

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
Case No. _____

HARVEY BRITTON FORD and KATHY)	
REGENIA FORD, on behalf of themselves)	CLASS ACTION
and all others similarly situated,)	COMPLAINT
)	
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	

Plaintiffs Harvey Britton Ford and Kathy Regenia Ford (husband and wife), on behalf of themselves and all other persons similarly situated, brings this action against defendant Ford Motor Company and, to the best of their knowledge, information and belief, formed after an inquiry reasonable under the circumstances, alleges as follows:

NATURE OF THE ACTION

1. This is a consumer action on behalf of plaintiffs and a class of other similarly situated North Carolina consumers against defendant Ford, the manufacturer of the Explorer. Between 2011 to 2015, Ford Explorers were built on the same platform with common parts. This model has a distinct and dangerous characteristic: It leaks exhaust emissions (which includes carbon monoxide) into its passenger cabin.
2. The potential exposure to exhaust and carbon monoxide renders these vehicles unsafe to drive.
3. Ford has known about this problem since 2009.
4. In about 2012, Ford issued Technical Service Bulletin 12-12-4 (“TSB 12-12-4”)(Ex. B), titled “Explorer Exhaust Odor in Vehicle,” acknowledging that “[s]ome 2011-2013

Explorer vehicles may exhibit an exhaust odor in the vehicle with the auxiliary climate control system on. Customers may indicate the odor smells like sulfur.” Ford’s TSB 12-12-4 provides instructions which Ford claims will correct the exhaust odor in 2011 through 2013 model year Ford Explorers.

5. Subsequent to TSB 12-12-4, Ford issued Technical Service Bulletin 14-0130 (“TSB 14-0130”) (Ex. C).

6. Titled “Exhaust Odor in Vehicle,” TSB 14-0130 also acknowledges an exhaust odor in Explorer vehicles, and adds the 2014 and 2015 model year Explorers to the list of affected vehicles. TSB 14-0130 includes the same or similar service procedures outlined in TSB 12-12-4, and adds certain procedures not included in TSB 12-12-4. Both TSBs provide that the repairs associated with the TSBs are covered by Ford’s warranty.

7. Ford’s TSBs 12-12-4 and 14-0130, however, do not correct the condition. Ford has serviced thousands of vehicles around the world under TSBs 12-12-4 and 14-0130, generally without success in eliminating the exhaust leak. Ford has bought back hundreds of vehicles around the world, mostly overseas, because it has been unable to fix the leak. Ford has attempted a variety of fixes, all without success.

8. Ford’s TSBs 12-12-4 and 14-0130 also fail to acknowledge that carbon monoxide may enter the passenger compartment of affected vehicles. Ford’s TSBs 12-12-4 and 14-0130 are provided to authorized dealerships, and do not directly notify non-Ford automotive repair facilities about the defects associated with TSBs 12-12-4 and 14-0130. Further, although Ford has received numerous complaints relating to exhaust entering the passenger compartments of 2011 through 2015 model year Ford Explorers, Ford has not provided any notice to plaintiffs or

the proposed class members about the defect and the potential exposure to dangerous carbon monoxide in the 2011 through 2015 model-year Ford Explorers.

9. The systemic nature of the exhaust leakage and the inability of Ford to find a fix have been conceded by a Ford representative, under oath, at a non-binding arbitration concerning a claim made by a Ford Explorer owner that his car was leaking exhaust into the passenger cabin. In urging that the arbitrator rule against the vehicle owner, the Ford representative testified on January 2, 2015 (a true and correct copy of this transcript is appended as **Exhibit A** to this Class Action Complaint):

- A. “It seems to be happening across the only -- across the design line. They can't -- so then it really is a design issue, not a problem with this particular vehicle.”** Exhibit A at 50:2–6.
- B. “There is another fine line there that, you know, this is happening across the -- the Explorers over a number of years. It -- it doesn't seem to be a problem with an individual part or an individual vehicle that was misbuilt. It does seem to be a design issue.”** Exhibit A at 83:13–18.
- C. “And then, in terms of -- of repairs, as I said, we're working on it. I wish I had a better answer for that. I don't, and I can only apologize on behalf of Ford for that, because, you know, it's obviously taking longer than anybody wants, especially our customers who have the vehicle.”** Exhibit A at 51:2–8.
- D. “In terms of the request for repairs, as soon as we can get it -- get them done, as soon as we have a robust fix, something that's going to actually do the job, we would love to get it done. That should be very soon. I know that that's what the customer was told, you know, all those months ago; but we do feel that we've taken steps along the way. We have come out with the two technical service bulletins trying to address it, and we do want to get it fixed. So we are not saying no to a repair; we are just saying we have to have the fix first.”** Exhibit A at 84:25–85:12.

10. Ford sold or leased hundreds of thousands of defective vehicles nationwide. Each such vehicle was sold or leased in a dangerous and defective condition because each such vehicle contains design or manufacturing flaws, and/or an exhaust and/or HVAC system that permit(s)

exhaust and other gases, including toxic carbon monoxide, to enter the passenger compartment during the normal and customary use of such vehicles.

11. Ford designed, manufactured, sold and leased the 2011 through 2015 model year Ford Explorer when it knew or should have known of such defects, or Ford otherwise learned of such defects and failed to notify plaintiffs and the proposed class members of the defect in the 2011 through 2015 model year Ford Explorers that exposed plaintiffs, the proposed class members, and others, to a life safety hazard.

12. Plaintiff and the members of the proposed classes reasonably expect to have their Ford vehicles operate in a normal and customary manner free from exposure to potentially noxious and potentially deadly exhaust gases entering the vehicle's cabin during normal and expected use.

JURISDICTION AND VENUE

13. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and more than two-thirds of the class is diverse from Ford.

14. The Court has personal jurisdiction over Ford because Ford conducts substantial business in this District, and some of the actions giving rise to this complaint took place in this District.

15. Venue is proper in this District under 28 U.S.C. § 1391 because, among other things, a substantial part of the events or omissions giving rise to the claims occurred in this District, and caused harm to class members residing in this District.

PARTIES

16. Plaintiffs Harvey Britton Ford and Kathy Regenia Ford are residents of Hartford, Tennessee.

17. Defendant Ford Motor Company is a Delaware corporation with its principal place of business in Michigan. In this Complaint, “Ford” refers to the named defendant and all related, successor, predecessor, parent, and subsidiary entities to which these allegations pertain.

PLAINTIFF’S INDIVIDUAL ALLEGATIONS

18. On or about February 6, 2014, plaintiffs bought a new 2014 Ford Explorer, VIN number 1FM5K8F87EGB40343, from “Four Seasons Ford,” an authorized Ford dealership in Hendersonville, North Carolina.

19. The 2014 Ford Explorer purchased by plaintiffs was dangerous and defective when purchased because its design and exhaust and/or HVAC systems permitted an exhaust odor, exhaust and other gases, including carbon monoxide, to enter the passenger compartment of the vehicle. The defect is latent in nature because it is not obvious or ascertainable upon reasonable examination or inspection.

20. At the time of the purchase, plaintiffs were not notified that the 2014 Ford Explorer they purchased was defective, nor were they notified that they and all occupants would be exposed to carbon monoxide and other potentially dangerous gases while driving in the 2014 Ford Explorer during its normal and customary use.

21. Plaintiffs brought their 2014 Ford Explorer in for service to authorized Ford dealerships on numerous occasions, with complaints of an exhaust odor present in the passenger compartment while the 2014 Ford Explorer was in use.

22. Plaintiffs experienced an exhaust odor inside the passenger cabin of their 2014 Ford Explorer within weeks of the vehicle's purchase.

23. On or about August 26, 2014, plaintiffs brought their 2014 Ford Explorer in for service to Ken Wilson Ford, an authorized Ford dealership in Canton, North Carolina and complained about an exhaust odor inside the passenger compartment of her vehicle while the vehicle was being driven. At that time, the subject vehicle had been driven 11,336 miles, and was well within the 3 year/36,000 mile warranty period. The authorized Ford dealership prescribed and performed TSB 14-0130, which was intended to correct the problem.

24. The work performed under the TSB did not eliminate the exhaust smell. Accordingly, on or about September 9, 2014, plaintiffs returned to Ken Wilson Ford to complain about the problem. The authorized Ford dealership requested that plaintiffs leave their vehicle with the dealership while the service department could address their concerns.

25. The following day, a representative from Ken Wilson Ford informed the plaintiffs that they had contacted defendant Ford Motor Company for guidance.

26. Plaintiffs picked up their Explorer on or about September 26, 2014. On or about September 30, 2014, plaintiffs again noticed an exhaust odor in the passenger cabin of the Ford Explorer.

27. On or about October 2, 2014, plaintiffs brought their Ford Explorer to a second authorized Ford dealership, Four Season's Ford in Hendersonville, North Carolina. An agent or representative from the dealership's service department told plaintiffs that Ford engineers were working on the problem and that they would contact plaintiffs once a solution had been found.

28. Four Season's Ford communicated directly with Defendant Ford Motor Co. about the plaintiffs' complaints through a dealership hotline. The dealership informed Ford that TSB

14-0130 had been performed. Ford advised the dealership that the exhaust issue was “currently under investigation.” Four Season’s Ford then explained to plaintiffs that they could not fix the problem.

29. On or about October 7, 2014, Plaintiffs contacted Defendant Ford Motor Co. directly, and spoke with a customer service representative named “Lucy.” Lucy informed plaintiffs that there was no repair that could be made to their vehicle.

30. On or about November 13, 2014, plaintiffs again spoke directly with a Ford service representative named “Chris” who informed them that plaintiffs’ Ford case inquiry had been closed.

31. In November 2014, plaintiffs again directly contacted Ford and spoke with “Lucy” concerning their inquiry about the exhaust odor. Following this conversation, Plaintiffs received a letter from Teresa Wesley, identified as a Ford customer service representative, concerning their inquiry with Ford about the exhaust odor. No fix or repair was offered by Defendant Ford Motor Co.’s service agents.

32. Neither Ford nor its authorized dealerships have been able to fix the vehicle. Plaintiffs continue to experience the exhaust odor when accelerating the vehicle. On multiple occasions, plaintiffs have plugged in a carbon monoxide detector inside the vehicle. More than once, the monitor’s alarm has sounded while plaintiffs have been driving the car.

33. Carbon monoxide is an odorless, colorless, and tasteless gas that is toxic to humans.

34. On multiple occasions, plaintiffs and/or their passengers have become nauseated, dizzy, or sick from exposure to the gases inside the passenger compartment.

35. To date, Ford has not repaired plaintiffs' 2014 Ford Explorer, nor has Ford acknowledged to plaintiffs or the members of the proposed class that the 2011 through 2015 model year Ford Explorers contain design flaws and/or defective exhaust and/or HVAC systems permitting exhaust, carbon monoxide and other potentially dangerous gases into the passenger compartments of those vehicles.

GENERAL ALLEGATIONS

1. Ford's Sale and Leasing of Defective and Dangerous Vehicles

36. Ford began selling and leasing a new generation of Ford Explorers – considered the fifth generation of Explorer vehicles – with the 2011 model year Ford Explorer.

37. The subsequent model-year Ford explorers are not dramatically different in design from the 2011 Explorer. These Explorers, including those sold today, are all known as “fifth generation” Explorers.

38. The 2011 through 2015 model year Ford Explorers were designed, engineered, and manufactured by Ford with design flaws and/or defective exhaust and/or HVAC systems that permit carbon monoxide and exhaust to enter into the passenger compartments of those vehicles while they are driven in a normal and customary manner.

39. Ford designed, manufactured, assembled, inspected, distributed, sold, and leased the 2011 through 2015 model year Ford Explorers in a manner so as to render the subject vehicles defective and unsafe for their intended use and purpose by, among other things:

- (a) Designing the vehicles such that exhaust and other gases, including carbon monoxide, may enter the passenger compartments of the vehicles;
- (b) Designing the bumpers and/or tailpipes on the vehicles such that exhaust and other gases, including carbon monoxide, may accumulate behind the bumper and within the interior and exterior panels, allowing those gases to permeate the passenger compartments of the vehicles;

- (c) Designing, manufacturing and assembling the vehicles using defective rear air extractors which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (d) Designing, manufacturing and assembling the liftgates in the rear of the vehicles using defective drain valves, which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (e) Designing, manufacturing and assembling the vehicles with sheet metal panels and overlaps which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (f) Designing, manufacturing and assembling the vehicles with joints and seams which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles; and,
- (g) Designing, manufacturing and assembling the vehicles with rear auxiliary air conditioning system parts which are defectively designed and/or located too close in proximity to the driver side rear air extractor, such that exhaust and other gases, including carbon monoxide, may enter the auxiliary air conditioning system and the passenger compartments of the vehicles.

40. Ford knew or should have known that the 2011 through 2015 model year Explorers were dangerous and defective such that drivers and passengers of those vehicles may be exposed to carbon monoxide and other dangerous gases while the vehicles are in operation.

41. The defective vehicles were sold or leased pursuant to express and implied warranties. At the time the defective vehicles were sold or leased by Ford directly and through its authorized agents, the vehicles were in violation of express and implied warranties. All of the defective vehicles are still within the effective dates of the express warranties, or the time or mileage limits in the express warranties should be inapplicable given Ford's fraudulent conduct, among other factors.

42. In promoting, selling and repairing its defective vehicles, Ford acts through numerous authorized dealers who act, and represent themselves to the public, as exclusive Ford

representatives and agents. That the dealers act as Ford's agents is demonstrated by the fact that: (i) the warranties provided by Ford for the defective vehicles directs consumers to take their vehicles to authorized dealerships for repairs or services; (ii) Ford dictates the nature and terms of the purchase contracts entered into between its authorized dealers and consumers; (iii) Ford directs its authorized dealers as to the manner in which they can respond to complaints and inquiries concerning defective vehicles; and (iv) Ford has entered into agreements and understandings with its authorized dealers pursuant to which it authorizes and exercises substantial control over the operations of its dealers and the dealers' interaction with the public.

43. Ford's control over the actions of its dealers is also evidenced by its implementation of the company's express and implied warranties as they relate to the defects alleged herein. Authorized Ford dealerships are instructed by Ford to address complaints of an exhaust odor by prescribing and implementing TSBs 12-12-4 and 14-0130. Implementation of the TSBs is not triggered by complaints of carbon monoxide entering the passenger cabin.

2. Ford Acknowledged the Subject Vehicles' Defective Condition in TSBs 12-12-4 and 14-0130

44. In response to customer complaints of an exhaust odor in the passenger compartments of the subject vehicles, Ford issued TSB 12-12-4 in or about December 2012. TSB 12-12-4 was intended to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odor in 2011 through 2013 model year Ford Explorers.

