Warranty of Merchantability – Under the terms of the section 2.314 of the U.C.C., the vehicles as sold by Ford and the Selling Dealers, carried with them the implied by law warranty of merchantability, the terms of which are dependant upon the usage of the trade related to the product. Tex. Bus. & Com. Code

Ann. § 2.314 (Vernon 1994). Plaintiff alleges that such implied warranties, here, include that the vehicles are reasonably safe and non-defective for their intended use in design and manufacture. As applied to automobiles, such warranty includes a warranty of reasonably safe protection from the consequences of a crash (crashworthiness), which was breached in that the vehicles, in fact, are defective and unreasonably dangerous with respect to rear impact fuel system integrity.

7.11 Further, there is an implied warranty of merchantability that the vehicles are free of “safety-related defects,” and that if safety-related defects are present the vehicle will be repaired and defects remedied at the sole cost of the manufacturer. It is the recognized and uniform standard of the industry, that, when sold, vehicles are to be free of “safety-related defects;” that the manufacturer will exercise good faith in making post-sale determinations of the presence of safety-related defects; that, if it is found post-sale that the vehicles contain “safety-related defects,” the same will be remedied at the sole cost of the manufacturer, *i.e.* Ford Motor Company. Such practice was confirmed by the statement of Sue Cischke, a Ford Vice-President, regarding Ford Crown Victoria Police Interceptors that, if changes to the vehicles are necessary, “Ford will pick up the bill.”

The customary procedure is:

- (a) for the manufacturer to develop modifications necessary to remedy the defect;
- (b) for the manufacturer to notify all vehicle owners of the nature and extent of

the defect and of the availability of repairs to correct the defect;

- (c) for the manufacturer to pay its authorized dealers to make needed modifications.

7.12 Breach – This warranty has been breached in that:

- (a) The vehicles contain safety-related defects with respect to fuel system integrity in rear impacts, and Ford has failed to notify owners of the Ford Police Interceptors in question of the need to make safety-related modifications, has failed to develop adequate remedies, and has failed to provide such remedies at its own cost;
- (b) Ford failed to exercise good faith in determining the presence of safety-related defects by failing to follow its own internal procedures for making such determinations.

7.13 Notwithstanding the inadequacy of the remedies it recommends, the TSB constitutes an admission that the vehicles are defective and require modification. Ford has not even notified law enforcement agencies of the TSB recommendations, nor has it arranged to provide such remedies at its own expense.

7.14 Further, the implied warranty of merchantability warrants that the vehicles have been designed and manufactured in conformity with the manufacturer's internal guidelines for safety.

7.15 This warranty is breached due to the failure of the vehicles to meet Ford's internal 50 m.p.h. Safety Segment Guidelines for rear impact fuel system integrity.

7.16 Ford Motor Company is liable for breach of the implied warranty of merchantability as set forth above.

7.17 Each of the Selling Dealers, independently of Ford, is liable for breach of the implied warranty of merchantability as set forth above for the specific vehicles sold and/or delivered by that Selling Dealer.

7.18 Breach of the Implied Warranty of Fitness for a Particular Purpose – Under the terms of Sec. 2.315 of the U.C.C., Ford Motor Company and the Selling Dealers knew and understood at the time of contracting that Plaintiff was acquiring the Ford Police Interceptors in question for use in police law enforcement vehicles, and that the Plaintiff relied on Ford’s skill and judgment to furnish vehicles with suitable characteristics; accordingly, Ford and the Selling Dealers (independently of Ford) warranted that the Police Interceptors were suitable (including reasonable safety with respect to crashworthiness) for their particular usage as law enforcement vehicles. Tex. Bus. & Com. Code Ann. § 2.315 (Vernon 1994).

7.19 Law enforcement usage entails an increased exposure to highway speed rear impacts, which in turn carry a dramatically increased likelihood of loss of fuel system integrity and fuel-fed-fire. Accordingly, there is an implied warranty that the vehicle provides reasonable safety from such increased risk.

