IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NO. 2009-CA-00207

SANDRA COLEMAN **PLAINTIFF- APPELLANT**

VS.

FORD MOTOR COMPANY **DEFENDANT-APPELLEE**

REPLY BRIEF OF APPELLANT

APPEALED FROM THE CIRCUIT COURT
OF LOWNDES COUNTY, MISSISSIPPI

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ORAL ARGUMENT REQUESTED

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COMES NOW, the Appellant /Plaintiff, Sandra Coleman, by and through counsel, and files this her Reply Brief of Appellant.

I.

ARGUMENT

Appellee / Defendant Ford Motor Company throughout its brief repeatedly takes the position that Appellant / Plaintiff Sandra Coleman's arguments are without merit since the jury returned a verdict for Ford Motor Company wherein they found no defect in the subject Ford F-150 truck. Interestingly, the Appellee / Defendant cites extensively to *Hunter v. General Motors Corp.*, 729 So. 2d 1264 (Miss. 1999) in its brief, and in this product liability case, the jury returned an unanimous verdict in favor of the defendant General Motors, similar to what the jury did in the present matter. However, the Mississippi Supreme Court in *Hunter* went on to address such issues as whether the trial court erred in admitting evidence of the non-use of seatbelts, whether the jury erred in instructing the jury that the failure of the plaintiffs to wear seat belts could be considered evidence of contributory negligence, whether the statute concerning the use or non-use of seat belts should apply to a crashworthiness cause of action, whether the trial court erred in allowing the defense of comparative negligence in a crashworthiness claim, and whether the trial court erred in allowing the evidence of the blood alcohol level of Joseph Hunter. In reversing, the Mississippi Supreme Court stated that "the cumulative effect of the errors at the trial court below is sufficient to warrant a reversal and remand for new trial." *Hunter*, 729 So. 2d at 1279. Therefore, Appellee's / Defendant's argument on this issue is without merit, and this Court may review all the errors in a trial and reverse on the cumulative effect of these errors as

the court did in *Hunter*.

As for the issue of there being four Ford F-150 owners on the jury and the lower court not excluding these jurors on a challenge for cause, the Appellee / Defendant Ford Motor Company glosses over this issue and chose to ignore the fact that the statistics in the present are very similar to the statistics in *Hudson v. Taleff*, 546 So. 2d 359 (Miss. 1989). Instead, the Appellee / Defendant Ford Motor simply states that *Hudson* is a physician / patient case and that the case *sub judice* involves the relationship between a loyal vehicle owner and the manufacturer of that vehicle. Our Supreme Court has recognized that there is a strong chance of influence when a loyal relationship exists. Although stated in Appellant's brief, it is worth noting what our Supreme Court states about this type of relationship. In *Hudson*, the Court stated the following:

> [The] strong likelihood that the opportunity for undue influence over other jurors in this case was too great...the court holds that the trial jury was not impartial.

Hudson, 546 So. 2d at 363. The Appellant / Plaintiff Sandra Coleman was left with the ominous task of convincing current Ford F-150 owners that a defect existed in their vehicle they drove on a daily basis. These jurors literally sat directly over the are where the defect was alleged to be. This presented an unfair disadvantage to the Appellant / Plaintiff Sandra Coleman, and heightened the burden of proof that she had to prove to these four jury members. This coupled with the undue influence these four jurors may have had on the remainder of the jury panel resulted in the high likelihood of a partial jury in the favor of the Appellee / Defendant Ford Motor Company.

Regarding the issue of the Appellee / Defendant Ford Motor Company criticizing Coleman for the failure to reference any substantially similar accidents in their closing arguments, Mississippi case law does exist wherein the trial court should have gone further by

instructing the jury to disregard this argument by Ford's counsel. In the recent case of *Denham v. Holmes*, 2010WL1037494 (Miss. Ct. App. 2010), this Court held that the trial court committed reversible error when it refused to instruct the jury to disregard the attorney's comments in closing argument when these comments were not made to further the jury evaluation or understanding of the evidence but instead were made to arouse prejudice. This is exactly what the Appellee / Defendant Ford Motor Company's counsel was attempting to do in its closing argument–to arouse prejudice against the Appellant / Plaintiff Sandra Coleman. In reaching this decision in *Denham*, this Court cited to two different Mississippi Supreme Court cases. The first case was *Shell Oil Co. v. Pou*, 204 So. 2d 155, 157 (Miss. 1967), where in the court stated that:

> The only legitimate purpose of the [closing] argument of counsel in a jury case is to assist the jurors in evaluating the evidence and in understanding the law and in applying it to the facts.