45. In or about July 2014, Ford issued TSB 14-0130, which added 2014 and 2015 model year Explorers to the list of affected vehicles. TSB 14-0130 was intended to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odor in 2011 through 2015 model year Ford Explorers.

46. Even after issuing TSBs 12-12-4 and 14-0130, Ford did not inform plaintiff or the members of the proposed class of the defects in 2011 through 2015 model year Ford Explorers, despite the fact that those defects presented life safety issues to occupants of the vehicles.

47. Notably, TSBs 12-12-4 and 14-0130 fail to disclose that the exhaust odor acknowledged therein is accompanied in the passenger compartment by toxic and potentially lethal carbon monoxide and other gases.

48. At all material times, Ford has failed to inform customers who purchased and/or leased 2011 through 2015 model-year Ford Explorers that they are unsafe for operation or that they were designed, engineered, and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartments of such vehicles.

3. Ford's TSBs 12-12-4 and 14-0130 Fail to Repair the Defects

49. Ford's TSBs 12-12-4 and 14-0130 fail to repair the exhaust odor problem, and vehicles which have received the repairs outlined in TSBs 12-12-4 and 14-0130 may continue to have exhaust and other gases, including carbon monoxide, enter the passenger compartment.

50. TSBs 12-12-4 and 14-0130 identify flaws in the initial design and manufacture of the 2011 through 2015 model-year Ford Explorers, and prescribe repairs and/or replacements which are inadequate and equally flawed and defective.

51. In TSBs 12-12-4 and 14-0130, Ford requires installation or use of the following replacement parts in the subject vehicles, among others: (i) a dual rate air extractor (part number BB5Z-61280B62-A under TSB 12-12-4 and part number BB5Z-61280B62-B under TSB 14-0130); (ii) valve assembly auto drains (part number 4M8Z-54280B62-A); and (iii) Motorcraft® Seam sealer (part number TA-2).

52. The replacement parts and service, however, fail to prevent exhaust and other gases, including carbon monoxide, from entering the passenger cabins of the subject vehicles.

53. The problem common to the Explorer models results from primarily three facts.

54. The first fact is that engine exhaust tends to splash against the rear outside liftgate of the car. This tends to worsen at higher speeds.

55. The second fact is the subject Ford models are not remotely airtight. Part of this is intentional. Drainholes are cut into the cars' rear liftgates; just as water can run down these holes, exhaust can float up through them. Moreover, part of this particular problem results from poor workmanship and inferior products: the rubber mounting that cushions the liftgate window against the liftgate itself is not airtight; gaps caused by poor placement and inconsistent use of adhesive leaves observable gaps. In addition, the cars at issue have air extractors built above the rear tires. These extractors are supposed to act like check valves and modulate the flow of air, and air pressure, in the passenger cab. But the flaps on the extractors are poorly made. They stiffen and curl and don't sit flat over the extractor's opening when they should.

56. The third fact is that at certain air conditioning settings – and especially when the air conditioning is set at maximum (which causes the air inside the cabin to recycle) – the air pressure inside the passenger cabin drops.

57. The result of these factors is that the vehicles' engine exhaust, which tends to build up against the rear liftgate at high speeds, is pulled into the passenger cabin through the many holes and gaps in the back end of the car because the pressure inside the cab is less than the pressure outside.

4. Ford's Conduct and/or Inaction Has Damaged Plaintiffs and Members of the Proposed Class

58. Plaintiffs and each member of the proposed class has sustained ascertainable losses and damages in connection with their lease or purchase of the vehicles.

59. Plaintiffs and each class member has not received what he or she paid for: a car that can be safely and comfortably driven without the presence of exhaust fumes in the cabin.

60. Plaintiffs and the class members have been damaged by Ford's conduct and/or inaction, as they have been exposed to harmful carbon monoxide and exhaust, they unknowingly leased or purchased defective vehicles that cannot be safely operated, they have been forced to pay, or will pay, substantial amounts of money to repair the vehicles, if a repair can be made, and the value of their affected vehicles has been diminished because of this defect.

61. A vehicle containing the defect described – that is, a defect that permits the entry of carbon monoxide and other gases into the passenger compartment of the vehicle – is worth less than a vehicle free from such defect. Given that the defect renders driving the subject vehicles a health hazard that is potentially deadly, the vehicles are valueless. At the time plaintiffs purchased and leased their vehicles, they paid a price based on the value of such a vehicle free of such defect.

62. Plaintiffs and the class have been damaged and are entitled to compensation because (a) they overpaid (whether through purchase price or lease cost) for the car and (b) their Explorers' value has diminished due to the defect.

CLASS ACTION ALLEGATIONS

63. Plaintiffs seek to bring this case as a class action, pursuant to Fed. R. Civ. P. 23(a)(1)-(4) and (b)(2) and/or (b)(3). The proposed class is as follows:

All persons who purchased or leased directly from a Ford authorized dealership in North Carolina at least one of the following vehicles: 2011 Ford Explorer, 2012 Ford Explorer, 2013 Ford Explorer, 2014 Ford Explorer or 2015 Ford Explorer.

64. **Numerosity.** Members of the class are so numerous that individual joinder of all members is impracticable. Based upon information and belief, Ford has sold or leased tens of thousands of 2011 through 2015 model year Ford Explorers in North Carolina. All of these vehicles are covered by TSBs 12-12-4 and 14-0130, and contain a defect that may cause carbon monoxide or exhaust to enter the passenger compartments of such vehicles.

65. **Existence of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the class. These include, but are not limited to: whether the 2011 through 2015 model year Ford Explorers have been sold or leased subject to express and/or implied warranties; whether the 2011 through 2015 model year Ford Explorers are defective such that carbon monoxide and exhaust may enter the passenger compartments of such vehicles; whether the 2011 through 2015 model year Ford Explorers suffer from a design defect, are unreasonably dangerous and/or are unfit for their intended use; whether Ford has knowledge of such defect; when Ford learned of such defect; whether Ford failed to disclose the defect to plaintiffs and the class; whether Ford misrepresented that the affected vehicles were safe; whether Ford has a fix to the defect and, if so, how much the fix will cost; whether the defect reduces the value of the affected vehicles; whether Ford's express warranties cover the latent defects; whether Ford breached its warranties made to plaintiffs and the class; whether Ford negligently designed/engineered/manufactured the affected vehicles; whether Ford concealed the defect; and whether plaintiffs and the class have suffered damages as a result of the conduct alleged, and if so, the measure of such damage.

66. **Typicality.** The claims of plaintiffs are typical of the claims of the class, as plaintiff and the members of the class have purchased or leased defective vehicles and have been harmed in some manner by Ford's conduct.

67. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' interests do not conflict with the interests of the members of the class. Further, plaintiffs have retained counsel competent and experienced in complex class action litigation. Plaintiffs and her counsel are committed to vigorously prosecuting this action.

68. **Predominance and Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual class members is impracticable. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members. Likewise, because the damages suffered by each individual class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

69. The prosecution of separate actions by the individual class members would also create a risk of inconsistent or varying adjudications for individual class members, which would establish incompatible standards of conduct for Ford. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member. Further, plaintiff anticipates no difficulty in the management of this litigation as a class action.

70. For all of the foregoing reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF EXPRESS WARRANTY

71. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 70 as if fully set forth herein.

72. This count is brought on behalf of the class.

73. For each defective vehicle sold by Ford, an express written warranty was issued which covered the vehicle, warranting the vehicle to be free of defects in materials and workmanship at the time of delivery.

74. Ford's express warranties are intended to benefit the customer, including plaintiff and the members of the class.

75. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that it would pay for all repairs and parts to replace defects introduced during the design and manufacturing process.

76. Plaintiffs, and the members of the class, relied upon Ford's express warranties, and the existence of such warranties, when purchasing or leasing the vehicles.

77. Ford breached its express warranties by offering for sale, and selling or leasing as safe, defective vehicles that were by design and construction unsafe, thereby subjecting occupants of the defective vehicles purchased or leased by plaintiffs and members of the class to the risk of injury or death.

78. The defect at issue in this litigation was present in the subject vehicles at the time of sale or lease to plaintiffs and the members of the class.

79. The defect at issue in this litigation must be corrected by Ford, and the expenses of such repairs must be borne by Ford, per Ford's express warranties.

80. Ford breached its express warranties (and continues to breach its express warranties) because it has not fixed the defect causing carbon monoxide and exhaust to enter the passenger compartment of the subject vehicles, nor has it covered the expenses associated with correcting the defect.

81. Plaintiffs and the members of the class have performed the duties required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of Ford or by operation of law in light of Ford's conduct described throughout this Complaint.

82. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

83. Plaintiffs and the members of the class have suffered damages caused by Ford's breach of the express warranties and are entitled to recover compensatory damages, including but not limited to the cost of repairs and diminution in value.

COUNT II

BREACH OF IMPLIED WARRANTY

84. Plaintiffs repeat and re-allege the allegations in Paragraphs 1 through 83 as if fully set forth herein.

85. This Count is brought on behalf of the class.

86. Ford impliedly warrantied that the subject vehicles, which Ford designed, manufactured, sold or leased, were merchantable, fit for the ordinary purposes for which they were intended to be used, and were not otherwise injurious to consumers. The ordinary purpose for which the subject vehicles are used is, among other things, to drive in a manner that does not unnecessarily and unreasonably expose occupants to needless harm or risk.

87. Ford breached its implied warranty of merchantability when it designed, manufactured, distributed, sold and leased the 2011 through 2015 model year Ford Explorers in an unsafe and un-merchantable condition. The subject vehicles threaten to expose occupants to carbon monoxide and other dangerous gases while the vehicles are being driven in a normal and customary manner. The subject vehicles were therefore unfit for their ordinary purpose.

88. Plaintiffs and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and plaintiffs and each of the members of the class, on the other hand. Notwithstanding, privity is not required because plaintiffs and each of the members of the class are the intended beneficiaries of Ford's written warranties and its contractual relationships with Ford dealerships. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's express warranties were designed for and intended to benefit the consumers only. Plaintiffs and the members of the class were the intended consumers of the subject vehicles.

89. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

90. Plaintiffs and the members of the class have suffered damages caused by Ford's breach of the implied warranty of merchantability and are entitled to recover compensatory damages, including but not limited to the cost of repairs and diminution in value.

COUNT III

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *et seq.*)

91. Plaintiffs repeats and re-alleges the allegations in Paragraphs 1 through 90 as if fully set forth herein.

92. This Count is brought on behalf of the class.

93. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

94. Ford is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

95. The subject 2011 through 2015 model-year Ford Explorers are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

96. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by, among other things, the failure of a warrantor to comply with written or implied warranties.

97. Ford sells and leases its vehicles subject to express warranties which are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Ford additionally sells and leases its vehicles subject to implied warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7).

98. When plaintiffs and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that it would pay for all repairs and parts to remedy defects introduced during the design and manufacturing process.

99. When plaintiffs and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford impliedly warranted that the vehicles were merchantable, fit for the ordinary purposes for which they were intended to be used, including the guarantee that they were in a safe and non-defective condition for use by owners and lessees,

and were not otherwise injurious to consumers. Ford was under a duty to design, construct, manufacture, inspect and test the vehicles so as to make them suitable for the ordinary purpose of their use.

100. The subject 2011 through 2015 model year Ford Explorers share a common defect in that they have been designed and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartment of such vehicles during their normal and customary use. Ford is aware of the defect, and has acknowledged the problem of an exhaust odor inside the passenger compartment of such vehicles by its issuance of TSBs 12-12-4 and 14-0130. However, TSBs 12-12-4 and 14-0130 do not disclose the presence of carbon monoxide inside the passenger compartment of the subject vehicles, nor do they fix the problem of exhaust and other gases entering the passenger compartment. Ford has breached its express and implied warranties by failing to disclose a life safety defect in the subject vehicles, by failing to fix the defects in the subject vehicles, and by selling or leasing vehicles which are unsafe and unfit for the ordinary purposes for which they are intended to be used.

101. Plaintiffs and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and plaintiffs and each of the members of the class, on the other hand. Notwithstanding, plaintiffs and each of the members of the class are the intended beneficiaries of Ford's express and implied warranties. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's warranties were designed for and intended to benefit the consumers only.

102. Affording Ford a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. Ford has known, or should have known, or was reckless

in not knowing of its misrepresentations or omissions concerning the subject vehicles' defect resulting in exhaust and other gases, including carbon monoxide, entering the passenger compartment of such vehicles. Notwithstanding, Ford has failed to disclose the existence of this defect and the risk of carbon monoxide exposure, and has failed to rectify the situation. Plaintiffs, on numerous occasions, afforded Ford an opportunity to cure by bringing their vehicle into an authorized Ford dealership for service, and notifying the dealership of an exhaust odor in the passenger compartment. Notwithstanding, the defect in plaintiff's vehicle was not repaired. Neither TSB 12-12-4 nor TSB 14-0130 repairs the defect. Under the circumstances, any requirement that plaintiff afford Ford a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

103. The amount in controversy of plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000.00, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

104. Plaintiffs, individually and on behalf of the other class members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial.

COUNT IV

UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C. Gen. Stat. § 75-1.1 *et seq.*)

105. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 104 as if fully set forth herein.

106. This Count is brought on behalf of the class.

107. Plaintiff and the members of the class are “injured persons” within the meaning of the North Carolina Unfair Trade Practices Act and (“UDTPA”) and N.C. Gen. Stat. § 75-16.

108. Ford engaged in trade or commerce in North Carolina within the meaning of the UDTPA and N.C. Gen. Stat. § 75-1.1(a).

109. The UDTPA and N.C. Gen. Stat. § 75-16 affords consumers a private right of action when a person or corporation suffers injury by reason of unfair or deceptive practices as prohibited by the Act.

110. Ford sells and leases its vehicles subject to express and implied warranties and within the meaning of “business activities” under the UDTPA and N.C. Gen. Stat. § 75-1.1(b).

111. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that the vehicles would be free from defects in design, materials and workmanship. Ford promised to pay for all repairs and parts to remedy defects introduced during the design and manufacturing process.

112. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford impliedly warranted that the vehicles were merchantable, fit for the ordinary purposes for which they were intended to be used, including the guarantee that they were in a safe and non-defective condition for use by owners and lessees, and were not otherwise injurious to consumers. Ford was under a duty to design, construct, manufacture, inspect and test the vehicles so as to make them suitable for the ordinary purpose of their use.