7.20 Such warranty was breached by failure of the vehicles to provide any increased protection from such dangers over and above that provided by civilian vehicles.

7.21 None of the above referenced warranties have been effectively disclaimed

by any defendant in this action.

7.22 Ford Motor Company is liable for breach of the implied warranty of fitness for a particular purpose as set forth above.

7.23 Each of the Selling Dealers, independently of Ford, is liable for breach of implied warranty of fitness for a particular purpose as set forth above for the specific vehicles sold and/or delivered by that Selling Dealer.

**VIII.**  
**Texas Deceptive Trade Practices Act**

8.1 Ford has represented to Plaintiff that the vehicles in question are free of defects and that any defects will be repaired free of charge. Such representations are not true and Ford's conduct violates section 17.46(b)(5); (7), (12), (13) and/or (24) of the DTPA.

8.2 Nueces County is entitled to seek injunctive relief by and through its County Attorney. Tex. Bus. & Com. Code Ann. § 17.48(b) (Vernon 1987).

8.3 Plaintiff has complied with all conditions precedent to obtaining injunctive relief pursuant to the DTPA.

8.4 In addition to equitable or injunctive relief, Plaintiff seeks court costs and reasonable and necessary attorneys' fees as allowed by the DTPA.

**IX.**  
**Breach of Fiduciary Duty**

9.1 By its conduct and advertising, Ford has created, and admits that it has created, a fiduciary relationship with its customers in which the customers are led to believe that they can rely with trust and confidence upon Ford Motor Company. In particular, with respect to safety:

9.2 Ford has uniquely superior knowledge relating to the safety of the vehicle as it respects crashworthiness dangers, vehicle construction and characteristics to protect occupants in crashes, and remedies and precautions regarding crashworthiness;

9.3 Customers are led to believe that customers can place special trust and confidence in Ford to act on behalf of its customers, including placing their safety ahead of its own interest.

9.4 Ford has admitted that it stands in a fiduciary relationship to its customers.

9.5 Ford has breached such fiduciary relationship by concealing material facts related to the fuel-fed-fire danger of Ford Police Interceptors in question, including but not limited to the following:

9.6 Its knowledge of the hundreds of rear impact fuel-fed-fire events of Ford vehicles with behind-the-axle fuel tanks, involving hundred of fire-related deaths and hundreds more of fire-related injuries;

9.7 That its continued use of the vertical behind-the-axle fuel tank in the Police Interceptor is contrary to its internal determination that the safest place for the fuel tank is forward of the rear axle;

9.8 That field performance data show the vertical behind-the-axle fuel tank and the Police Interceptors to have disproportionately high rates of rear impact fuel-fed-fire fatalities;

9.9 That the vehicles do not comply with Ford's internal 50 m.p.h. Safety Segment Guidelines for rear impact fuel system integrity;

9.10 That the Police Interceptor offers no additional protection compared to the civilian vehicles from the law enforcement-related increased risk of rear impact fuel-fed-fires.

9.11 That Ford was aware of continued fire deaths and injuries to law enforcement officers arising from on-duty rear impacts, including:

9.12 On September 20, 1992, Sheriff Thomas Randal Shelton was severely burned when his 1992 Police Interceptor was struck in the rear causing a leak at the fuel sender unit;

9.13 On November 13, 1992, Officer Ed Truelove was burned to death when his 1989 Police Interceptor was struck in the rear causing a puncture in the gas tank;



9.14 On July 26, 1997, Trooper Robert Smith was burned to death when his 1996 Police Interceptor was struck in the rear causing a puncture in his gas tank;

9.15 On August 2, 1997, Trooper Howard Kimble was severely burned when his 1996 Police Interceptor was struck in the rear;

9.16 On May 19, 1998, Trooper Hung Le was burned to death when his 1996 Police Interceptor was struck in the rear causing the gas to be crushed;

9.17 On December 9, 1998, Trooper Juan Cruz was burned to death when his 1996 Police Interceptor was struck in the rear causing a puncture to his gas tank;

