

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 11 of 41

1 HUSBAND AND WIFE AND THE RIGHT OF EACH TO THE COMPANY, SOCIETY,
2 COOPERATION, AFFECTION, AND AID OF THE OTHER IN EVERY CONJUGAL
3 RELATION. LOSS OF CONSORTIUM INCLUDES SEVERAL ELEMENTS: (1) SUPPORT
4 AND SERVICES PROVIDED BY THE OTHER SPOUSE; (2) LOVE;
5 (3) COMPANIONSHIP; (4) AFFECTION; (5) SOCIETY; (6) SEXUAL RELATIONS;
6 (7) COMFORT; (8) SOLACE; (9) GUIDANCE. IN ORDER TO PREVAIL IN HER ACTION
7 FOR LOSS OF CONSORTIUM, PLAINTIFF MUST PROVE THE DEFENDANT'S
8 LIABILITY FOR THE JOHN WICKERSHAM'S INJURIES, AS WELL AS DAMAGES TO
9 PLAINTIFF RESULTING FROM THOSE INJURIES.

10 **WRONGFUL DEATH AND SURVIVAL ACTIONS**

11 PLAINTIFF ALSO BRINGS TWO ACTIONS ON BEHALF OF THE ESTATE OF
12 JOHN HARLEY WICKERSHAM, JR. FIRST, PLAINTIFF IS BRINGING A "SURVIVAL"
13 ACTION, WHICH MEANS THAT ANY CLAIMS THAT JOHN WICKERSHAM HAD
14 AGAINST THE DEFENDANT MAY NOW BE BROUGHT BY HIS ESTATE. PLAINTIFF
15 IS ALSO BRINGING A WRONGFUL DEATH ACTION, WHICH SEEKS TO RECOVER
16 DAMAGES FOR THE LOSSES JOHN WICKERSHAM'S BENEFICIARIES SUFFERED
17 FROM HIS DEATH.

18 **GENERAL REQUIREMENTS FOR PRODUCTS LIABILITY**

19 PLAINTIFF SEEKS TO ESTABLISH DEFENDANT'S LIABILITY IN EACH
20 ACTION THROUGH THREE SEPARATE CLAIMS. PLAINTIFF BRINGS CLAIMS FOR
21 STRICT LIABILITY, NEGLIGENCE, AND BREACH OF WARRANTY. UNDER EACH OF
22 THESE CLAIMS, PLAINTIFF FIRST MUST PROVE THE FOLLOWING THREE
23 ELEMENTS:

1 (1) THE 2010 FORD ESCAPE WAS DEFECTIVE;

2 (2) JOHN WICKERSHAM'S INJURIES WERE PROXIMATELY CAUSED BY A
3 DEFECT IN THE 2010 FORD ESCAPE; AND

4 (3) AT THE TIME OF THE ACCIDENT, THE 2010 FORD ESCAPE WAS IN
5 ESSENTIALLY THE SAME CONDITION AS WHEN IT LEFT THE HANDS OF THE
6 DEFENDANT.

7 THE PARTIES HAVE STIPULATED THAT THE 2010 FORD ESCAPE WAS IN
8 ESSENTIALLY THE SAME CONDITION AT THE TIME OF THE ACCIDENT AS WHEN
9 IT LEFT THE HANDS OF THE DEFENDANT. THEREFORE, THE THIRD ELEMENT IS
10 SATISFIED IN THIS CASE. IF PLAINTIFF FAILS TO MEET HER BURDEN TO PROVE
11 ANY OF THE OTHER ELEMENTS, YOUR VERDICT MUST BE FOR DEFENDANT ON
12 ALL CLAIMS.

13 **DESIGN DEFECT**

14 A PRODUCT CAN BE DEFECTIVE BECAUSE OF A FLAW IN ITS DESIGN. A
15 PRODUCT WHICH IS MANUFACTURED AS INTENDED MAY BE DEFECTIVE WHERE
16 IT IS IMPROPERLY OR INADEQUATELY DESIGNED. A DEFECTIVE DESIGN
17 INVOLVES A FAILURE OR INADEQUACY IN A PRODUCT'S DESIGN OR PLAN.