113. The subject 2011 through 2015 model year Ford Explorers share a common defect in that they have been designed and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartment of such vehicles during their normal

and customary use. Ford is aware of the defect, and has acknowledged the problem of an exhaust odor inside the passenger compartment of such vehicles by its issuance of TSBs 12-12-4 and 14-0130. However, TSBs 12-12-4 and 14-0130 do not disclose the presence of carbon monoxide inside the passenger compartment of the subject vehicles, nor do they fix the problem of exhaust and other gases entering the passenger compartment. Ford has breached its express and implied warranties by failing to disclose a life safety defect in the subject vehicles, by failing to fix the defects in the subject vehicles, and by selling or leasing vehicles which are unsafe and unfit for the ordinary purposes for which they are intended to be used.

114. The action and misconduct alleged above was undertaken by Defendant willfully and with knowledge that such actions were unfair, deceptive, unscrupulous and substantially injurious to Plaintiff and members of the proposed class.

115. Plaintiff and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and Plaintiff and each of the members of the class, on the other hand. Notwithstanding, plaintiff and each of the members of the class are the intended beneficiaries of Ford's express and implied warranties. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's warranties were designed for and intended to benefit the consumers only.

116. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

117. Ford's breach of its express and implied warranties constitutes a producing cause of economic damage to Plaintiff and the members of the class.

118. Ford's conduct as just described amounts to a violation of the established public policy of North Carolina, was in or affecting commerce in North Carolina, was unethical, oppressive, unscrupulous, and substantially injurious to consumers in North Carolina, had the capacity and the tendency to deceive the average consumer, Plaintiff, and each member of the class as to the value, safety and warrantability of the subject 2011 through 2015 model year Ford Explorers.

119. Plaintiff and each member of the class both actually and reasonably relied on Ford's misrepresentation concerning the safety, value, and warrantability of the subject 2011 through 2015 model year Ford Explorers, as evidenced by, among other facts, the purchase and use of the vehicles by the Plaintiff and each member of the class.

120. Plaintiff and each member of the class could not have discovered the existence of the defects as alleged herein through reasonable diligence or investigation prior to the purchase or lease of the subject 2011 through 2015 model year Ford Explorers.

121. Plaintiff, individually and on behalf of the other class members, seeks all damages permitted by law, including without limitation diminution in value of their vehicles and all additional amounts permitted under the UDTPA and N.C. Gen. Stat. § 75-16, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on their own behalf and on behalf of the Class, respectfully request judgment against Ford:

(a) Certifying the class and appointing plaintiffs and their counsel to represent the class;

(b) Ordering Ford to provide notice to the class of the defect with the design of the vehicles, and/or the exhaust and/or HVAC systems in the 2011 through 2015 model year Ford Explorers that causes carbon monoxide and exhaust to enter into the passenger compartments of such vehicles during their normal and customary use;

(c) Ordering Ford to extend the applicable warranties beyond their expiration date to cover repairs associated with the exhaust smell infiltration;

(d) Awarding damages which include, but are not limited to, the cost of any repairs and the diminution of value of the vehicles;

(e) Awarding pre-judgment and post-judgment interest;

(f) Awarding attorneys' fees and costs; and

(g) Awarding any such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues triable.

Dated: July 14, 2016.

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(Motions for Pro Hac Vice Admission
Intended)

**ATTORNEYS FOR PLAINTIFFS
AND THE PROPOSED CLASS**

IN RE: BBB Auto Line Arbitration
Consumer: James Cassidy
Business: Ford Motor Company
Case number: FRD1430502-IR.

Transcription of Audio Files of Proceedings
held January 2, 2015:

FRD1430502-1R-Cassidy- Part A and
FRD1430502-1R-Cassidy- Part B

Transcribed from audio file by:
Emily Scott, stenographic reporter
United Reporting, Inc.
1218 SE 3rd Avenue
Fort Lauderdale, Florida 33316

United Reporting, Inc.
954.525.2221

1 Thereupon, the proceedings were transcribed from CD as
2 follows:

3 UNIDENTIFIED SPEAKER: -- with the New
4 Orleans Better Business Bureau.

5 MR. GRAY: Yes, good morning.

6 UNIDENTIFIED SPEAKER: Good morning.

7 I have Mr. and Mrs. Cassidy here, and
8 Mr. Geoffrey Stewart, who is going to be our
9 arbitrator this morning.

10 MR. GRAY: Excellent.

11 UNIDENTIFIED SPEAKER: Good.

12 Okay. I already have the recorder
13 started, since we record all of our hearings;
14 and so what I am going to do is go ahead and
15 read the arbitrator's oath and appointment to
16 Mr. Stewart, and then I'm going to turn the
17 hearing over to him, and he'll kind of explain
18 how everything's going to work today.

19 MR. GRAY: Okay.

20 UNIDENTIFIED SPEAKER: Okay.

21 Mr. Stewart, you have been selected to serve
22 as an arbitrator in a dispute involving the
23 above parties, which is Mr. and Mrs. James
24 Cassidy and Ford Motor Company, represented by
25 Bob Gray.

1 Unless you are not able to accept this
2 responsibility or feel you cannot give an
3 impartial decision in this matter, please sign
4 this arbitrator's oath. With this form, you
5 will receive a copy of the agreement to
6 arbitrate, which outlines the dispute and
7 establishes the limits within which you must
8 make your decision.

9 To maintain the integrity of this entire
10 process, please disclose any relationship you
11 may have had with any of the parties named
12 above or with their attorneys, if any.
13 Financial, professional, commercial,
14 competitive, social or family relationships,
15 no matter how remote, should be revealed.

16 THE ARBITRATOR: Okay. Thank you, Lisa.

17 I'm going to read the oath. I would say
18 that I don't have any relationship with either
19 party, except Bob Gray has been on previous --
20 he's represented Ford in other proceedings;
21 but that's the only relationship I have with
22 either party.

23 I, Geoffrey M. Stewart, hereby accept
24 appointment as arbitrator of the dispute
25 concerning the parties named above. I swear

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1 that I will act faithfully and impartially to
2 the best of my ability to hear and examine the
3 issues in dispute and to conduct the
4 proceedings and render a decision pursuant to
5 the rules of the Better Business Bureau Auto
6 Line Arbitration program and to the best of my
7 ability within the time allotted.

8 UNIDENTIFIED SPEAKER: Okay. Great.
9 Okay.

10 THE ARBITRATOR: Would you like me to
11 sign the other --

12 UNIDENTIFIED SPEAKER: No, I am just
13 going to take a copy of yours --

14 THE ARBITRATOR: Okay.

15 UNIDENTIFIED SPEAKER: -- later.

16 Thank you.

17 THE ARBITRATOR: Thank you very much.

18 UNIDENTIFIED SPEAKER: (Inaudible.)

19 MS. CASSIDY: No.

20 MR. CASSIDY: No. Thank you.

21 THE ARBITRATOR: Mr. Gray?

22 MR. GRAY: Yes.

23 THE ARBITRATOR: Now, as always, please
24 let me know if you can't hear at any time.

25 MR. GRAY: Thank you. I appreciate that.

1 Right now it's not too bad.

2 THE ARBITRATOR: Is it a little low?

3 MR. GRAY: A little.

4 THE ARBITRATOR: Okay. We are going to
5 try to speak up.

6 MR. GRAY: Okay. I appreciate that.

7 Thank you.

8 THE ARBITRATOR: And the phone is pretty
9 centrally located today, because we have a
10 longer cord.

11 So just as you heard me do, or saw me do,
12 take an oath to act impartially, I would ask
13 the parties now take an oath to give truthful
14 testimony. If the parties in the room would
15 please raise their right hand?

16 And, Mr. Gray, I'll indicate that you are
17 swearing out by phone.

18 MR. GRAY: Okay.

19 THE ARBITRATOR: I swear or affirm that
20 all evidence that I give or present concerning
21 the dispute will be the truth, the whole truth
22 and nothing but the truth. Please say "I do."

23 MR. CASSIDY: I do.

24 MS. CASSIDY: I do.

25 THE ARBITRATOR: Mr. Gray?

1 MR. GRAY: I do.

2 THE ARBITRATOR: Thank you.

3 And I'm going to pass this around to the
4 parties in the room.

5 Mr. Gray, your title is dispute
6 resolution specialist?

7 MR. GRAY: Correct.

8 THE ARBITRATOR: This form is asking for
9 an address; can I get an address for you?

10 MR. GRAY: Certainly. It's 1320 South
11 Babcock Street, and that's Melbourne, Florida
12 32901.

13 THE ARBITRATOR: 32901, and "Babcock" is
14 B-A-B-C-O-C-K?

15 MR. GRAY: B-A-B-C-O-C-K, yes.

16 THE ARBITRATOR: Thank you.

17 Okay. And I'm passing the oath to Faith
18 Cassidy and James Cassidy to sign.

19 Do you need a pen?

20 Okay.

21 MS. CASSIDY: Would you like me to fill
22 out my address, as well?

23 THE ARBITRATOR: Please.

24 MR. CASSIDY: Would you do mine?

25 MS. CASSIDY: Is it all right for me to

1 fill out his address line? Is that okay?

2 THE ARBITRATOR: Yeah, sure.

3 MR. CASSIDY: Her handwriting is neater
4 than mine.

5 THE ARBITRATOR: It's probably neater
6 than mine, so it's probably better -- best.

7 Thank you very much.

8 Welcome. Thank you for availing yourself
9 of the Better Business Bureau Auto Line
10 arbitration program. This is an informal
11 dispute resolution program.

12 As Lisa mentioned, the tape recorder is
13 on. The proceedings are being recorded. The
14 proceedings are confidential. I won't
15 disclose anything related to the proceedings,
16 except to Better Business Bureau staff for
17 administrative reasons.

18 The hearing format, which you may have
19 received in a packet --

20 MR. CASSIDY: Uh-huh, yes.

21 THE ARBITRATOR: -- I'm going to review
22 it. I realized recently the parties probably
23 have already looked at this when I go over it,
24 so I go over it in too much detail, probably.

25 So, briefly, each party has 20 minutes to

1 give their basic evidence, testimony or
2 witnesses, beginning with Mr. and
3 Mrs. Cassidy.

4 It -- there follows a question, comment
5 and rebuttal period of five minutes for either
6 party. And, at that point, I may have some
7 questions, and I'll ask them at that time.

8 I would ask that the parties, if they
9 have questions of the other party, that they
10 direct them towards me, and the other party
11 can answer to me. The other -- the parties
12 shouldn't have conversation with each other,
13 generally speaking. It is informal, but it
14 is -- it's not a mediation; it's an
15 arbitration. So I'm in the position of being
16 a judge that's making a decision, and so
17 evidence is being given to me.

18 Then we go down for a vehicle inspection
19 and/or test drive, if necessary. The purpose
20 of this is so that I can see -- in this case,
21 smell -- conditions that are complained about
22 in the agreement to arbitrate. Because
23 Mr. Gray is participating by phone, a staff
24 member of the Better Business Bureau will come
25 down with us, also.

1 Basically, we won't have any substantive
2 conversation, nothing in the way of testimony
3 about the condition which would -- you know,
4 nothing like "this has been going on for six
5 months" -- one second.

6 That -- that -- that's not something I
7 can perceive, you know. I'm just there just
8 to perceive what I can perceive. This doesn't
9 make or break anything. This is just
10 additional evidence.

11 If I don't notice the condition, that
12 doesn't mean it doesn't exist; and if I do
13 notice it, it doesn't mean that a remedy is
14 available to you.

15 You had a question, Mr. Cassidy?

16 MR. CASSIDY: Yes, sir. Thank you.

17 During the test drive, is one of us going
18 to be with you, along with the other person,
19 or --

20 THE ARBITRATOR: The consumers, either or
21 both of you, can come down. One of you would
22 come down with -- with the staff member of the
23 Better Business Bureau and myself.

24 MR. CASSIDY: Okay.

25 THE ARBITRATOR: If Mr. Gray were here,

1 he would also go.

2 MR. CASSIDY: Okay.

3 THE ARBITRATOR: After -- and if you have
4 anything that you want to indicate about the
5 experience, please wait until we get into the
6 hearing room and turn on the tape recorder and
7 get Mr. Gray back on the phone.

8 After we come back, each party has five
9 minutes for questions, comments about the test
10 drive and inspection. I may have some
11 questions at that time.

12 Then it says we take a recess. We
13 will -- we can do that, certainly, if either
14 party wants to, if you want to gather your
15 materials together, if you want to review
16 them, see if there is anything else you want
17 to provide me that you haven't provided
18 previously.

19 In the interest of not cutting Mr. Gray
20 off the phone a second time after another ten
21 minutes, if I don't need a recess, I'll
22 indicate that. It's also so I can look over
23 the materials and see if there is anything I
24 want to ask. It's -- it's also to see if
25 there is faxes, information that's being sent

1 back and forth that everybody has, what
2 everybody else has.

3 So with the consent of the parties, we
4 may waive the recess.

5 Following that, each party has ten
6 minutes, beginning with the consumer, as
7 always, to give any final testimony, evidence
8 or witnesses that they want. That would be
9 the place to provide things that maybe make
10 points that you felt weren't sufficiently made
11 or something you had forgotten. I may have
12 some final questions.

13 At that point, each party has the
14 opportunity for a five-minute closing, which
15 would just be a summary of -- of the case you
16 are providing.

17 This is -- does anyone have any questions
18 about the hearing format itself?

19 MS. CASSIDY: No, sir.

20 MR. CASSIDY: I do not.

21 MS. CASSIDY: No.

22 THE ARBITRATOR: This is not a court.
23 It's an informal dispute resolution procedure.
24 There are no rules of evidence. Hearsay is
25 admissible. If someone said something who is

1 not here, you can say "they said this." I may
2 not give it a lot of weight, depending, but
3 it's admissible.

4 There are no objections. Anything that's
5 relevant is -- is fine to bring up. The only
6 restrictions are relevance. If it's
7 irrelevant, then I may curb that -- or
8 repetitious or hostile. Those are the only
9 restrictions.

10 There is no particular format that you
11 need to provide things or any particular
12 language. It's just normal human language.

13 In the connection of presentation of
14 testimony, please refrain, Parties, from
15 interrupting each other and wait for your turn
16 to rebut or respond to what the other party is
17 providing, if you would please do that.

18 The hearing is focused on the agreement
19 to arbitrate, which I will now read allowed,
20 and the parties will orally confirm: BBB Auto
21 Line agreement to arbitrate; Date, 01-02-2015;
22 Consumer, James Cassidy; Business, Ford Motor
23 Company; Case number, FRD1430502-IR;
24 Manufacturer Info, 6700LA1FM5K7F84DGC77457.