9.18 On July 26, 1999, Deputy Steven Agner was burned to death when his 1999 Police Interceptor was struck in the rear causing a puncture in his gas tank;

9.19 On January 30, 2000, Officer Alan Neel narrowly escaped severe burn injuries when his 2000 Police Interceptor was struck in the rear causing a puncture in his gas tank;

9.20 On February 18, 2000, Trooper Floyd James "Skip" Fink, Jr. was burned to death when his 1999 Police Interceptor was struck in the rear;

9.21 On August 26, 2000, Officer Lynn Ross was burned to death when his 1998 Police Interceptor was struck in the rear causing a puncture in his gas tank;

9.22 On January 28, 2001, a civilian seated in the rear of Officer Gerald Shea's patrol car was severely burned when his 1998 Police Interceptor was struck in the rear;

9.23 On March 26, 2001, Officer Jason Schechterle was severely burned when his 1996 Police Interceptor was struck in the rear causing a puncture in his gas tank; and

9.24 On June 12, 2002, Officer Robert Neilson was burned to death when his 2000 Police Interceptor was struck in the rear.

## **X. Class Action Allegations**

10.1 Class Definition – Plaintiff seeks to represent a class of all counties, municipalities and other political subdivisions within the State of Texas which have purchased and own Ford Crown Victoria Police Interceptors, model years 1992-2002, which are provided to law enforcement officers for use as law enforcement vehicles.

10.2 Excluded from this class are any persons or entities who have an action for damages for personal injury or death arising out of the post collision fuel-fed-fire in a Ford Police Interceptor.

10.3 Joinder of individual plaintiffs in this case is impracticable given the number of Texas political subdivisions that have purchased Ford Police Interceptor's. Moreover, the exact identity and location of these unnamed class members is presently known only to Defendant Ford Motor Company.

10.4 Commonality: There is a well defined community of interest on the questions of law and fact involved that affect the parties within the classes to be represented. Tex. R. Civ. P. 42(a)(2). These common questions of law and fact

predominate over questions that may affect individual class members. Such issues include but are not limited to, the following:

- (a) Whether the Ford Police Interceptors, manufactured and sold between 1992 and the present, contain a safety related defect;
- (b) Whether the defendants breached express and/or implied warranties;
- (c) Whether defendants are required to remedy the safety related defect pursuant to the terms of the express and/or implied warranties;
- (d) Whether Ford and the Selling Dealers warranted that the vehicles were free from defects;
- (e) Whether Ford and the Selling Dealers warranted that defects would be repaired without charge.

10.5 Typicality: Plaintiff would further show that its claims are typical of the claims of the class. Tex. R. Civ. P. 42(a)(3).

- (a) The safety related defects in Plaintiff's Ford Police Interceptor's are the same as those in other class members' Ford Police Interceptors;
- (b) Any alleged defenses by Ford will be the same to the class as such alleged defense would be to Plaintiff;
- (c) Plaintiff's allegations as to declaratory/injunctive relief sought are typical to every class member who purchased a Ford Police Interceptor.

10.6 Adequacy of Representation: Plaintiff and its counsel will fairly and adequately protect the interests of the class. Tex. R. Civ. P. 42(a)(4).

- (a) Plaintiff will vigorously pursue the interests of the class and knows of no antagonism or conflict of interest between its own interest and

those of the unnamed class members;

- (b) Plaintiff has retained competent counsel to pursue the interests of the class.

10.7 Maintainability: This case is maintainable as a class action pursuant to Texas Rule of Civil Procedure 42(b)(2) because Ford has acted or refused to act on grounds generally applicable to the entire class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

## **XI. Request for Declaratory Relief**

11.1 Plaintiff seeks a judicial declaration that Ford and the Selling Dealers have breached their respective express and implied warranties as set forth herein;

11.2 That efforts by Ford and/or the Selling Dealers, if any, to disclaim any express or implied warranties are ineffective and/or unconscionable pursuant to section 2.302 of the Tex. Bus. & Comm. Code as to Plaintiff and the other class members;

11.3 That any limitation of the express or implied warranties by Ford or the Selling Dealers are ineffective and/or unconscionable pursuant to section 2.302 of the Tex. Bus. & Comm. Code.