18 UNDER SOUTH CAROLINA LAW, A PRODUCT IS NOT DEFECTIVELY
19 DESIGNED SIMPLY BECAUSE IT COULD HAVE BEEN MADE SAFER. SIMILARLY, A
20 PRODUCT IS NOT DEFECTIVELY DESIGNED SIMPLY BECAUSE IT IS POSSIBLE TO
21 BE INJURED WHILE USING IT. INSTEAD, A PRODUCT IS DEFECTIVELY DESIGNED
22 WHEN THE DANGER ASSOCIATED WITH THE USE OF THE PRODUCT OUTWEIGHS
23 THE PRODUCT'S UTILITY. IN DECIDING WHETHER THE RISK OF DANGER

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 13 of 41

1 ASSOCIATED WITH A PRODUCT OUTWEIGHS ITS UTILITY, YOU MUST CONSIDER
2 THE USEFULNESS AND DESIRABILITY OF THE PRODUCT, THE COST INVOLVED
3 FOR ADDED SAFETY, THE LIKELIHOOD AND POTENTIAL SERIOUSNESS OF
4 INJURY, AND THE OBVIOUSNESS OF THE DANGER.

5 TO PROVE THE RISK OF DANGER OUTWEIGHS THE PRODUCT'S UTILITY,
6 PLAINTIFF MUST PRESENT EVIDENCE OF A REASONABLE ALTERNATIVE DESIGN.
7 PLAINTIFF MUST SHOW HOW THIS ALTERNATIVE DESIGN WOULD HAVE
8 PREVENTED THE PRODUCT FROM BEING UNREASONABLY DANGEROUS.
9 ADDITIONALLY, YOU MUST CONSIDER THE FEASIBILITY OF THIS ALTERNATIVE
10 DESIGN, IN LIGHT OF ITS COSTS, SAFETY, AND FUNCTIONALITY.

11 **STATE OF THE ART**

12 IN DETERMINING WHETHER A PRODUCT WAS DEFECTIVELY DESIGNED, YOU
13 MAY ONLY CONSIDER THE STATE OF SCIENTIFIC AND TECHNICAL KNOWLEDGE
14 AS IT EXISTED AT THE TIME THE PRODUCT WAS MADE. IN THIS CASE, YOU
15 SHOULD CONSIDER THE STATE OF SCIENTIFIC AND TECHNICAL KNOWLEDGE
16 THAT EXISTED IN MARCH 2010, WHEN THE 2010 FORD ESCAPE WAS
17 MANUFACTURED, NOT THE TIME OF THE ACCIDENT OR TODAY.

18 **INDUSTRY STANDARDS**

19 YOU MAY CONSIDER DEFENDANT'S COMPLIANCE WITH GOVERNMENT
20 STANDARDS OR REQUIREMENTS, AS WELL AS INDUSTRY STANDARDS, CUSTOMS
21 OR PRACTICES, IN DETERMINING WHETHER THE 2010 FORD ESCAPE WAS
22 DEFECTIVELY DESIGNED AND UNREASONABLY DANGEROUS. HOWEVER, SUCH
23 COMPLIANCE DOES NOT PRECLUDE A FINDING OF DEFECT IF YOU ARE

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 14 of 41

1 CONVINCED BY THE GREATER WEIGHT OF ALL OF THE EVIDENCE THAT THE
2 VEHICLE WAS DEFECTIVELY DESIGNED DESPITE ITS COMPLIANCE.

3 **CLAIM ONE: STRICT LIABILITY**

4 PLAINTIFF'S FIRST CLAIM IS FOR STRICT LIABILITY. UNDER STRICT
5 LIABILITY, A PLAINTIFF MAY RECOVER FOR A DEFECTIVE PRODUCT THAT
6 CAUSES INJURY, EVEN IF A DEFENDANT EXERCISED ALL POSSIBLE CARE IN THE
7 PREPARATION AND SALE OF THE PRODUCT. THE EXERCISE OF DUE CARE IN THE
8 MANUFACTURE OF A PRODUCT WILL NOT RELIEVE THE MANUFACTURER OF
9 LIABILITY. RATHER, A PLAINTIFF NEED ONLY PROVE THE PRODUCT WAS
10 DEFECTIVE AND UNREASONABLY DANGEROUS WHEN IT WAS PLACED IN THE
11 STREAM OF COMMERCE. THUS, THE FOCUS IS UPON THE PRODUCT ITSELF, NOT
12 THE CONDUCT OF THE MANUFACTURER.