25 The decision of the arbitrator will be in

1 accordance with the BBB Auto Line arbitration
2 rules and the applicable manufacturer's
3 program summary. All remedies will fall
4 within the confines of the applicable
5 manufacturer's program summary, unless
6 additional remedies are noted below.

7 Model, Explorer; Year, 2013.

8 All parties named above submit to
9 arbitration, the following: Bullet point,
10 exhaust smell in cabin.

11 The parties have come to agreement on the
12 following: NA.

13 Each party requests the arbitrator render
14 the following decision: Consumer repairs,
15 manufacturer denial.

16 The manufacturer also agrees to extend
17 authority to the arbitrator to award the
18 following: NA.

19 Is that your understanding, all parties,
20 of what the agreement to arbitrate says?

21 MR. GRAY: Yes.

22 MS. CASSIDY: Yes.

23 MR. CASSIDY: Yes.

24 THE ARBITRATOR: Thank you.

25 I realize in -- Mr. and Mrs. Cassidy, in

1 your claim form, you mention repairs, and you
2 also mentioned replacement.

3 MS. CASSIDY: Yes.

4 THE ARBITRATOR: So I note that, and
5 just --

6 MS. CASSIDY: Thank you.

7 THE ARBITRATOR: -- because it says
8 "repairs" here, doesn't mean that I couldn't
9 order replacement, if -- if such remedy were
10 available.

11 MS. CASSIDY: Yes, sir.

12 THE ARBITRATOR: The decision is
13 conditionally binding, which you may or may
14 not know means it's binding on the
15 manufacturer, not on the consumer. So if you
16 don't like the decision, you are free to
17 pursue any other legal remedies you may have.

18 MS. CASSIDY: Okay.

19 THE ARBITRATOR: You are free to reject
20 the decision.

21 MS. CASSIDY: Yes, sir.

22 THE ARBITRATOR: I won't divulge a
23 decision today. I also won't indicate, you
24 know, where I'm going with it. I am not going
25 to -- for instance, when we go down for the

1 test drive, I'm not going to give an
2 indication of what I'm perceiving. I'm just
3 gathering evidence, and I'll provide a written
4 decision within three business days, which
5 would be -- not including today, would be the
6 close of business Friday.

7 That gets sent to the main council of the
8 Better Business Bureau. They review it, and
9 then they forward it to the parties, if
10 accepted.

11 MS. CASSIDY: Okay.

12 THE ARBITRATOR: So by next week.

13 MS. CASSIDY: Okay.

14 THE ARBITRATOR: The only thing that
15 would -- that would change that is if -- well,
16 if I ordered a technical expert to look at it
17 or something like that, obviously, that would
18 take more time; but you would also know that,
19 because you'd be notified and so on.

20 Does anybody have any questions about any
21 of these preliminary matters?

22 MS. CASSIDY: No.

23 MR. CASSIDY: No.

24 MR. GRAY: No.

25 THE ARBITRATOR: Okay.

1 And, Mr. Gray, are you hearing me okay?
2 I realize I'm going higher and lower in my
3 volume.

4 MR. GRAY: No, you're doing fine. Thank
5 you.

6 THE ARBITRATOR: All right. Thank you.
7 Well, Miss -- Ms. Cassidy, I believe you
8 want to present --

9 MS. CASSIDY: Yes.

10 THE ARBITRATOR: -- so you have 20
11 minutes.

12 MS. CASSIDY: Yes, sir.

13 My husband and I purchased this vehicle
14 at the end of May 2013. Shortly after
15 purchasing the vehicle, within a week or so,
16 we took the vehicle on a long trip to Florida.
17 We did notice some exhaust smell in the
18 vehicle but really kind of attributed it to,
19 you know, not having the air circulate on. It
20 was coming in from outside, as you would in a
21 normal vehicle, it would come -- you would
22 think it would come and go. But we continued
23 to notice that it was happening after coming
24 home.

25 I do a lot of interstate driving from --

1 from my home to my employment, and so there is
2 a lot of acceleration on and off the
3 interstate or passing on the interstate; and
4 so I noticed, with acceleration, there would
5 be this smell in the cabin.

6 One particular day I was coming home, and
7 I had to merge to get into a single line to
8 get towards house. I heavily accelerated.
9 The cabin was so full of exhaust smell, I
10 immediately became lightheaded and nauseated.
11 I had to put all four windows in the vehicle
12 down to relieve it, and that's when I
13 decided -- we decided, something's wrong, and
14 it was --

15 THE ARBITRATOR: This was -- this was
16 when?

17 MS. CASSIDY: In July, at the beginning
18 of July.

19 I called the dealership, and we did bring
20 the vehicle in on July the 13th for the first
21 complaint with the exhaust smell. At that
22 time, Bohn Ford said they had not heard of
23 anything, you know, that this was basically
24 new to them.

25 So they kept the vehicle from July the

1 3rd to July the 9th and did some -- whatever
2 they did trying to figure out what the problem
3 was and gave the vehicle back. In --

4 THE ARBITRATOR: Was it July 13th or July
5 3rd?

6 MS. CASSIDY: July 13th, I'm sorry.

7 THE ARBITRATOR: Thank you.

8 MS. CASSIDY: Yes.

9 It was very soon noticed, when we got the
10 vehicle back, that it was not corrected. So
11 they kept it from the 13th to the 19th of
12 July. We returned it back on the 23rd of
13 July, telling them it's not right. So then
14 they kept it from July 23rd to August the 8th
15 and, again, with no successful resolution.

16 It was brought up to the field engineer,
17 I believe, Ken Campbell, the local area field
18 service engineer, to look into the issue; and
19 I believe at that time, or somewhere around
20 that time, it was brought to Ford
21 Corporation's attention that there was an
22 issue with this exhaust in the vehicle.

23 Basically, we were told that there was no
24 fix for it. They were looking into it to try
25 to figure out what the problem was and how

1 they were going to be able to fix it.

2 We periodically checked in to see what
3 the fix was, if there was -- was there a fix,
4 because we were never -- no one ever called us
5 back to say, "hey, we have a fix" or "we are
6 work -- "we are still working on a fix"; and
7 we were kept being put off, saying, you know,
8 "we're working on it, we're working on it."

9 So, basically, every time I brought my
10 car in for an oil change and tire rotation,
11 which we do per the manufacturer's
12 recommendation, we were asking about it; and
13 sometimes, in between, I would ask.

14 In the meantime, as I'm driving to and
15 from work every day, I'm having to crack all
16 four of my windows to keep this smell out of
17 my car because I'm developing headaches. I
18 drive about 18 miles to work every day, so I'm
19 developing headaches; and I'm noticing when
20 I'm getting out of the vehicle, within 15 or
21 20 minutes, I feel better. It's like it's
22 gone. So I'm like just, am I nuts, you know?

23 But, anyway, we kept checking; and then,
24 finally, they tell us this summer that there's
25 going to be a fix around August or September.

1 So I checked with Banner Ford on my side of
2 the lake, and we brought the vehicle in in
3 September; and they said -- I said, is this
4 the fix? Because we've had two attempts now,
5 is this --

6 Oh, yes, ma'am, this is the fix.

7 So I drove off the lot. I accelerate to
8 get onto the interstate to get back to my
9 residence, and lo and behold, the smell is
10 still in my car.

11 THE ARBITRATOR: Following that --

12 MS. CASSIDY: Following that attempted
13 fix.

14 I called back -- I said, well, let me
15 give it a couple of days, maybe I'm just, you
16 know, hearing and seeing and smelling things
17 that are not there, so --

18 THE ARBITRATOR: And this is -- this is
19 September a year later; is that correct?

20 MS. CASSIDY: This -- that is correct,
21 yes, sir.

22 THE ARBITRATOR: All right.

23 MS. CASSIDY: This whole time, I've
24 been -- we've been faithfully waiting for a
25 fix for the vehicle.

1 So when I call back to tell them, "hey,
2 this didn't work," I was told, "oh, the fix is
3 coming in December." And I said, "wait a
4 minute, you just told me this was the fix."

5 So I became very frustrated at that
6 point.

7 I filed a claim myself with Ford Motor
8 Company on September the 16th, and I was given
9 a case number. I was told at that time that I
10 would get a call from someone managing my
11 complaint.

12 I did receive a phone call, which I
13 missed -- I was in a meeting -- from a
14 gentleman named Leon at Ford Motor Credit on
15 the 16th telling me that Ann was assigned to
16 my case and that Ann would be in touch with
17 me, she was out on vacation. And he gave me a
18 date that she would be back, which would have
19 been the 22nd of March.

20 THE ARBITRATOR: Okay.

21 MS. CASSIDY: I didn't hear from her. So
22 on the 23rd -- and I called and I spoke with a
23 lady named Debby. At this point, I have yet
24 to hear from Ann ever. Ann has never called
25 me to discuss my issue or concern.

1 I became extremely frustrated waiting for
2 someone to call me, so I called again in
3 October; and I said, what -- what are my
4 options at that point, because my vehicle is
5 still horrible and --

6 Oh, let me back up and tell you this:
7 When I brought the vehicle in in September for
8 the supposed fix, the service advisor, Jim
9 Gregorio, at Banner Ford, opened the door to
10 my vehicle and said, oh, my God, this is
11 terrible.

12 I said, yes, this is what I'm living with
13 every day since May 28th of 2013 is what's
14 going on in my vehicle.

15 So, anyway, I -- I was advised that my
16 only option at this point was to go through
17 the Better Business Bureau to file a formal
18 complaint, which I did, I think around the
19 24th.

20 THE ARBITRATOR: Of October?

21 MS. CASSIDY: Of October, October 24th,
22 yes, sir.

23 The Better Business Bureau, I guess, took
24 my information and forwarded it to Ford.

25 Ford's response was, they were going to have

1 the field service engineer look at -- they
2 wanted to look at the vehicle in December.
3 They felt like the field service engineer
4 could fix the vehicle in December.

5 And I said, okay, perfect.

6 Well, I get a call from Kelly at Ford
7 and -- I'm sorry, I mean, excuse me, Cheryl --
8 Cherie, Cherie, S -- C-H-E-R-I-E, at Ford, and
9 I didn't get the date; I didn't write the date
10 down, saying that --

11 THE ARBITRATOR: Roughly when was it?

12 MS. CASSIDY: It was in early December.

13 -- saying that the fix wasn't -- was
14 going to be coming January the 15th and would
15 I accept that.

16 And I said, well, wait a minute. First
17 off, I agreed to allow the engineer to look at
18 it, because you guys said you were going to
19 fix it, but that letter was dated December the
20 2nd by the Better Business Bureau.

21 I said, January 15th is out of the 30
22 days that you guys are allowed.

23 I said, you know, forgive me for being a
24 little skeptical, but I keep being told that
25 the fix is coming, and here we are a year and

1 a half later, and I'm waiting.

2 So I said, I'm not going to agree to
3 anything. We're going to go ahead and go to
4 arbitration.

5 So starting January the 15th, last week,
6 my husband and I have called every day to
7 Ford, with the exception of Saturday, because
8 it's not a real, true business day for Ford
9 Motor Corporation to send the fix, and Sunday;
10 and as of 9 o'clock this morning, there was no
11 fix for my vehicle. I called on the way here
12 to verify that.

13 Now, I want to say, Mr. Stewart, and to
14 the gentleman that's on the phone, my husband
15 and I are Ford owners. We have three other
16 Ford vehicles; and that may or may not be
17 relevant, but we don't have problems with our
18 other Fords, and we are not complainers and
19 malcontents.

20 This is an issue and a concern that we
21 have been very faithful and patient and
22 waiting because, frankly, the vehicle, aside
23 from this issue, is a lovely vehicle. That's
24 why we bought it, but this is just
25 unacceptable.

1 I have a grandchild coming in July. Do I
2 want to put a grandchild in the back,
3 breathing potentially poisonous information --
4 I mean emissions?

5 In our research -- because Ford kept
6 telling us that -- you know, basically, we
7 felt like, well, we're the only ones with this
8 issue? We decided to start looking into this.

9 There is information here that says this
10 has been sent to the NHTSA for potentially
11 lethal carbon monoxide emissions building up
12 inside 2011 through 2014 Explorers. This is
13 not right.

14 THE ARBITRATOR: And what -- what is this
15 document?

16 MS. CASSIDY: I -- we printed it off the
17 internet. We just started, like I said, just
18 searching around --

19 MR. CASSIDY: The -- may I interject --

20 THE ARBITRATOR: Please.

21 MR. CASSIDY: -- now because I said I
22 wasn't but, you know --

23 THE ARBITRATOR: No, please.

24 MR. CASSIDY: -- I guess I can't help
25 myself.

1 Because we started looking to see, you
2 know, what else was out there, we came
3 across -- there is a class action lawsuit out
4 of Florida regarding the same situation. I
5 didn't write any of that information down,
6 because I do not believe it's pertinent, you
7 know, right now, because we're going through
8 this informal hearing.

9 In those searches on the internet,
10 like -- like she showed you, you know, we
11 found this here.

12 We also found the original two TSBs that
13 Ford issued regarding the exhaust smell in --
14 regarding the Explorer, and we actually
15 printed those copies off and brought them to
16 Ford and said, hey, you know, this is an
17 issue. So they do -- they did have copies of
18 those TSBs.

19 One of the dealerships, I think it was
20 Banner, was unfamiliar with the TSB on the --
21 on the vehicle, but there are two of them out
22 there. One supersedes the other one, though,
23 so...

24 THE ARBITRATOR: Let me stop you for one
25 moment. I -- I have a copy of a TSB.

1 MS. CASSIDY: It is -- it may be this one
2 here, this 581.

3 THE ARBITRATOR: I believe that's it.

4 MR. CASSIDY: I never could find --

5 MS. CASSIDY: That's it.

6 MR. CASSIDY: I never could find the
7 original one. I had it, and I gave it to one
8 of the Ford employees at Bohn; and I guess I
9 shouldn't have done that. I should have made
10 a copy, but I can't find that original TSB.

11 THE ARBITRATOR: Mr. Cassidy, so you are
12 saying there is a TSB that this supersedes?

13 MR. CASSIDY: Yes, sir.

14 THE ARBITRATOR: Okay.

15 MS. CASSIDY: There is one -- and it
16 tells you here, this one supersedes this one.

17 THE ARBITRATOR: Okay.

18 MR. CASSIDY: I had that copy, but --

19 MS. CASSIDY: So --

20 MR. CASSIDY: -- I gave it to someone at
21 Bohn. Sorry.

22 MS. CASSIDY: -- I think that Ford keeps
23 telling us that, "well, we've only had it
24 three times to fix it; you are not allowing us
25 to fix it."