11.4 That the Ford Crown Victoria Police Interceptors contained a safety related defect at the time of their sale by Ford and the Selling Dealers respectively, which safety related defect was hidden from Plaintiff.

11.5 That, due to Ford's concealment of the defective condition of the vehicles, any limitation period as to breach of warranty is inapplicable.

**XII.**  
**Request for Temporary Injunctive Relief**

12.1 Ford is continuing to conceal the nature and extent of the defective condition of the vehicles by failing to notify law enforcement agencies of known factual information concerning the fires, deaths and injuries which have occurred, and by failing to notify such agencies of the recommendations for repairs to the vehicles which are made by Ford's Technical Service Bulletin issued in October 2001.

12.2 Such failure to disclose information is an unlawful violation of Section 17.46(24) Tex. Bus. & Comm. Code.

12.3 Ford's statements concealing the need for the implementation of the repairs recommended by the Technical Service Bulletin constitute false or misleading statements of fact concerning the need for parts, replacement or repair service and are unlawful under the terms of Sec. 17.46(13) Tex. Bus. & Comm. Code.

12.4 Such concealment of the defect and of the presently available repairs works an immediate and irreparable injury upon Plaintiff and other members of the class. Plaintiff and other members of the class have a duty to provide to law enforcement officers a safe place to work, and safe equipment with which to work. Each such officer driving such vehicles is daily exposed to a risk of death by fire which could be

immediately reduced by the repairs recommended by the Technical Service Bulletin. To the extent such risk can be reduced immediately, it is unreasonable to continue to expose officers to such risk.

12.5 The sudden, recent and tragic death of Officer Robert Nielson, Chandler, Arizona, on June 12, 2002, is a reminder of the irreparable injury nature of the harm which may occur from failure to remedy these defects. Officer Chandler died by fire when his Ford Crown Victoria Police Interceptor was involved in a collision which ruptured the fuel tank of the vehicle due to the defects made the basis of this lawsuit.

12.6 Plaintiff seeks a temporary injunction because there is no adequate remedy at law for the continuing exposure of such officers to death by fire.

12.7 Plaintiff seeks a temporary injunction, following a hearing, enjoining the Ford Motor Company from:

- (1) Continuing to withhold information concerning the dangers of such vehicles from law enforcement agencies;
- (2) Continuing to withhold information on the availability of repairs recommended by the Technical Service Bulletin;
- (3) Failing to immediately provide a copy of the Technical Service Bulletin to all Texas counties, cities, and law enforcement agencies located in Texas which operate such vehicles, together with a clear statement, in form and language approved by the Court, that such repairs are available from authorized dealers and that Ford recommends that such repairs be made to reduce the danger of fuel-fed fires in rear impact collisions, and

- (4) Making any statement which minimizes the need for such repairs or discourages the owners of the vehicles from obtaining such repairs.

12.8. No bond is required for the temporary injunction under the provisions of sec. 6.001, Tex. Civ. Prac. & Rem. Code.

### **XIII. Request for Permanent Injunctive Relief**

13.1 Following trial on the merits, Plaintiff requests that the Court issue its permanent injunction against Ford Motor Company:

- (a) From failing to reimburse Plaintiff and members of the class for any payments made to authorized Ford dealerships to obtain Ford recommended repairs to the vehicles, and
- (b) Requiring Ford to design, implement and release remedial repairs adequate (as approved by the Court) to remedy the defects alleged herein, and to provide such remedies to the owners of such vehicles immediately and without charge through its authorized dealers.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants Ford Motor Company, Charlie Thomas' Courtesy Ford, Inc. f/k/a Courtesy Ford Motors, Inc., Charlie Thomas' Courtesy Ford, Inc. d/b/a Padre Ford-Mazda, Tradewinds Ford Sales, Inc. f/k/a Crosstown Ford Sales, Inc., and Bob Lacy Ford, Inc., be cited to appear and answer herein, and that this cause be set for trial, and that Plaintiff, individually and as class representative, recover judgment of and from these Defendants:

- (1) For declaratory judgment that the Ford Crown Victoria Police Interceptors at issue herein contained a safety-related defect at the time of their sale;
- (2) For declaratory judgment that Ford Motor Company and the Selling Dealers have breached their respective express and implied warranties as alleged herein;
- (3) For temporary injunctive relief against Ford Motor Company as specified above;
- (4) For permanent injunctive relief against Ford Motor Company as specified above;
- (4) For attorneys fees and costs of suit, and
- (5) For such other relief as Plaintiff and the class may justly show itself to be entitled.

Respectfully submitted,

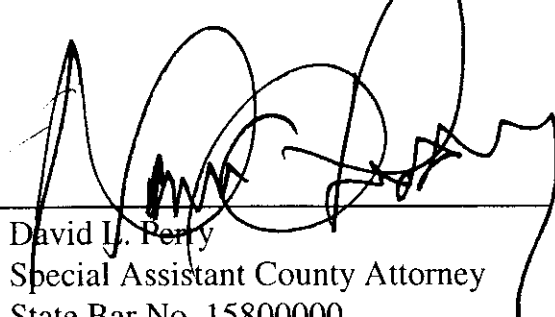
NUECES COUNTY, TEXAS,  
Plaintiff

LAURA GARZA JIMENEZ  
County Attorney, by

PERRY & HAAS, L.L.P.  
P.O. Box 1500  
2300 Frost Bank Plaza  
Corpus Christi, Texas 78403-1500  
Telephone: (361) 880-7500  
Fax: (361) 887-9507



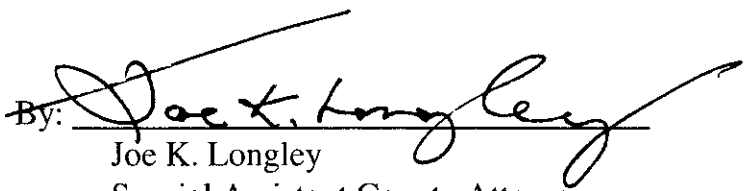
By: \_\_\_\_\_

  
David L. Perly  
Special Assistant County Attorney  
State Bar No. 15800000

Patricia A. Shackelford  
State Bar No. 00788393  
Danny Tower  
State Bar No. 20152950

LONGLEY & MAXWELL, L.L.P.  
P. O. Box 12667  
1609 Shoal Creek Boulevard, Suite 100  
Austin, Texas 78701

By: \_\_\_\_\_

  
Joe K. Longley  
Special Assistant County Attorney  
State Bar No. 12542000

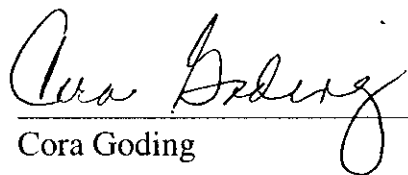
Philip K. Maxwell  
State Bar No. 13254000  
Telephone No.: (512) 477-4444  
Fax No.: (512) 477-4470

**AFFIDAVIT**

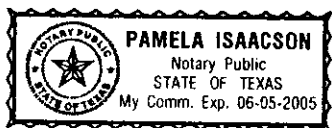
THE STATE OF TEXAS   §  
                                      §  
COUNTY OF NUECES   §


**Before me**, the undersigned authority, on this day personally appeared CORA GODING, known to me to be the person whose name is subscribed below, and having been by me first duly sworn, did on her oath depose and say as follows:

1. My name is CORA GODING. I am more than 18 years of age and am competent to make this affidavit.
2. I am the Purchasing Agent for Nueces County, Texas. I have worked in the Purchasing Department for approximately 20 years and have been Purchasing Agent for approximately 8 years. It is part of the duties of the Purchasing Department to handle purchases of vehicles for the county, including Ford Crown Victoria Police Interceptor Vehicles. It is also part of the duties of the Purchasing Department to receive communications from vehicle manufacturers and/or dealers which are sent to the county from time to time, which recommend or require repairs or adjustments to county-owned vehicles. Such communications would include recall notices which we receive from time to time, which notify the county that certain vehicles have been recalled for some certain problem, and that repairs may be obtained at a dealership.
3. I have read Paragraphs 6.19 and 6.20 of the above and foregoing petition, and have personal knowledge that the facts stated therein are true and correct.