The second supreme court case referenced by this Court was *Eckman v. Moore*, 876 So. 2d 975, 986 (Miss. 2004) wherein the court held that:

> The test in determining whether a lawyer has made an improper argument which requires reversal is 'whether the natural and probably effect of the improper argument . . . creates an unjust prejudice against the opposing party resulting in a decision influenced by the prejudice so created.'

This was not the first time Appellee / Defendant Ford referenced the lack of evidence of substantially similar accidents. Counsel for Appellee / Defendant Ford first madereference to other instances, or lack of, during opening statement. As previously stated, the only reason the Appellee / Defendant Ford Motor Company argued in closing arguments about the inability of the Appellant / Plaintiff Sandra Coleman to provide evidence of substantial similar accidents was to prejudice the jury against Coleman. The jury is unaware of the high standard that a party must

meet before they can introduce evidence of other incidents. The trial court erred in failing to instruct the jury to disregard the comments by counsel for Appellee / Defendant Ford Motor Company.

The Appellee / Defendant Ford Motor Company also downplays the lack of any scientific basis for their fire cause and origins expert's, Ralph Newell's, alleged opinions regarding the ignition source for the subject fire. Appellant / Plaintiff Sandra Coleman went into great detail in her brief why Newell's opinion was speculative and fell woefully short of the standard for expert testimony set by *Daubert* and Fed. R. Evid. 702.

In her brief, Appellant / Plaintiff Sandra Coleman quoted directly to Newell's testimony where he was unable to identify the ignition source and to utilize only speculative terms and phrases regarding the ignition source such as "possible cause", "cannot eliminate", "in the ball park", and "can't eliminate smoking". To add to this speculative testimony, Newell could not even answer whether or not one of his possible ignition sources, the capacitor, even had the required charge to ignite a combustible product and whether the necessary multiple step sequence of events necessary to ignite another possible ignition source, the propane torch, even occurred. Again, Appellant / Defendant Ford Motor Company chooses to ignore these failures in Newell's opinions. Appellant / Plaintiff Sandra Coleman's fire cause and origin expert's, Chip Bush's, opinions are quite distinguishable from the speculative testimony of Newell; however, the Appellant / Defendant Ford Motor Company chooses not to cite to these facts or to quote directly from the trial testimony because the facts emphasize that Newell's testimony, unlike Bush's testimony, was purely speculative and it was error not to exclude Newell's testimony for its inability to meet the requisite standard.

Contrary to the Appellee/ Defendant Ford Motor Company's position in its brief, Bush did state that the ignition source was electrical arcing, and he provided this opinion to a reasonable degree of probability, unlike Ford's expert, Newell.

At trial, Appellant / Plaintiff Sandra Coleman had the impossible task of proving a defect existed in the subject Ford F-150 with a jury of F-150 owners, Newell's purely speculative opinion and Ford's inappropriate remarks during closing argument along with the other errors that occurred at trial as noted in Appellant/ Plaintiff Sandra Coleman's brief, a miscarriage of justice occurred at trial, and the substantial rights of Coleman were greatly affected. This Court should reverse and remand this matter for a new trial.

II.

CONCLUSION

For the reasons stated in Appellant / Plaintiff Sandra Coleman's brief and for the reasons stated above, this Court should reverse the trial court's denial of Appellant Coleman's Motion for Judgment Notwithstanding Jury Verdict, and Motion for New Trial and remand this matter for a new trial. The trial judge did abuse his discretion in the trial of this matter, and as a result this matter should be reversed and remanded for a new trial.

WHEREFORE, PREMISES CONSIDERED, Appellant / Plaintiff respectfully requests this Court reverse the trial court and remand this matter for a new trial, together with such other relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sara B. Russo, one of the attorneys for Appellant / Plaintiff, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing document to:

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THIS the 3rd day May, 2010.

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