1 Well, if this has been going on since the
2 2011 Explorers, they've had plenty of ample
3 opportunity, in my personal opinion, to fix
4 it; and we've been patient, and -- and -- and
5 just trying to, you know, let them fix it, but
6 they are not fixing it. Even to this day,
7 here we go, another date that we're going to
8 have a fix and it is not available.

9 And every day that I drive this vehicle,
10 I -- every Monday through Friday I have to
11 drive, if the weather permits, with my windows
12 down, which is -- you know.

13 And, oh, this last fix -- this may be
14 irrelevant, but I would like to let you
15 know --

16 THE ARBITRATOR: Sure.

17 MS. CASSIDY: -- the last fix that they
18 did to the vehicle, my gas mileage now has
19 gone down in the vehicle about four to five
20 miles per gallon, and, again, it's the same
21 driving conditions. So I thought maybe it was
22 the tank of gas, but, no, it's continuing. So
23 I don't know, are they going to continue
24 whatever they do cause this issue to make it
25 worse?

1 THE ARBITRATOR: You are saying since the
2 September --

3 MS. CASSIDY: September fix, that's
4 correct.

5 THE ARBITRATOR: Okay.

6 MS. CASSIDY: I'm not sure if there is
7 anything else that I can add to how -- just
8 other than I am just disappointed, you know,
9 as being, you know, a four-car owner, that
10 this is how things are come -- to have come to
11 this.

12 Jim?

13 Oh, I can't get -- I have two -- a
14 19-year-old and a 20-year-old still, not at
15 home; they are at college. They are four
16 hours away at college.

17 THE ARBITRATOR: Uh-huh.

18 MS. CASSIDY: They will not -- if we
19 drive in this vehicle, even with those windows
20 cracked all the way up four hours away --

21 THE ARBITRATOR: Uh-huh.

22 MS. CASSIDY: -- they don't want to get
23 in the vehicle because you can smell it. I
24 mean, you may, when you go to drive it, be
25 able to smell it when you open the doors.

1 THE ARBITRATOR: Your children, 19 and
2 20 --

3 MS. CASSIDY: Yep, do not want to drive
4 in the -- ride in the back of the vehicle. We
5 have to turn off -- first off --

6 MR. CASSIDY: There you go.

7 MS. CASSIDY: -- you have to turn off the
8 air, the back air --

9 MR. CASSIDY: Yep.

10 MS. CASSIDY: -- and it still does not --
11 Ford, I think, is of the opinion that that's
12 the only place that it's coming from; but even
13 when you turn that back air off, which is the
14 point of me owning -- buying the vehicle and
15 paying for back air, you know, if I can't use
16 it --

17 MR. CASSIDY: Can't use it.

18 MS. CASSIDY: -- but it's still in there.

19 THE ARBITRATOR: Okay. Is there anything
20 else?

21 MS. CASSIDY: Did you have anything else,
22 honey?

23 MR. CASSIDY: I think you covered it all.
24 We can review it at the end, the five
25 minutes --

1 MS. CASSIDY: Right. Okay.

2 MR. CASSIDY: -- (inaudible.)

3 THE ARBITRATOR: Right. You'll have
4 ample opportunity if there's --

5 MR. CASSIDY: Did you need copies of
6 these things? Because we made copies of these
7 for you, this here and that other.

8 MS. CASSIDY: I think he has all of the
9 stuff from the -- the -- all the times that we
10 brought the car in. It looks like they sent
11 him everything, forward.

12 I can give -- you can have this, if
13 you're interested in that.

14 THE ARBITRATOR: I'll -- Mr. Gray,
15 Mrs. Cassidy is showing me a --

16 MS. CASSIDY: What is that?

17 MR. CASSIDY: TSB.

18 THE ARBITRATOR: -- NHTSA -- some
19 information about 2011 to 2014 Ford Explorers
20 and carbon monoxide dangers. That's what I'm
21 looking at.

22 MR. GRAY: Okay. Um, yeah, I would like
23 a copy of that, actually, if it's possible.

24 THE ARBITRATOR: Okay. We're going to --
25 would you like me to get the copy to you now?

1 MR. GRAY: It can wait until the test
2 drive.

3 THE ARBITRATOR: Okay. Then I'll have
4 Lisa send it over.

5 What would be a good fax number?

6 MR. GRAY: Sure. 866 --

7 THE ARBITRATOR: 866.

8 MR. GRAY: -- 433 --

9 THE ARBITRATOR: 433.

10 MR. GRAY: -- 7972.

11 THE ARBITRATOR: 7972?

12 MR. GRAY: Yes.

13 THE ARBITRATOR: And it would go directly
14 to you?

15 MR. GRAY: It will -- it will come
16 directly to my computer.

17 THE ARBITRATOR: Okay. Great.

18 MR. CASSIDY: And let me point out,
19 Mr. Stewart, these are just, you know,
20 searches that we found; and like I said, you
21 know, we only printed off two items or three
22 items, you know, that we thought were
23 pertinent.

24 There -- but if you go on the internet,
25 there's a lot more where they talk about, you

1 know, the potential hazards of the carbon
2 monoxide in the cabin.

3 THE ARBITRATOR: I appreciate that.

4 MR. CASSIDY: I mean, we could --

5 THE ARBITRATOR: To the extent it has
6 relevance, you know, I'll consider it.

7 Broad-based -- I mean, the issue in this case
8 is -- it has some relevance. It doesn't have
9 a lot of relevance, because the issue in this
10 case is whether this vehicle is suffering from
11 a vehicle defect and whether various criteria
12 has been established, not whether, broadly,
13 there is problems with a vehicle or not. But
14 I appreciate that, and Mr. Gray wants a copy,
15 and we're -- I am -- I am certainly going to
16 review it.

17 That said, is there anything else at this
18 time?

19 MS. CASSIDY: Well, I think the only
20 thing that I would like to add is, I've often
21 thought to myself when -- as I'm getting out
22 and it's made me feel the way it makes me feel
23 riding in my vehicle, that I'm making these
24 payments faithfully, on, every month, and I
25 have to go to work so that I can make my

1 payments, is that, you know, people inhale
2 this type of stuff to kill themselves, and
3 what am I -- what's happening to me when I'm
4 getting a low dose of this twice a day five
5 days a week? It's very concerning to me.

6 It seems that Ford, you know, knowing
7 about this as long as they've known about it,
8 doesn't seem to be in any hurry to fix it, and
9 it's just -- it's troubling.

10 MR. CASSIDY: Has not made this public,
11 either.

12 THE ARBITRATOR: Okay. Thank you.

13 MS. CASSIDY: Thank you.

14 THE ARBITRATOR: Mr. Gray?

15 MR. GRAY: Yes. Well, first of all --

16 THE ARBITRATOR: (Inaudible).

17 MR. GRAY: -- I want to thank everybody
18 for being here today. The BBB is a great
19 program, saves people a lot of money on
20 lawyers and things like that; but if we don't
21 have, you know, good customers that are
22 willing to take part in it, it doesn't do
23 anybody any good. And if we don't have
24 arbitrators willing to come and -- and give
25 their time, it doesn't do anybody any good.

1 So -- so thank you, first of all, for -- as I
2 said, just for being here and taking part in
3 the program.

4 THE ARBITRATOR: Well, thank you for
5 participating, also.

6 MR. GRAY: My -- my job for Ford -- I
7 always get into this, because everybody seems
8 to have different expectations of what it is
9 that I do. My job for Ford is relatively
10 simple, on the surface, anyway. It's to look
11 at the guidelines of the state. In some
12 states we do what's called a concurrent
13 program with the -- with the state's lemon
14 law. We don't do that in -- in -- in your
15 state. We -- we run off of the guidelines
16 that are set forth by the BBB Auto Line
17 program under the summary guidelines.

18 So my job is to look at that, look at the
19 information that I can gather from the
20 dealerships, what the customer (inaudible),
21 things like that, and -- and see if -- where
22 we stand.

23 Sometimes that's difficult because the
24 dealerships are all independently owned and
25 operated, separate and distinct from Ford by

1 law. They are their own businesses. So, for
2 a lot of the information, we have to request
3 it from the dealerships, so sometimes that
4 takes time; and sometimes, when I am -- you
5 know, we still have -- have issues with it.

6 But, basically, my job is to look at all
7 the information that I can gather and -- and
8 see if it meets the guidelines for repurchase
9 or replacement or repairs, whichever the
10 customer is -- whatever the customer is
11 seeking.

12 So, in this case, the difficult part of
13 my job -- I said that my job was fairly
14 simple; the difficult part of it is taking the
15 emotions out of it, because I do feel for, you
16 know, people that are upset at their vehicles,
17 upset with Ford.

18 And Ford is so monolithic in so many
19 different ways, but it's also got a bunch of
20 little nooks and crannies and different
21 departments, and every -- you know, one hand
22 often doesn't know what the other hand is
23 doing. So I try to make sure that I get as
24 much of that information as I can.

25 In this case, essentially what I've been

1 told about this issue is -- is that under hard
2 acceleration, with the air-conditioning set on
3 recirculate, that an exhaust smell can enter
4 the -- enter the cabin of the vehicle.

5 Now, there is -- there is several things
6 with that. First of all, there -- there needs
7 to be a determination made. The guidelines do
8 state on the last page -- I don't know if you
9 have a copy right there in front of you or
10 not --

11 THE ARBITRATOR: The program summary?

12 MR. GRAY: -- the (inaudible) are not
13 eligible is -- is listed. If the customer is
14 saying that it's causing physical issues with
15 them, then that becomes a product liability
16 case, rather than a case for the BBB Auto
17 Line.

18 In this case, we do have a customer --
19 the customer is saying that they feel that
20 this is making them ill. They're worried
21 about the effects on their grandchild, worried
22 about the effects on them.

23 So when we read that guideline -- and I'm
24 trying to get to it here on my computer --
25 essentially, what it says: Claims involving a

1 vehicle defect, if the customer alleges,
2 either as a part of the BBB Auto Line claim,
3 or at any other time, that the vehicle defect
4 has caused, one, bodily injury or, two, caused
5 an accident or fire that resulted in damage to
6 any vehicle or damage to property -- well,
7 there hasn't been an accident. So the
8 question is, is it causing bodily injury?

9 If, Arbitrator, if you feel that that's
10 the case, then the BBB case would be
11 ineligible.

12 I just want to make sure that this goes
13 through the proper venue, especially if it is
14 making people sick. When I start hearing talk
15 about, you know, carbon monoxide poisoning and
16 things of that sort, it is -- it is worrisome,
17 obviously not something Ford wants to have
18 happen, so there is that.

19 Then there is the issue of -- when you
20 look at the guidelines, there is -- there is
21 three bulleted points that need to be met in
22 some way for a repurchase or replacement to be
23 granted.

24 So going through those, the first thing,
25 the issue has to be reported within 18 months

1 or 18,000 miles, whichever comes first. I
2 don't believe that's an issue. The issue we
3 first had reported was at 4,784 miles, so I
4 don't -- I believe that one's been met, but
5 all three of them need to be in some way.

6 The second one is, is that the issue has
7 to be subject to repair four or more times and
8 continue to exist or 30 days out of service.
9 Ford doesn't see that being met on either --
10 either one of those prongs, either the number
11 of repair attempts -- we have three -- or the
12 days out of service. I believe I figured it
13 to be about 18 or 19. So we don't feel it
14 meets on that level.

15 And then the third bulleted point is --
16 is the one that's always difficult because it
17 means -- it shows that there has to be a
18 substantial impairment to the safety, value or
19 use of the vehicle. Well, with something
20 that's occurring only when you are hard on the
21 accelerator and only when the air-conditioning
22 is set on recirculate, Ford would say there is
23 other ways to set your air conditioner so it
24 doesn't happen; and then, at the times when
25 you really, truly do need to accelerate

1 heavily are not the majority part of your
2 driving. So we would question whether or not
3 this is a substantial impairment to the
4 safety, value or use of the vehicle.

5 I'm always mindful when -- when I say
6 that, that when the guidelines came into
7 place, when most of the lemon laws came into
8 place, was when we were having issues with
9 vehicles simply not operating or not being
10 able to operate safely. We don't feel that's
11 the case here. We don't feel that this rises
12 to that level, where the vehicle would need to
13 be repurchased.

14 In terms of repairs, I wish I had more
15 information on -- on the repair. I've checked
16 with our -- our technical experts. They do
17 say now they are figuring now the middle of
18 January, so about now; but it -- I believe it
19 was Mrs. Cassidy said it's still not out yet.

20 Now, the reason for that is, is that we
21 have done two technical service bulletins on
22 this, which are essentially updates to the
23 service manual for the vehicle, trying to
24 address it in different ways.

25 We do feel that it's a design issue.

1 It's simply a vent leading somewhere where it
2 doesn't need to be; and, you know, it's just
3 being set in a certain way that's -- that's
4 allowing it to draw it into the -- into the
5 vehicle.

6 With two technical service bulletins out,
7 they are going to be very careful before they
8 come out with a third one, you know. We are
9 pretty confident when we come out with these
10 that they've been tested, they seem to work;
11 but sometimes, when you put them out in
12 real-world situations, it's not the same. So
13 we do feel that it's a design issue, not a
14 defect. The fact that it's being reported
15 across the large number of vehicles would show
16 that it's not a defect in this particular
17 vehicle -- excuse me -- and so we have to
18 question that.

19 Essentially, when you add that all up, a
20 lot of it is going to come down to the test
21 drive. Now, I've never -- never seen the
22 Cassidys' vehicle. I've never driven in it.
23 I'm trying to remember the last time,
24 honestly, that I was ever even in an Explorer
25 on a -- on a personal level. I know it's been

1 a while, anyway, so I wouldn't be the one to
2 judge anyway.

3 In my position, as I said, I am pretty
4 removed from -- from the situation at hand. I
5 understand the customer's frustration, because
6 I am a customer myself; but in terms of what's
7 actually going on with the vehicle, how --
8 how -- at what level this is, I guess is
9 something that I can't accurately say -- you
10 know, I can look to the ROs and say what they
11 say, but in regards to -- to how substantial
12 an impact this is, you know, it's difficult,
13 because people have different -- excuse me,
14 I'm stuttering.

15 THE ARBITRATOR: That's okay.

16 MR. GRAY: People have different
17 sensitivities. So what may be very extreme to
18 one person may not bother the average person.
19 On the other hand, me, you know, I definitely
20 wouldn't want to go test this myself, because
21 I have a lousy sense of smell, so it probably
22 wouldn't bother me in the least, but that's
23 me. And I'm not there to -- you know, to --
24 to ride in the vehicle, so I'm grateful for
25 the opportunity for the arbitrator to be able

1 to go and look this over themselves.