  
\_\_\_\_\_  
Cora Goding

1<sup>st</sup> SUBSCRIBED and sworn to before me, the undersigned authority, on this the \_\_\_\_\_ day of July, 2002.



  
\_\_\_\_\_  
Notary Public  
State of Texas

**EXHIBIT A**

- **BODY—PARTS AND PROCEDURE TO REDUCE THE POTENTIAL OF FUEL TANK PUNCTURES DURING RARE AND EXTREMELY HIGH-SPEED REAR IMPACTS**
- **FUEL— PARTS AND PROCEDURE TO REDUCE THE POTENTIAL OF FUEL TANK PUNCTURES DURING RARE AND EXTREMELY HIGH-SPEED REAR IMPACTS**

Article No.  
01-21-14

**FORD:** 1992-2001 CROWN VICTORIA  
**LINCOLN:** 1992-2001 TOWN CAR  
**MERCURY:** 1992-2001 GRAND MARQUIS

**ISSUE**

This article is being issued to provide Service Parts and a Service Procedure to further reduce the unlikely possibility of a fuel tank puncture during an extremely high-speed rear impact in certain vehicle applications. Some Police agencies have indicated that their vehicles may stop along high-speed roads - which is prohibited by law except in emergency situations - and may thereby become exposed to extremely high-speed rear impacts, typically by drunk drivers.

Ford corporate guideline tests, at speeds 20 mph above government requirements, demonstrate excellent fuel tank integrity in these vehicles. Because of the nature of their use, some Police vehicles in certain applications may be exposed to extremely high-speed rear impacts with closing speeds above 80 mph. Investigation of several police vehicles involved in extreme high-speed rear impacts has identified a potential cause of the fuel tank puncture in at least one of these impacts.

**ACTION**

Recommended for vehicles exposed to extremely high-speed rear impacts. Refer to the following Service Procedure for details.

**SERVICE PROCEDURE**

1. On 1992-1997 vehicles, replace Park Brake Cable to Axle attaching hex head bolt part N806900-S2 with round-headed fastener part W706024-S427. Model year 1998 and later vehicles are of a different design and do not use this bolt (Figure 1).

2. On 1992-2001 vehicles, use a die grinder or electric grinder with suitable carbide or grinding wheel to remove the 4 mm high by 6 mm wide tab which protrudes down from one flange of the rear stabilizer bar axle attachment "U" bracket. There is a "U" bracket at each end of the center section of the rear stabilizer bar (Figure 2).

The "U" brackets do not need to be removed from the vehicle.

The tab should be ground until it is flush with the contour of the flange.

PART NUMBER	PART NAME
W706024-S427	Bolt - Round Headed Fastener

**OTHER APPLICABLE ARTICLES:** NONE

**WARRANTY STATUS:** Eligible Under The Provisions Of Bumper To Bumper Warranty Coverage

OPERATION	DESCRIPTION	TIME
012114A	Replace Park Brake Cable To Axle Attaching Hex Head Fastener With Round Headed Fastener, Then Grind Tab From Both U-Brackets On Rear Stabilizer Bar 1992-1997	0.4 Hr.
012114B	Grind Tab From Both U-Brackets On Rear Stabilizer Bar 1992-2001	0.2 Hr.

**CRUZ** 1271  
**F 030541**

Article No. 01-21-14 Cont'd.

DEALER CODING

BASIC PART NO.