13 **PROXIMATE CAUSE**

14 IF YOU FIND THAT PLAINTIFF HAS PROVED THAT, IN FACT, THE 2010 FORD
15 ESCAPE WAS DEFECTIVE AND UNREASONABLY DANGEROUS WHEN IT WAS
16 PLACED IN THE STREAM OF COMMERCE, THEN YOUR NEXT INQUIRY WOULD BE
17 WHETHER PLAINTIFF HAS PROVED THAT THIS DEFECT WAS A PROXIMATE
18 CAUSE OF PLAINTIFF'S DAMAGES. BECAUSE PLAINTIFF'S NEGLIGENCE AND
19 BREACH OF WARRANTY CLAIMS ALSO REQUIRE PROOF OF PROXIMATE CAUSE, I
20 WILL ADDRESS THAT ISSUE AT ONE TIME, AFTER I HAVE OUTLINED PLAINTIFF'S
21 NEGLIGENCE AND BREACH OF WARRANTY CLAIMS.

22

1 **CLAIM TWO: NEGLIGENCE**

2 PLAINTIFF’S NEXT CLAIM IS FOR NEGLIGENCE. SPECIFICALLY, PLAINTIFF
3 ALLEGES THAT DEFENDANT FORD MOTOR COMPANY WAS NEGLIGENT IN
4 FAILING TO EQUIP THE 2010 FORD ESCAPE WITH A PROPERLY DESIGNED
5 SUPPLEMENTAL RESTRAINT SYSTEM. AS A RESULT, PLAINTIFF ALLEGES, THE
6 AIRBAG DEPLOYED IN A CRASH THAT DID NOT WARRANT DEPLOYMENT, AND
7 EVEN IF THE DEPLOYMENT ITSELF WAS WARRANTED, THE DEPLOYMENT WAS
8 UNREASONABLY LATE.

9 NEGLIGENCE IS DEFINED AS THE FAILURE TO USE REASONABLE OR
10 ORDINARY CARE. THE WORD CARELESSNESS CONVEYS THE SAME IDEA AS
11 NEGLIGENCE. IT IS THE FAILURE BY OMISSION OR COMMISSION TO EXERCISE
12 SUCH DUE CARE AS A PERSON OF ORDINARY REASON AND PRUDENCE WOULD
13 EXERCISE IN THE SAME CIRCUMSTANCES. IN DETERMINING WHETHER A
14 PARTICULAR ACT IS NEGLIGENT, YOU MUST ASK WHAT A PERSON OF ORDINARY
15 REASON AND PRUDENCE WOULD DO UNDER THOSE CIRCUMSTANCES. WHEN I
16 USE THE WORD “PERSON” HERE, THAT ALSO ENCOMPASSES THE WORD
17 “CORPORATION.” THE FOCUS IS ON THE CONDUCT OF THE DEFENDANT, AND
18 LIABILITY IS DETERMINED ACCORDING TO FAULT.

19 **RECKLESSNESS**

20 RECKLESSNESS IS AN EXTENSION OF THE CONCEPT OF NEGLIGENCE. THE
21 WORDS RECKLESSNESS, WILLFULNESS, AND WANTONNESS ARE SYNONYMOUS.
22 THE TERMS ARE USED TO DESCRIBE A CONSCIOUS FAILURE TO EXERCISE
23 REASONABLE OR DUE CARE. RECKLESSNESS IMPLIES THE DOING OF A

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 16 of 41

1 NEGLIGENT ACT KNOWINGLY. WHEN ONE ACTS NEGLIGENTLY AND HE
2 REALIZES THAT HE IS ACTING NEGLIGENTLY, THE LAW SAYS HE IS RECKLESS,
3 WILLFUL, AND/OR WANTON.