2 I really feel that this case comes down
3 to -- to several different things. In terms
4 of Ford's request for a denial of -- of,
5 essentially, a repurchase, we are willing to
6 repair this as soon as we can, as soon as we
7 have the fix for it; but in terms of
8 repurchase or replacement, we don't feel that
9 it's a substantial impairment. That may --
10 that may be -- not be your experience. It may
11 be your experience as you go out for the test
12 drive.

13 In terms of the guidelines, we only have
14 two, possibly three, repairs and, as I said,
15 about 19 days out of service, so we don't feel
16 that it meets that criteria; and all of them
17 need to be met for repurchase or replacement
18 to be granted.

19 In -- in this case, in terms of repairs,
20 as I said, we are looking to have that repair
21 available, but we want to have it in place
22 before we call the customer and say, "yeah,
23 come on in and have this done," because we
24 don't want to frustrate them further.

25 So we don't feel it meets the guidelines

1 on those last two bulleted points, either the
2 number of repairs, the days out of service or
3 being a substantial impairment to safety,
4 value or use of the vehicle; and those are the
5 reasons we are seeking a denial.

6 THE ARBITRATOR: Okay. Thank you very
7 much.

8 Do you have anything else at this time,
9 Mr. Gray?

10 MR. GRAY: No, I don't.

11 THE ARBITRATOR: Mr. and Mrs. Cassidy,
12 you have five minutes for questions or
13 rebuttals.

14 MS. CASSIDY: Well, the first thing I'd
15 like to say is, they -- they keep -- again, as
16 he reiterated, they want -- they want to fix
17 the vehicle. We want them to fix the vehicle,
18 but how long do I have to wait under these
19 conditions for them to fix the vehicle? I
20 mean, I could have called Ford every single
21 day, I could have brought the car in every
22 single day to ask them to fix it, and then I
23 could have had 700 attempts to fix it; but if
24 I know they don't have a fix, why -- you see
25 what I'm saying?

1 It's like he is arguing the point that,
2 "well, we haven't had four attempts to fix
3 it." Well, you could have had over 700
4 attempts to fix it, and you would not be able
5 to fix it because you do not have the fix,
6 so -- and he is right; he is not living this
7 every day. He is not here to smell it every
8 day.

9 MR. CASSIDY: And let me interject
10 this --

11 THE ARBITRATOR: Okay.

12 MR. CASSIDY: -- you know, he brings up a
13 point that -- you know, that this TSB has been
14 out -- how long has this TSB been out? He is
15 asking, you know, for us to give them time to
16 come up with the repair, but how long have
17 they known about it? So are we going to wait
18 another two years, another three years? I
19 mean, eventually, the value of the vehicle is
20 going to be, you know, rock bottom.

21 So, I mean, yes, we would like to have
22 them fix the vehicle, but how long do we have
23 to wait?

24 The TSBN -- the TSBN, like I said, has
25 been out for awhile. They've been looking at

1 trying to repair this. It's a design issue.
2 How long do we have to wait for them to -- you
3 know, to come up with a fix? They've already
4 had time. They've had plenty of time, and
5 they still haven't fixed it.

6 THE ARBITRATOR: Okay.

7 MR. CASSIDY: And then he also brings up
8 a point about -- you know, about not driving
9 the car under the conditions, you know, like
10 don't have the recirculator on, don't
11 accelerate, don't pass. Why would you buy a
12 vehicle if you can't use the full potential of
13 that vehicle? That doesn't make sense.
14 That's like saying: "Okay, well, it comes
15 with four wheels, but we are going to take off
16 one of them because we don't want that one to
17 wear out." That -- it doesn't make sense.
18 That's an irrelevant point.

19 You make a car -- you make a car with --
20 you know, that has a potential; and it's the
21 consumer, you know, who decides on how he is
22 going to use that vehicle. You know, we want
23 to drive the vehicle the way we drive it, you
24 know, using the back air conditioner, you
25 know, and then, when need be, you know, to

1 pass a vehicle, to accelerate. Well, you are
2 telling me I can't accelerate the vehicle.

3 THE ARBITRATOR: Okay.

4 MS. CASSIDY: It's just -- that doesn't
5 make -- that argument, in my opinion, makes no
6 sense. I mean, it's the normal use of the
7 vehicle to be able to accelerate and to use
8 the air in the back.

9 THE ARBITRATOR: Okay. Anything else?

10 MS. CASSIDY: No, sir, I'm good.

11 MR. GRAY: Just let me respond.

12 THE ARBITRATOR: Sure.

13 MR. GRAY: Essentially, as -- as I said,
14 there is -- I understand your position, and I
15 understand your being upset with the vehicle.
16 I'm glad that your previous Ford vehicles
17 were, you know, relatively trouble free.

18 But in terms of -- of why I'm making
19 these arguments, I'm making these arguments
20 because we do have the guidelines before us.
21 I -- I didn't make those. Ford didn't come up
22 with those all on their own. They are the
23 guidelines we are working with.

24 So, essentially, the guidelines do say we
25 have to have a certain number of repair

1 attempts. Now, could you have brought the
2 vehicle in that number of times? Yes, you
3 could have. I admit it's a perfectly arguable
4 point; but we don't have the number of -- of
5 days out of service. We don't have the number
6 of repair attempts. That's the guidelines. I
7 understand your point.

8 The other point really comes down to, is
9 this a substantial enough impairment to the
10 safety, value or use of the vehicle to warrant
11 repurchasing the whole vehicle? As I said,
12 Ford is -- is attempting to come up with a
13 fix. I understand your frustration on the
14 timeline. I know it's frustrating for -- for
15 people at Ford, as well, not on the same
16 level, because we are not driving the vehicle
17 every day.

18 But in terms of repurchase or
19 replacement, the question really comes down,
20 is this a substantial enough impairment in
21 itself to warrant the replacement or
22 repurchase of the vehicle? That's something,
23 as I've been very forthright about saying, you
24 know, it's going to depend on the test drive;
25 and then it's going to depend on the

1 arbitrator who we -- we charge with making a
2 decision on that. And that third bullet point
3 really is a subjective value based on -- on
4 the arbitrator's experience and, you know,
5 thoughts on the matter.

6 So in terms of that, I'm saying, you
7 know, I can't say how bad this is, because I
8 haven't seen the vehicle. I do know it's not
9 something that -- that Ford has felt is --
10 rises to that level.

11 We do feel that it's something that we
12 want to address under the terms of the new
13 vehicle limited warranty. We do feel it's a
14 design issue, not a defect in this particular
15 vehicle, which is what's required for this
16 program. It has to be a problem with a part,
17 you know, how a part is made, or how that part
18 was installed in the vehicle. So either in
19 the part itself or in the manufacture, there
20 has to be something wrong.

21 In this case, we can't point to anything
22 that's wrong that we haven't addressed. We
23 addressed some things through the technical
24 service bulletins. But in terms of what's
25 going on with the vehicle now, we can't say,

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1 okay, this is -- this is the fault, this is
2 what's going on. It seems to be happening
3 across the only -- across the design line.
4 They can't -- so then it really is a design
5 issue, not a problem with this particular
6 vehicle.

7 And then, again, for the arbitrator,
8 simply the fact that, if -- if this is simply
9 a matter -- if this is a matter of it being
10 bad -- bad enough that it is doing damage to
11 our -- our customers, then we need another
12 venue for this.

13 So I -- I can -- I can empathize with our
14 customer's displeasure. As I said, I am a
15 consumer myself. I understand that we have a
16 problem with your vehicle; and especially when
17 it doesn't get resolved, that -- you know,
18 that that messes up your whole life,
19 essentially. It becomes your whole point of
20 focus, and it's because you do have to use
21 that vehicle every day.

22 The question is, though: Is -- is it
23 a -- is the issue itself, happening when it
24 does, is it a substantial enough impairment to
25 the safety, value or use of the vehicle to

1 warrant repurchase or replacement?

2 And then, in terms of -- of repairs, as I
3 said, we're working on it. I wish I had a
4 better answer for that. I don't, and I can
5 only apologize on behalf of Ford for that,
6 because, you know, it's obviously taking
7 longer than anybody wants, especially our
8 customers who have the vehicle. That doesn't
9 make it a defect, however, and it doesn't make
10 it a substantial impairment that would -- that
11 would essentially be determined a
12 nonconformity, which is a substantial
13 impairment to the safety, value or use of the
14 vehicle.

15 And saying that, I understand we are here
16 because we have a disagreement, so I would be
17 surprised if we agreed on everything. So I
18 appreciate your patience.

19 THE ARBITRATOR: Okay. Thank you.

20 Is there anything else from -- from you,
21 Mr. Gray?

22 MR. GRAY: No. Thank you.

23 THE ARBITRATOR: I have a few questions
24 before we go down for the vehicle inspection.

25 To be clear -- and I haven't heard

1 anything different -- I count three repairs;
2 is that what everybody understands to be the
3 case? I have invoice 513611, which was -- I
4 have January 13th to the 19th; and then I have
5 a second, 514083, and that's July 23rd to
6 August 2nd, is what I have.

7 MS. CASSIDY: Uh-huh.

8 THE ARBITRATOR: I believe you mentioned
9 a different date in August. I wanted to make
10 sure that that was correct. It says
11 August 2nd here --

12 MS. CASSIDY: Is when we picked it back
13 up.

14 THE ARBITRATOR: -- and that's what I'm
15 basing these days --

16 MS. CASSIDY: That's correct, yes, sir.

17 THE ARBITRATOR: Okay.

18 There is a repair order that doesn't seem
19 to have anything to do with this vehicle
20 problem. It's repair order 526806 on -- in
21 April of 2014 that says, battery condition is
22 good. It looks like some kind of general --

23 MS. CASSIDY: I may have gone --

24 THE ARBITRATOR: -- inspection.

25 MS. CASSIDY: I may have gone for my

1 normal oil change and tire rotation. That may
2 be what that is.

3 THE ARBITRATOR: That's what this looks
4 like, so --

5 MS. CASSIDY: And then in September was
6 the last one.

7 THE ARBITRATOR: And that would be
8 267312, and that was September 10th to 11th.

9 MS. CASSIDY: Yes.

10 THE ARBITRATOR: And so, at that point,
11 I'm counting -- and because I'm counting the
12 day that it was brought in when I'm looking at
13 days out of service, and the day it was picked
14 up, so I'm counting a total of 21 days out of
15 service for this vehicle --

16 MS. CASSIDY: Yes.

17 THE ARBITRATOR: -- for any vehicle
18 problem.

19 Does that make sense with everybody?
20 Does anybody have anything to -- to disagree
21 with that?

22 MR. GRAY: No, that's all I have.

23 MS. CASSIDY: No, sir.

24 THE ARBITRATOR: Okay. Mr. Gray?

25 MR. GRAY: Yes.

1 THE ARBITRATOR: Can you explain to me
2 the difference between what Ford would
3 consider a design flaw and a manufacturing
4 defect or a nonconformity?

5 MR. GRAY: Okay. Well, to put it as
6 simply as I can, a design issue is -- is
7 something that is across -- across the line
8 of -- of an entire model line. It's something
9 that's brought about by the way that the
10 vehicle was designed.

11 A defect, on the other hand, is -- is a
12 problem with -- with a specific part. Say,
13 for example, if you had -- the only thing that
14 comes mind right off is a carburetor, and we
15 don't use those anymore, but let's say a
16 suspension component. So there is a problem
17 with the -- with how it was manufactured in a
18 particular plant or somebody wasn't paying
19 attention when they put it in, right, that
20 that caused -- caused problems and wasn't
21 properly addressed. That would be a defect.

22 So the issue with -- with the program is
23 right there in the beginning of the -- the
24 guidelines under -- under eligible cases.
25 Basically, it needs to be a problem with a

1 part, as I said, some -- some way that the
2 part was mismanufactured or -- or a problem
3 with the quality of the component that caused
4 problems, you know, something that was molded
5 wrong or something like that --

6 THE ARBITRATOR: May I interrupt you?

7 MR. GRAY: -- or that was -- or that it
8 was installed wrong.

9 THE ARBITRATOR: Mr. Gray, where do you
10 see that in the --

11 MR. GRAY: That should be the first --

12 THE ARBITRATOR: You are talking about
13 the program summary?

14 MR. GRAY: Yes.

15 THE ARBITRATOR: Okay. Where do -- where
16 do you see that, that it needs --

17 MR. GRAY: Let me -- let me bring that
18 up.

19 I believe it's right under eligible --
20 eligible claims --

21 THE ARBITRATOR: Okay.

22 MR. GRAY: -- about -- a little less than
23 three quarters of the way down -- or a little
24 more than three quarters of the way down on
25 the page, the first page of the program

1 summary guidelines.

2 THE ARBITRATOR: Okay.

3 MR. GRAY: Eligible claims: Claims must
4 be based on a defect in the vehicle's
5 factory-supplied material or workmanship
6 covered by the applicable Ford US new vehicle
7 limited warranty.

8 THE ARBITRATOR: Okay. I'm -- Mr. Gray,
9 I get your broad point about defects versus
10 design flaws. This -- this eligible claim
11 language is written pretty generally. I mean,
12 it's written so that it could be argued either
13 way, whether, say, something like this might
14 be a defect or a design flaw.

15 MR. GRAY: I -- I understand your point.

16 THE ARBITRATOR: But your argument is
17 this is -- that -- if I understand correctly,
18 that, A, this is a design flaw that's
19 broad-based over a whole model line that Ford
20 is aware of and is trying to come up with a
21 fix, based on a faulty design --

22 MR. GRAY: Correct.

23 THE ARBITRATOR: -- that has something to
24 do with the air-conditioning and acceleration
25 and exhaust fumes --

1 MR. GRAY: Right.

2 THE ARBITRATOR: -- and -- and not
3 related to a defective part or installation of
4 part --

5 MR. GRAY: Correct.

6 THE ARBITRATOR: -- from a factory.

7 Is -- would that be a fair restatement of
8 your argument?

9 MR. GRAY: Yes.

10 THE ARBITRATOR: Okay.

11 MR. GRAY: That part of Ford's argument,
12 yes.

13 THE ARBITRATOR: So you -- I believe you
14 had something to say, Mr.-- Mr. Cassidy.

15 MR. CASSIDY: My wife keeps on telling me
16 to just, you know, not -- not say anything.
17 I -- you know, I just wanted to rebut.

18 He is saying, you know, design flaw. I
19 don't know anything about this, because I'm a
20 former law enforcement guy here, you know.