4A047

OASIS CODES: 111000, 404000, 509000

CONDITION

CODE

42

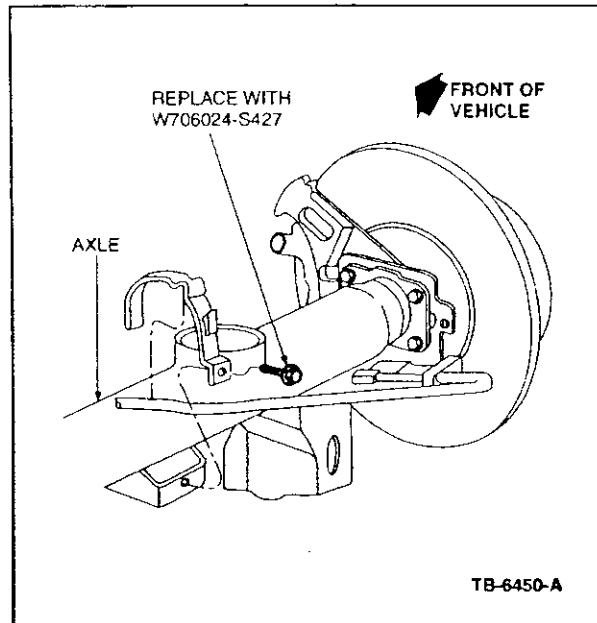


Figure 1 - Article 01-21-14

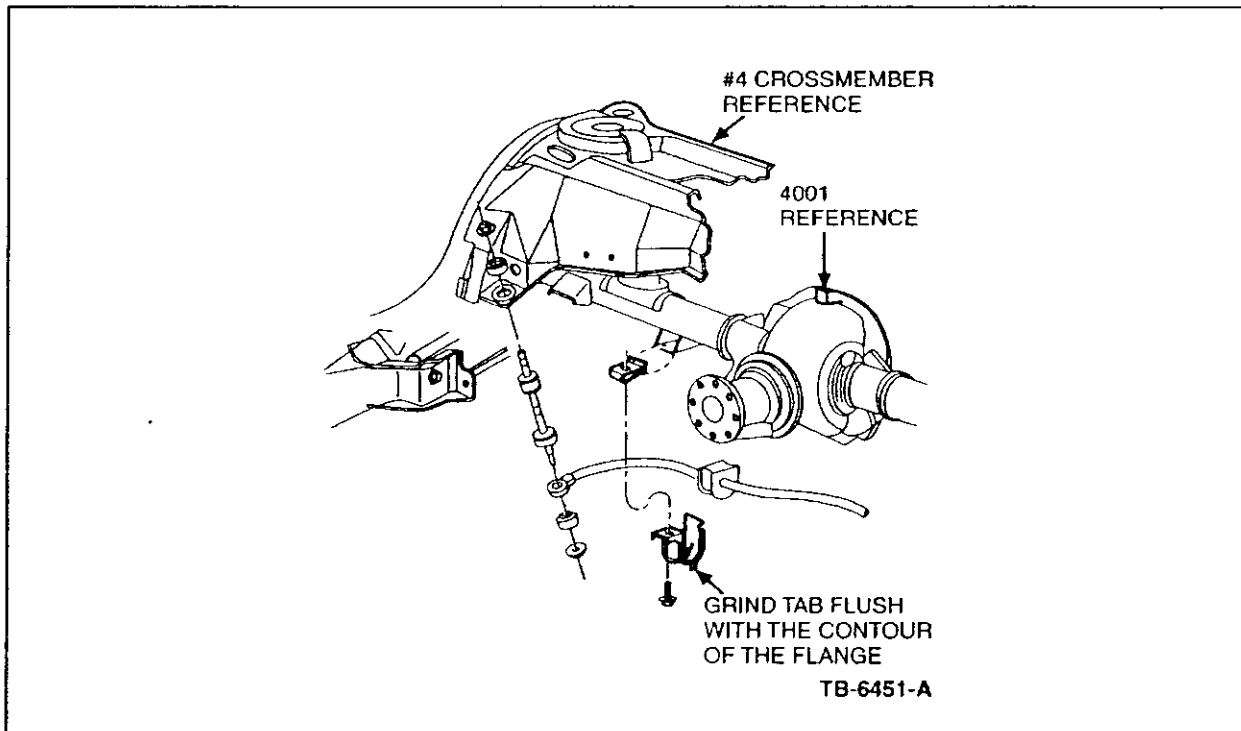


Figure 2 - Article 01-21-14

**EXHIBIT B**

## FORD CROWN VICTORIA POLICE CARS

*[Background: On Thursday, April 11, Good Morning America ran a short news segment that questioned the integrity of the Crown Victoria's fuel system. The GMA story stems from the Arizona Attorney General's ongoing campaign calling for Ford Motor Company to recall the Crown Victoria Police Interceptor package.]*

Over the past twenty years, Ford has sold more than 500,000 Ford Crown Victoria Police Interceptor vehicles. The Crown Victoria is not only the market leader, but comprises the bulk of the police vehicle market. Over the years, the Crown Victoria police car has a proven record of safe, dependable service to law enforcement departments across the country.

Accident data show that the number of rear collision fires involving these vehicles is extremely low and that the performance of the Crown Victoria is comparable to similar makes and models.

All of the accidents Ford knows of involving Crown Victoria Police Interceptors and fires have occurred in very high-energy impacts, some being struck at high speeds by large vehicles and others at speeds up to 100 mph. For comparison sake, a Crown Victoria dropped from an 8 story building would be traveling 50 mph when it hit the ground. The energy involved in these high-energy impacts can cause fuel leakage in any vehicle.

The Crown Victoria, both as a police vehicle and a consumer vehicle, surpasses government fuel system integrity requirements and meets more stringent Ford internal requirements. Ford's voluntary fuel system integrity guidelines include a 50 mph, car-to-car rear crash. This compares to the government's 30 mph, moving barrier rear crash test. Ford knows of no automaker that tests its fleet of vehicles to a higher crash test speed.

While the Crown Victoria has a proven performance and test history, it's ready to meet future requirements, also. Ford recently tested a 1996 Crown Victoria to the U.S. government's more stringent future fuel system integrity requirements and passed this tougher test with no fuel leak. This new government requirement involves a 50 mph crash with a deformable barrier at a 70 percent offset.