4 **DUTY OF CARE**

5 IN DETERMINING WHETHER THE LEGAL STANDARD OF CARE HAS BEEN
6 SATISFIED, A MANUFACTURER IS HELD TO THE SKILL OF AN EXPERT IN ITS
7 BUSINESS AND TO AN EXPERT'S KNOWLEDGE OF THE MATERIALS AND
8 PROCESSES IN ITS INDUSTRY. MANUFACTURERS HAVE A DUTY TO POSSESS
9 EXPERT KNOWLEDGE IN THE FIELD OF THEIR PRODUCTS AND TO EXERCISE
10 REASONABLE CARE IN PLACING THE PRODUCT IN THE MARKET, WHICH DUTY
11 MAY REQUIRE INSPECTION AND TESTING, WHEN SUCH INSPECTION AND
12 TESTING IS APPROPRIATE. IN SUCH CIRCUMSTANCES, A MANUFACTURER OWES
13 A DUTY TO CONDUCT ADEQUATE TESTS AND INSPECTIONS OF ITS PRODUCT
14 SUCH AS ARE NECESSARY TO REVEAL LATENT DEFECTS OR DEFECTS THAT ARE
15 NOT VISIBLE OR APPARENT UPON A REASONABLE INSPECTION OF THE PRODUCT.
16 THE FAILURE TO EXERCISE REASONABLE CARE IN FULFILLING ANY OF THESE
17 DUTIES CONSTITUTES NEGLIGENCE AND, IF ACCOMPANIED BY THE REQUISITE
18 KNOWLEDGE, MAY CONSTITUTE RECKLESSNESS.

19 YOU MAY CONSIDER GOVERNMENT STANDARDS OR REQUIREMENTS IN
20 DETERMINING WHETHER DEFENDANT MET ITS DUTY OF CARE. SIMILARLY,
21 INDUSTRY STANDARDS, IN THE FORM OF CODES OR MANUALS ISSUED BY
22 VOLUNTARY ASSOCIATIONS, EVEN THOUGH LACKING THE FORCE OF LAW, ARE
23 PROPER MATTERS FOR YOUR CONSIDERATION AND MAY BE EVALUATED BY

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 17 of 41

1 YOU AS RELEVANT TO THE DEFENDANT’S DUTY OF CARE. HOWEVER, THE
2 EVIDENCE OF THESE GOVERNMENT AND INDUSTRY STANDARDS IS NOT
3 CONCLUSIVE. IF YOU FIND THE GOVERNMENT OR INDUSTRY HAD ESTABLISHED
4 STANDARDS, REQUIREMENTS, CUSTOMS, OR PRACTICES RELATING TO 2010 FORD
5 ESCAPE, AND THAT THE 2010 FORD ESCAPE IN THIS CASE CONFORMED TO SUCH
6 STANDARDS, REQUIREMENTS, CUSTOMS, OR PRACTICES, THEN THAT IS A
7 FACTOR FOR YOU TO WEIGH IN CONSIDERING WHETHER PLAINTIFF HAS
8 CARRIED HER BURDEN OF ESTABLISHING, BY THE PREPONDERANCE OR
9 GREATER WEIGHT OF THE EVIDENCE, THAT THE PRODUCT WAS DEFECTIVE OR
10 NEGLIGENTLY DESIGNED.

11 **CRASHWORTHINESS**

12 UNDER SOUTH CAROLINA LAW, AUTOMOBILE MANUFACTURERS HAVE A
13 DUTY TO EXERCISE REASONABLE OR DUE CARE IN DESIGNING A VEHICLE WITH
14 RESPECT TO THE CRASHWORTHINESS OF THE VEHICLE. THE TERM
15 “CRASHWORTHINESS” MEANS THE PROTECTION THAT A MOTOR VEHICLE
16 PROVIDES ITS OCCUPANTS AGAINST INJURY OR DEATH AS A RESULT OF A
17 MOTOR VEHICLE ACCIDENT. AN ACCIDENT OR COLLISION IS CONSIDERED A
18 FORESEEABLE RESULT OF THE NORMAL USE OF A VEHICLE AND A RISK
19 AGAINST WHICH A MANUFACTURER IS REQUIRED TO TAKE REASONABLE
20 PRECAUTIONS. ACCORDINGLY, AN AUTOMOBILE MANUFACTURER HAS A DUTY
21 TO DESIGN REASONABLY CRASHWORTHY VEHICLES, SO THAT THE EFFECTS OF
22 ACCIDENTS ARE MINIMIZED TO THE EXTENT REASONABLY PRACTICABLE.

23

1 **CLAIM THREE: BREACH OF WARRANTY**

2 PLAINTIFF'S LAST CLAIM IS FOR BREACH OF EXPRESS AND IMPLIED
3 WARRANTIES. TO RECOVER FOR A BREACH OF EXPRESS OR IMPLIED
4 WARRANTIES, PLAINTIFF MUST PROVE

- 5 (1) THE EXISTENCE OF AN EXPRESS OR IMPLIED WARRANTY,
6 (2) A BREACH OF THE DEFENDANT'S EXPRESS OR IMPLIED WARRANTY,
7 (3) A CAUSAL CONNECTION BETWEEN THE DEFENDANT'S BREACH AND
8 JOHN WICKERSHAM'S INJURY OR DAMAGE, AND
9 (4) THE EXTENT OF LOSS PROXIMATELY CAUSED BY THE DEFENDANT'S
10 BREACH.