21 But on the TSB, it clearly points out
22 that -- you know, what the part is, you know,
23 what they think the part is. It's the HVAC
24 system, and, you know, if that's -- if that's
25 the part you want to look at, that's the part

1 they are saying is the problem -- we've also
2 been told that it's the exhaust, the exhaust
3 doesn't extend far enough past the rear
4 bumper; that's why the fumes get, you know,
5 pulled back up into the system by the HVAC.

6 I mean, again, he could explain it better
7 than I can. I'm just telling you, you know,
8 what I read here on the TSB.

9 THE ARBITRATOR: Uh-huh, and therefore?

10 MR. CASSIDY: I think it rebuts what he's
11 saying. It is a part, you know.

12 MR. GRAY: Right, but the TSB has been
13 completed, correct?

14 MR. CASSIDY: The TSB has been -- has
15 been -- the vehicle -- you mean has the
16 vehicle been serviced?

17 And I guess I'm asking you that, you
18 know, since we can't talk directly to each
19 other.

20 THE ARBITRATOR: That's fine.

21 MR. GRAY: Well, yeah, the last TSB has
22 been performed on the vehicle, right
23 (inaudible)?

24 MR. CASSIDY: Twice, and it failed both
25 times.

1 THE ARBITRATOR: Wait. Twice?

2 MR. CASSIDY: Yes, the --

3 MR. GRAY: Two -- well, two -- one and
4 then an update of it, yes.

5 MR. CASSIDY: No, twice. It was done at
6 Banner Ford and when --

7 MS. CASSIDY: Bohn.

8 MR. CASSIDY: Excuse me, it was done at
9 Bohn Ford, and when Bohn Ford did it --

10 THE ARBITRATOR: When was this?

11 MS. CASSIDY: I'm sure if they were using
12 the original TSB when they did whatever they
13 did that was -- this one -- the second one
14 supersedes the first one. I am not sure --

15 THE ARBITRATOR: There has been one
16 repair under this TSB, is my understanding.

17 MS. CASSIDY: That particular one, that
18 one.

19 MR. CASSIDY: Yeah, right, but --

20 MR. GRAY: Okay. Well, there is still
21 (inaudible) TSB --

22 THE ARBITRATOR: Okay. I got it.

23 MR. GRAY: -- so that would be the one
24 that would be done anyway.

25 My point is that it was done and the

1 condition continues to exist; therefore, it's
2 not based on that defect, as we thought it
3 might be.

4 THE ARBITRATOR: Wait. It's not based on
5 what?

6 MR. CASSIDY: It's not based on that
7 defect.

8 MS. CASSIDY: That's what he said.

9 MR. GRAY: All right. The TS -- the TSB
10 addresses what may be a possible defect, and I
11 don't have that -- that TSB right in front of
12 me; but, essentially, what they did was
13 they -- if you look at the -- that repair --
14 repair order --

15 THE ARBITRATOR: Uh-huh.

16 MR. GRAY: -- they did a reprogramming of
17 the -- of the -- the -- basically, the HV
18 heating module, replaced an air extractor,
19 both rear fender moldings and sealed the body
20 and installed lift-gate drain valves. So they
21 thought that perhaps that was what was causing
22 it.

23 THE ARBITRATOR: Uh-huh.

24 MR. GRAY: However, with that performed,
25 the issue still exists; and it is existing

1 across the model line, not just this
2 particular vehicle.

3 THE ARBITRATOR: Okay. Okay. At this
4 time, we are going to disconnect you,
5 Mr. Gray. I will fax the materials that
6 Ms. Cassidy introduced regarding carbon
7 monoxide poisoning to you, and then we'll go
8 down with a Better Business Bureau staff
9 person and inspect and test drive the vehicle,
10 and then we will reconnect with you after
11 that.

12 MR. GRAY: Okay. Thank you very much.

13 THE ARBITRATOR: Thank you.

14 MR. GRAY: I'll be waiting for your call.

15 THE ARBITRATOR: Appreciate it.

16 MR. CASSIDY: Do you want to go with him
17 since you drive the vehicle -- you know, you
18 are more familiar with the conditions?

19 (Break in recording.)

20 MR. GRAY: Ford Motor Company, Bob Gray.

21 UNIDENTIFIED SPEAKER: Hi, Mr. Gray.

22 This is Lisa with the Better Business Bureau
23 of New Orleans.

24 MR. GRAY: Yes.

25 UNIDENTIFIED SPEAKER: Hi, we have

1 everybody back from the inspection and test
2 drive.

3 Did you receive the fax?

4 MR. GRAY: Yes, I did. Thank you. I was
5 just going to say that.

6 UNIDENTIFIED SPEAKER: Okay. Good.

7 All right. Well, I'm going to turn the
8 hearing back over to Mr. Stewart.

9 MR. GRAY: Great.

10 THE ARBITRATOR: Okay. Mr. Gray?

11 MR. GRAY: Yeah.

12 THE ARBITRATOR: Basically, we -- we went
13 down and took a test drive on the interstate
14 under heavy acceleration with the rear
15 air-conditioner on, and there was a smell, a
16 sulfurous smell, that appeared under those
17 conditions.

18 You probably want to know the mileage.

19 MR. GRAY: Yes, please.

20 THE ARBITRATOR: 25994.5.

21 MR. GRAY: Excellent. Thank you.

22 THE ARBITRATOR: No aftermarket items, if
23 you need to know that.

24 Mr. Gray?

25 MR. GRAY: Do I need to know that there

1 are none, no.

2 THE ARBITRATOR: Okay.

3 MS. CASSIDY: We did put that -- we
4 did --

5 THE ARBITRATOR: Okay. What is it?

6 MS. CASSIDY: It's -- it's the --

7 MR. CASSIDY: It came from Ford.

8 MS. CASSIDY: It's the -- but we --

9 MR. CASSIDY: The window --

10 MS. CASSIDY: It's like a -- it's on the
11 hood, like --

12 THE ARBITRATOR: Windshield something.

13 MR. CASSIDY: Yeah, stone deflector,
14 whatever it's called.

15 MS. CASSIDY: The stone deflector on the
16 hood, but we bought it through Ford after
17 purchase.

18 MR. CASSIDY: Yeah, we bought it through
19 Ford. We bought it with the vehicle.

20 MS. CASSIDY: Okay.

21 MR. GRAY: Okay.

22 THE ARBITRATOR: Okay.

23 MR. CASSIDY: Yeah, and it has -- it has
24 that; and then rubber -- rubber mats, too, but
25 we bought those --

1 THE ARBITRATOR: But that came --

2 MS. CASSIDY: It's not --

3 MR. CASSIDY: Well, it comes --

4 THE ARBITRATOR: That's not really
5 aftermarket.

6 MS. CASSIDY: Yeah, it's okay.

7 MR. CASSIDY: Okay. Oh, okay.

8 THE ARBITRATOR: That's part of the --

9 MR. CASSIDY: Yeah, Ford thing, because
10 it came with both sets of mats, the carpeted
11 and the rubber mats, so...

12 THE ARBITRATOR: Okay. Well, Mr. -- Mr.
13 and Mrs. Cassidy, would you like to make any
14 comments or ask any questions about the test
15 drive?

16 MR. CASSIDY: About the test drive, no,
17 I'm -- I'm fine. I don't have any questions.
18 I don't have any comments. I mean --

19 THE ARBITRATOR: Would you like --

20 MR. CASSIDY: -- like --

21 THE ARBITRATOR: Would you like to
22 testify as to what you witnessed?

23 MR. CASSIDY: What I witnessed in the --
24 well, just, as you mentioned to Mr. Gray, that
25 when she was accelerating, coming back up onto

1 the interstate -- and, actually, I think when
2 she was, you know, going north up on I-10, you
3 could -- you could briefly smell it, the --
4 that sulfur smell.

5 And then, when she turned around, did
6 the -- you know, the return trip back to the
7 office here, under heavy acceleration coming
8 down the ramp, you could definitely smell
9 stronger in the vehicle.

10 And it's at -- for me, you know, because
11 of, you know, I'm used to it, you know, it's
12 like I want to roll the windows down as soon
13 as I smell it, you know. So hopefully that
14 didn't effect the test at all, but --

15 THE ARBITRATOR: Okay.

16 MR. CASSIDY: -- I think that's all I
17 have to say about it.

18 I mean, it's -- it's noticeable, and it's
19 noticeable under, you know, even the lightest,
20 you know, acceleration. Like I said, you
21 noticed it -- I noticed it right off the bat,
22 as soon as she, you know, jumped up on the
23 interstate heading north.

24 THE ARBITRATOR: Okay. Do you have
25 anything, Ms. Cassidy?

1 MS. CASSIDY: As the primary driver of
2 the vehicle, I will -- it is -- I am of the
3 opinion that what we experienced today is not
4 the strongest that I've smelled at times. I
5 mean, I did -- I smelled it in the front of
6 the vehicle, but it wasn't an overwhelming,
7 where I -- you know, I felt like I'm
8 lightheaded and dizzy.

9 THE ARBITRATOR: Okay.

10 MS. CASSIDY: So, yes, I experienced it
11 today; but in my opinion, it's not as bad as
12 it can be at times.

13 THE ARBITRATOR: Okay.

14 MS. CASSIDY: But I would have still put
15 the windows down at that point, because I
16 could smell it.

17 THE ARBITRATOR: Okay. Mr. Gray, do you
18 have any questions or comments?

19 MR. GRAY: No, I don't.

20 THE ARBITRATOR: Okay. Does anybody --
21 Mr. Gray has received the fax.

22 Is there any reason -- I don't need a
23 recess. Is there any reason why any of the
24 parties want to take a recess right now?

25 MR. CASSIDY: We do not, no. We're good.

1 MS. CASSIDY: No.

2 MR. GRAY: No, I'm fine, too. Thank you.

3 THE ARBITRATOR: Okay. And, again -- and
4 that's in the interest of not disconnecting
5 you from the phone for five minutes again and
6 so on.

7 MR. GRAY: Right.

8 THE ARBITRATOR: So, at this time, if
9 either party has any final testimony, evidence
10 or witnesses, now is the time, ten minutes.

11 This is not a summary. This is if you
12 have anything further that you'd like to bring
13 up that's a -- that's a point that maybe
14 wasn't adequately addressed, or something
15 you've forgotten, something like that.

16 MR. CASSIDY: I think I am fine. I mean,
17 insofar as witnesses, I mean, you guys can
18 talk to, you know, the Don Bohn folks about
19 the vehicle, and I'm sure you will (inaudible)
20 folks.

21 THE ARBITRATOR: Well, witnesses would
22 be --

23 MR. CASSIDY: Yeah, right.

24 THE ARBITRATOR: -- would be people you
25 brought in to testify --

1 MR. CASSIDY: No, just --

2 THE ARBITRATOR: -- or you yourselves are
3 witnesses. That's what I mean when I say
4 "witnesses."

5 MR. CASSIDY: We're good. I think you've
6 heard everything from us, you know. Except
7 for the summation, you know, you've heard
8 everything from us that we have to say about
9 the vehicle.

10 It is a nice vehicle, though, Mr. Gray.

11 MR. GRAY: Good. I'm glad. Thank you.

12 MR. CASSIDY: It is.

13 THE ARBITRATOR: Mr. Gray, any -- any
14 final testimony, evidence or witnesses?

15 MR. GRAY: Yeah, I do just want to talk
16 about this article briefly.

17 I would know -- first of all, it's not
18 from the NH -- NHTSA; it's from a blog --

19 MR. CASSIDY: Yes.

20 MR. GRAY: -- from a lemon law lawyer.
21 So it -- to me, it's just interesting, and
22 I'll just bring it to your attention, that
23 this was written -- you know, they quote the
24 lady from the NTHA (sic) back in June 20th of
25 2014; at that time, they hadn't taken any

1 action. They still haven't taken any action.
2 So they are aware of it, but yet they haven't
3 felt that it's risen to the level of -- of
4 needing to do anything about it.

5 I would note, again, that, yeah, this
6 is -- the lawyer that wrote this is from Krohn
7 & Moss. It's a group that we're very aware
8 of, a group of lawyers, in that it's pretty
9 much what they do is lemon law cases and BBB
10 Auto Line cases --

11 MR. CASSIDY: Okay.

12 MR. GRAY: -- against the manufacturers.

13 So when you hear a headline like
14 "Potentially Lethal Carbon Monoxide
15 Emissions," it's startling, and it's meant to
16 be, because it's meant to bring business
17 into -- into the lawyers, people trying to get
18 their vehicles bought back. So it's -- it's a
19 little bit of -- of extremism in Ford's
20 opinion, and -- and, again, there hasn't been
21 any action taken by NTHA (sic).

22 So I just wanted to note that, that it
23 wasn't a NHTSA article; it's an article by an
24 attorney.

25 THE ARBITRATOR: Okay. Noted.

1 MR. GRAY: And that's all I have in terms
2 of further testimony.

3 THE ARBITRATOR: Okay. I have a couple
4 of final questions.

5 It's pretty obvious that it was brought
6 in three times in which the problem was either
7 mentioned or -- or addressed. There is two
8 times when it seemed to have been -- when
9 they -- when Ford attempted to fix it, and
10 then one time it just appears to have been
11 mentioned but nothing was done.

12 Is there anything else, in terms of -- in
13 terms of making the vehicle subject to repair,
14 as it says in the manufacturer's program
15 summary --

16 MR. CASSIDY: Talk to him --

17 THE ARBITRATOR: -- other than those
18 three times?

19 MR. CASSIDY: Talk to him about the --
20 the service area rep was supposed to look at
21 it, and then that was supposed to be the
22 fourth fix, but he chose --

23 MS. CASSIDY: Right. Well, Ford had sent
24 a letter to the business -- Better Business
25 Bureau and us, after we contacted you guys,

1 about the Ford service engineer for the
2 region --

3 THE ARBITRATOR: That was last fall, and
4 what was that about?

5 MS. CASSIDY: That he was supposed to
6 look at it in December.

7 THE ARBITRATOR: Okay.

8 MR. CASSIDY: That would have been the
9 fourth one.

10 THE ARBITRATOR: Wait. December --

11 MS. CASSIDY: Of 20 --

12 THE ARBITRATOR: -- who was supposed to
13 look at it?

14 MS. CASSIDY: The local -- I think it's
15 Ford service field --

16 MR. CASSIDY: Engineer.

17 MS. CASSIDY: -- engineer. He may be
18 able to tell us the correct term.

19 THE ARBITRATOR: The field service
20 engineer.

21 MS. CASSIDY: Engineer was supposed to
22 take it in December. That was one of their
23 responses, which that never happened.