### Source: Ford Motor Company

**EXHIBIT C**



## Ford Agrees to Study Police Cars

By SHOLNN FREEMAN

DETROIT—Ford Motor Co. agreed to create an engineering task force to determine how to stop gas-tank fires in Ford's Crown Victoria police cruisers, the most popular cop cars on the market.

At least 11 police officers nationwide, including three in Arizona in recent years, have died in accidents where the gas tanks in Ford's Crown Victoria police cruisers exploded after a collision.

Ford officials have said the vehicle has no design flaw and that the fires have no common thread. However, the auto maker is now backing the task force, which will conduct crash-testing and examine gas-tank modifications, such as shields or gas-tank bladders, which Ford had been resisting.

Ford officials announced the formation of the task force—which is being given three months to propose some solutions—after a meeting with Janet Napolitano, the attorney general in Arizona.

Ford will pick the chairman of the new task force. But the two sides didn't

work out other details, such as the number of people in the study group or who the members will be. The two sides also decided to create a blue-ribbon commission that will study larger issues surrounding the problem, like police procedures and police-car markings.

The Ford Crown Victoria is the dominant cop car in the U.S. market. Ford, which sold 56,500 last year, estimates the car has 85% of the market. A spokeswoman said there are about 400,000 currently on the road. The Crown Victoria and mechanically similar models, such as the Mercury Grand Marquis, are also sold to consumers.

Ford is now facing growing scrutiny from federal investigators and consumer groups who are worried about the safety threat to drivers who have civilian versions of the cars. The National Highway Traffic Safety Administration is in the midst of an investigation into the gas-tank safety issue, which began in November. The Center for Auto Safety, a Washington, D.C., consumer group, is demanding a recall of at least two million cars with designs similar to the Crown Victoria that Ford sold to the public.

WSJ 6/26/02