11 A WARRANTY IS A STATEMENT OR REPRESENTATION MADE BY THE
12 SELLER OF GOODS, CONTEMPORANEOUSLY WITH AND AS A PART OF THE
13 CONTRACT OF SALE, ALTHOUGH COLLATERAL TO THE EXPRESS OBJECT OF THE
14 SALE, HAVING REFERENCE TO THE CHARACTER, QUALITY, FITNESS, OR TITLE OF
15 THE GOODS, AND BY WHICH THE SELLER PROMISES OR UNDERTAKES TO INSURE
16 THAT CERTAIN FACTS ARE OR SHALL BE AS HE THEN REPRESENTS THEM. A
17 WARRANTY IS EXPRESS WHEN THE SELLER MAKES AN AFFIRMATION WITH
18 RESPECT TO THE ARTICLE TO BE SOLD, PENDING THE CONTRACT OF SALE, UPON
19 WHICH IT IS INTENDED THAT THE BUYER SHALL RELY IN MAKING THE
20 PURCHASE. A WARRANTY IS IMPLIED WHEN THE LAW DERIVES IT BY
21 IMPLICATION OR INFERENCE FROM THE NATURE OF THE TRANSACTION OR THE
22 RELATIVE SITUATION OR CIRCUMSTANCES OF THE PARTIES.

1 IF YOU FIND THAT THERE WAS AN IMPLIED WARRANTY OR AN EXPRESS
2 WARRANTY, OR BOTH, THEN YOU WOULD GO TO THE SECOND ELEMENT. IF
3 THERE WAS A WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, YOU MUST
4 DETERMINE IF THE WARRANTY WAS BREACHED. IF YOU CONCLUDE THAT THE
5 WARRANTY WAS BREACHED, THEN YOU DETERMINE IF JOHN WICKERSHAM WAS
6 INJURED AS A PROXIMATE RESULT OF THE BREACH OF WARRANTY.

7 I WILL NOW PROVIDE A MORE DETAILED EXPLANATION OF THE TYPES OF
8 WARRANTIES PLAINTIFF ALLEGES DEFENDANT MADE AND BREACHED.

9 **EXPRESS WARRANTY**

10 PLAINTIFF ALLEGES THAT DEFENDANT MADE AND BREACHED CERTAIN
11 EXPRESS WARRANTIES DURING THE COURSE OF THE SALE OF THE 2010 FORD
12 ESCAPE. ANY AFFIRMATION OF FACT OR PROMISE, WHETHER ORAL OR
13 WRITTEN, MADE BY THE SELLER TO THE BUYER, WHETHER DIRECTLY OR
14 INDIRECTLY, WHICH RELATES TO THE PRODUCT AND BECOMES PART OF THE
15 BASIS OF THE BARGAIN BETWEEN THE SELLER AND THE BUYER CONCERNING
16 THE PRODUCT CREATES AN EXPRESS WARRANTY THAT THE PRODUCT
17 CONFORMS TO THE AFFIRMATION OR PROMISE. MOREOVER, ANY DESCRIPTION
18 OF THE PRODUCT THAT IS MADE PART OF THE BASIS OF THE BARGAIN BETWEEN
19 THE SELLER AND THE BUYER CREATES AN EXPRESS WARRANTY THAT THE
20 PRODUCT SHALL CONFORM TO THE DESCRIPTION.

21 WHEN GOODS DO NOT CONFORM TO A PROMISE OR AN AFFIRMATION OF
22 FACT MADE BY A SELLER, OR THE GOODS DO NOT CONFORM TO A DESCRIPTION,