24 MR. CASSIDY: Yeah, and that would have
25 been the fourth time that it would have been

1 looked at, but he chose not to see it.

2 THE ARBITRATOR: Why was that, as far as
3 you know?

4 MS. CASSIDY: Well, the -- this lady,
5 Cherie, that called me from Ford --

6 THE ARBITRATOR: Right.

7 MS. CASSIDY: -- said that he emailed her
8 to say the fix is going to be January 15th --

9 THE ARBITRATOR: Okay.

10 MR. CASSIDY: And here it is past
11 January 15th --

12 MS. CASSIDY: So, I mean, we did --

13 MR. CASSIDY: -- and it's not --

14 MS. CASSIDY: You know, I don't know. He
15 told me to bring it up; maybe I shouldn't.

16 THE ARBITRATOR: Okay. Mr. Gray, what
17 about the general fact that if Ford had a fix,
18 you know, it would have been addressed or
19 attempted to be addressed, subject to repair,
20 in December; but the fact that the consumers
21 are not satisfying the program criteria for
22 repurchase or replacement specifically related
23 to number of repair attempt -- it's not repair
24 attempts, it's "subject to repair" is the
25 language, is because Ford does not know how to

1 fix the vehicle?

2 MR. GRAY: Well --

3 THE ARBITRATOR: That --

4 MR. GRAY: -- in terms of that being a
5 fourth repair, yes, that's a possibility; and
6 I'll let you, you know, give that the weight
7 that it -- that it deserves.

8 I would state that the guidelines do say
9 four or more repair attempts with it
10 continuing to exist, where it helps that if it
11 was to be subject to repair again, it would be
12 repaired, so it would really depend on the
13 outcome of -- of that repair attempt.

14 THE ARBITRATOR: Well, it says "subject
15 to repair." I'm -- I'm referring to the
16 specific language that Ford uses, "subject to
17 repair," not "repair attempts."

18 MR. GRAY: Right. Okay.

19 THE ARBITRATOR: And so I am just
20 bringing that up, and I wanted to know if you
21 had anything to say about that, in terms of
22 what might constitute a vehicle being subject
23 to repair?

24 MR. GRAY: Um, well, normally, it's --
25 you know, it's taken into a dealership and

1 examined, you know. The complaint is -- is --
2 is stated. It's given the opportunity to be
3 repaired.

4 THE ARBITRATOR: Uh-huh.

5 MR. GRAY: I will -- you know, to me,
6 that would constitute a repair attempt or a --
7 or a -- whichever -- whichever phrase we're
8 using, and that hasn't taken place.

9 THE ARBITRATOR: Okay. I would ask the
10 consumers if they have anything to say about
11 the exclusionary language?

12 I believe -- you received a copy of the
13 program summary? There is exclusionary
14 language on the last page that states: Claims
15 that are not eligible -- I know you've seen
16 this and heard this -- claims involving a
17 vehicle defect, if the customer alleges,
18 either as part of the BBB Auto Line claim or
19 at any other time, that the vehicle defect
20 has, one, caused bodily injury...

21 Can you discuss that with regard to your
22 allegations, that the vehicle is causing you
23 headaches and so on and -- and you're
24 concerned about the health effects of the
25 vehicle's problems?

1 MS. CASSIDY: All I can do is tell you
2 that that's what I experience after inhaling
3 what was in the cabin of the -- of the
4 vehicle.

5 THE ARBITRATOR: Uh-huh.

6 MS. CASSIDY: I'm concerned that over the
7 time -- because, obviously, if I -- if I took
8 a pipe and put it in my car and turned my car
9 on, it wouldn't take long.

10 THE ARBITRATOR: Uh-huh.

11 MS. CASSIDY: But over time, I'm getting
12 these slow doses. I don't know if it's making
13 me sick. I'm concerned that it is making me
14 sick, and I'm not going to know until several
15 years down the road.

16 MR. CASSIDY: Well, to put a finer point
17 on that, it is making her ill, because it is
18 causing her headaches and nausea and
19 lightheadedness, and that's being a direct
20 effect of the -- of the carbon monoxide that's
21 coming inside the cabin, which Ford can't fix
22 and doesn't have a fix for it.

23 He freely admits that there's a problem,
24 and he freely admits that there is no fix for
25 this vehicle; and regardless of how many

1 attempts we've made, they don't have a fix for
2 it. We could have driven it there a hundred
3 times, and a hundred times they would have
4 told us there is no fix for this vehicle.

5 MS. CASSIDY: I mean, I can leave here
6 today, Mr. Stewart and Mr. Gray, and drive to
7 the dealership and say, fix it; and they are
8 going to tell me, I can't fix it. I already
9 know that; I called --

10 MR. CASSIDY: Well, we already -- yeah,
11 we know; we called this morning.

12 MS. CASSIDY: -- this morning. I called
13 the last -- I called the 15th, 16th, the
14 17th and --

15 MR. CASSIDY: There's no fix.

16 MS. CASSIDY: -- yesterday, so --

17 THE ARBITRATOR: Okay.

18 MS. CASSIDY: -- that, to me, is a moot
19 point.

20 MR. CASSIDY: What other due diligence do
21 they want us to do? Does he want us to drive
22 there today? We'll do that, and they can have
23 it for the week.

24 MS. CASSIDY: They can keep it until they
25 fix it.

1 THE ARBITRATOR: Right.

2 MS. CASSIDY: I mean, it makes no sense
3 to me.

4 THE ARBITRATOR: I got that.

5 I'm talking specifically about this
6 exclusion --

7 MS. CASSIDY: I'm sorry, yes.

8 THE ARBITRATOR: -- right now concerning
9 an allegation of bodily injury, if that is
10 what you're alleging.

11 MS. CASSIDY: I'm saying that I don't --
12 I won't know --

13 THE ARBITRATOR: Right.

14 MS. CASSIDY: -- possibly for years
15 whether it's caused me an issue or a problem.
16 I'm concerned about that that's going to
17 happen. I don't -- I can't -- I haven't been
18 to a doctor.

19 THE ARBITRATOR: Okay.

20 MS. CASSIDY: All I can say is, when I
21 get out of the vehicle, my headache goes away
22 within a few minutes; and I'm certainly not
23 nauseated when I put the windows down and all
24 the smoke goes out -- I mean the exhaust goes
25 out.

1 THE ARBITRATOR: Okay. Okay. I don't
2 have anything else.

3 Mr. Gray, I have one more question.

4 MR. GRAY: Sure.

5 THE ARBITRATOR: I think I know the
6 answer to this, but do you know when a fix
7 will be made available?

8 MR. GRAY: The last one I heard from
9 the -- from the field service engineer was --
10 was supposed to be January 15th. He may have
11 been referring to -- sometimes they put it out
12 to the field service engineers an advance --
13 you know, an advance copy of it before it goes
14 out to dealerships. So that may have been his
15 day, so he may have it already.

16 But I do know that it's supposed to be
17 very soon, and I know that's something that
18 the customers have heard before so -- but the
19 last word I heard was that the FSE was
20 supposed to have it as of the 15th.

21 THE ARBITRATOR: Okay. And you say that
22 may be a dissemination to field service
23 engineers and not to dealerships?

24 MR. GRAY: Correct.

25 THE ARBITRATOR: That that may be what

1 the date was supposed to be, the release day
2 of that?

3 MR. GRAY: Correct.

4 MR. CASSIDY: (Inaudible).

5 MS. CASSIDY: Uh-huh, well, he has a copy
6 of that in the record.

7 THE ARBITRATOR: Okay. I don't have
8 anything further.

9 At this time, beginning with the
10 Cassidys, if you would like to make a
11 five-minute closing, you have an opportunity
12 to do so.

13 MR. CASSIDY: I guess I'll handle the
14 closing, because she's a little emotional, and
15 I won't -- I won't take five minutes.

16 I just want to, you know, bring up, you
17 know, the point again: They admit there is
18 a -- there is a problem. They admit there is
19 no fix for the problem.

20 In his words, he admitted that it was a
21 defect; those were his words, Mr. Gray's
22 words. And I agree with him; it is, you know,
23 a defect.

24 How long do they want us to wait on this,
25 you know? The TSB, the initial one, has been

1 out for quite a while. Are we going to
2 continue to wait another year, another two
3 years before there is no value of this
4 vehicle, you know, for trade-in or what --
5 what have you?

6 You were -- you were concerned or there
7 were some concerns about whether it's causing
8 bodily harm. The bodily harm is the headaches
9 and nausea. It could cause her to, you know,
10 become ill, you know, and to have an accident,
11 you know. We won't know that.

12 Is -- is there in going to be any
13 long-term ramifications or any long-term
14 illness from this? Again, like she said, you
15 know, without going to see a doctor, we
16 wouldn't know; but we all know what the
17 effects of carbon monoxide, you know, can be.
18 It's lethal. It can kill you.

19 I don't think I have anything else I need
20 to -- need to say, because everything is else
21 is just you -- you beating the same drum over
22 and over and over again. I think we've made
23 our -- our case. We've stated our position,
24 and that's all I have to say.

25 Do you have anything you want to add to

1 that?

2 MS. CASSIDY: Well, I guess the last
3 thing that I would like to add is that, again,
4 we own four Ford vehicles, and I feel like
5 we've placed a lot of faith in Ford to fix the
6 problem.

7 This, in fact, is the last Ford -- no,
8 the second to last Ford vehicle that we owned,
9 so it's not like we are just out to get Ford
10 or out to be malcontents or complainers. We
11 have been very patient and done our due
12 diligence to give them the opportunity to take
13 care of the issue; and, in my opinion, they've
14 continued to fail to take care of what I think
15 is their responsibility to fix the vehicle.

16 THE ARBITRATOR: Okay.

17 MS. CASSIDY: And that's all we wanted
18 from the get-go was fix the vehicle.

19 But at this point, if we can't fix it, we
20 feel like we've been patient enough, and we
21 would like them to have their -- their vehicle
22 back.

23 THE ARBITRATOR: Is that it?

24 MS. CASSIDY: Yes, sir.

25 THE ARBITRATOR: Mr. Gray?

1 MR. GRAY: Yes. Well, thank you, and I'm
2 (inaudible) I can definitely agree with the
3 Cassidys; they have been very patient. It's
4 an issue that they have, you know, been aware
5 of for quite some time and have dealt with.

6 It's -- it's really quite a dichotomy.
7 On one level, I look at this and I go, okay,
8 if you listen to the article by the attorney,
9 we start hearing things like "potentially
10 lethal carbon monoxide emissions," it -- you
11 know, it's scary; and you start to get other
12 ramifications of what that might mean, and
13 that's even scarier.

14 But if that's the case, and if the
15 customer is experiencing nausea and
16 lightheadedness and feels that it may cause
17 her to have an accident, then there is that
18 exclusionary clause. Ford would say that this
19 isn't the place for that, that sort of action.

20 If it -- if it's not at that level, then
21 Ford says that it's not substantial enough to
22 repurchase or replace the vehicle.

23 In terms of the repair, as I said, as
24 soon as it's there, we would love to get this
25 vehicle fixed; and I know, in speaking to the

1 field service engineer, he feels that way.

2 I'm sure the dealership feels that way. I'm
3 sure our customers feel that way.

4 But when we look at the guidelines of the
5 program, as -- as we have to, I would just
6 state several things. First of all, there is
7 that exclusionary clause -- clause, I know,
8 that was written by a lawyer who was looking
9 to make money, so he wants more customers.

10 But then there is the issue, you know, as
11 I said, of it being product liability. There
12 is the question of, is this a design issue?
13 Is this a defect? There is another fine line
14 there that, you know, this is happening across
15 the -- the Explorers over a number of years.
16 It -- it doesn't seem to be a problem with an
17 individual part or an individual vehicle that
18 was misbuilt. It does seem to be a design
19 issue. Ford feels it's that way. We still
20 want to resolve it, but we don't feel that it
21 fits this program.

22 And then -- and then the last thing is,
23 is we come to, when we look at the guidelines
24 of the program, it does say four or more, you
25 know, times for it to be presented for -- for

1 work to be done. We have three, and we don't
2 have the days out of service. Normally that
3 would -- would cause me alone, in itself, to
4 say the vehicle is not eligible for repurchase
5 or replacement, but there are questions there,
6 as well.

7 Ford obviously has its own opinions in
8 terms of whether this is a vehicle that should
9 be bought back or should not. We don't feel
10 that it should for all the reasons discussed.

11 I think that the Cassidys have done a
12 very good job of stating their case, as well.
13 So I want to thank them; and given the
14 emotions involved, I want to thank them for
15 being polite and kind to me.

16 But in terms of -- of looking at the
17 guidelines just as the guidelines, taking the
18 emotion out of it, I think there is very --
19 some very big problems with this case in terms
20 of -- of requiring a repurchase or replacement
21 from Ford. I think -- when you look at those,
22 I think, in total, it's a vehicle that we just
23 don't feel should be repurchased or replaced,
24 and so we are seeking a denial.

25 In terms of the request for repairs, as

1 soon as we can get it -- get them done, as
2 soon as we have a robust fix, something that's
3 going to actually do the job, we would love to
4 get it done. That should be very soon.

5 I know that that's what the customer was
6 told, you know, all those months ago; but we
7 do feel that we've taken steps along the way.
8 We have come out with the two technical
9 service bulletins trying to address it, and we
10 do want to get it fixed. So we are not saying
11 no to a repair; we are just saying we have to
12 have the fix first.

13 In terms of repurchase or replacement, we
14 don't feel that the vehicle meets the
15 guidelines for all the reasons stated. I
16 won't go back into all of them.

17 But, again, my thanks to everybody, and
18 I'll leave it at that.

19 THE ARBITRATOR: Okay. Thank you,
20 Mr. Gray.

21 Thank you all for participating. This
22 concludes the hearing.

23 As I stated earlier, I'll submit a
24 written decision within three days. You all
25 should receive it by early next week, I would

1 imagine.

2 Thank you for participating and have a
3 good day.

4 MS. CASSIDY: Thank you.

5 MR. CASSIDY: Thanks very much.

6 Thank you, Mr. Gray.

7 MR. GRAY: Thank you all. Goodbye.

8 THE ARBITRATOR: Bye.

9 (Whereupon, the recording was concluded.)

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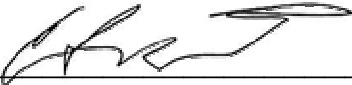
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C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF BROWARD)

I, EMILY SCOTT, certify that I was
authorized to and did stenographically transcribe
the foregoing proceedings from audio file to the
best of my ability and that the transcript is a true
and complete record of my stenographic notes.

Dated this 31st day of March, 2015.



EMILY SCOTT



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