1 SAMPLE, OR MODEL, WHICH IS MADE PART OF THE BASIS OF THE BARGAIN,
2 THEN A SELLER HAS BREACHED AN EXPRESS WARRANTY.

3 **IMPLIED WARRANTY OF MERCHANTABILITY**

4 PLAINTIFF NEXT ALLEGES THAT DEFENDANT BREACHED THE IMPLIED
5 WARRANTY OF MERCHANTABILITY. IN A SALE OF GOODS, THERE IS A
6 WARRANTY IMPLIED BY LAW THAT THE PRODUCTS SHALL BE MERCHANTABILITY
7 UNLESS SUCH WARRANTY HAS BEEN PROPERLY EXCLUDED OR MODIFIED. THIS
8 MEANS THAT THE GOODS PASS WITHOUT OBJECTION IN THE NORMAL TRADE OR
9 BUSINESS, ARE FIT FOR THE ORDINARY PURPOSES FOR WHICH SUCH GOODS ARE
10 USED, ARE OF EVEN KIND, QUALITY, AND QUANTITY WITHIN EACH UNIT, AND
11 ARE ADEQUATELY CONTAINED, PACKAGED, AND LABELED. AN IMPLIED
12 WARRANTY RUNS TO ANYONE WHO MAY BE REASONABLY EXPECTED TO USE,
13 BE IN THE VICINITY OF, OR BE AFFECTED BY THE PRODUCT.

14 A MANUFACTURER IS LIABLE UNDER THIS IMPLIED WARRANTY OF
15 MERCHANTABILITY IF IT SELLS A DEFECTIVE PRODUCT, EVEN THOUGH THE
16 MANUFACTURER MAY NOT HAVE BEEN NEGLIGENT.

17 **PROXIMATE CAUSE**

18 I STATED THAT I WOULD PROVIDE A MORE DETAILED EXPLANATION OF
19 THE TERM "PROXIMATE CAUSE" AFTER OUTLINING THE REQUIRMENTS OF EACH
20 CLAIM. NOW THAT I HAVE EXPLAINED THE OTHER ELEMENTS OF EACH CLAIM I
21 WILL FULLY EXPLAIN THE MEANING OF PROXIMATE CAUSE.

22 PROXIMATE CAUSE IS A LEGAL TERM WHICH MEANS THE EFFICIENT, OR
23 DIRECT, CAUSE, THE THING WHICH BRINGS ABOUT THE INJURIES OF WHICH

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 21 of 41

1 PLAINTIFF COMPLAINS. PROXIMATE CAUSE REQUIRES PROOF OF BOTH
2 CAUSATION IN FACT AND LEGAL CAUSE. CAUSATION IN FACT IS PROVED BY
3 ESTABLISHING THAT THE INJURY WOULD NOT HAVE OCCURRED "BUT FOR" THE
4 DEFENDANT'S ACT OR OMISSION. LEGAL CAUSE IS PROVED BY ESTABLISHING
5 FORESEEABILITY.

6 THE TEST OF FORESEEABILITY IS WHETHER SOME INJURY TO ANOTHER IS
7 THE NATURAL AND PROBABLE CONSEQUENCE OF THE COMPLAINED OF ACT.
8 THE DEFENDANT MAY BE HELD LIABLE FOR ANYTHING WHICH APPEARS TO
9 HAVE BEEN A NATURAL AND PROBABLE CONSEQUENCE OF THE PRODUCT
10 DEFECT. IN DETERMINING WHETHER A CONSEQUENCE IS ONE THAT IS NATURAL
11 AND PROBABLE, THE PRODUCT MUST BE VIEWED IN THE LIGHT OF THE
12 ATTENDANT CIRCUMSTANCES.

13 A DEFENDANT IS ENTITLED TO ASSERT THAT OTHER PERSONS OR
14 ENTITIES, WHETHER OR NOT PARTIES TO THE CASE, CONTRIBUTED TO THE
15 ALLEGED INJURY OR DAMAGES AND ARE LIABLE FOR ANY OR ALL OF THE
16 DAMAGES. THE PLAINTIFF MUST PROVE THAT SOME INJURY FROM THE
17 DEFENDANT'S CONDUCT WAS FORESEEABLE, BUT DOES NOT HAVE TO PROVE
18 THAT THE PARTICULAR INJURY THAT OCCURRED WAS FORESEEABLE. THE
19 PLAINTIFF DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S CONDUCT WAS
20 THE SOLE PROXIMATE CAUSE OF THE INJURIES, ONLY THAT IT WAS AT LEAST
21 ONE OF THE DIRECT, CONCURRING CAUSES OF THE INJURY.

22 TO FIND FOR PLAINTIFF UNDER ANY OF HER CLAIMS, YOU MUST FIND
23 THAT THE PREPONDERANCE OF THE EVIDENCE ESTABLISHES THAT JOHN

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 22 of 41

1 WICKERSHAM'S INJURIES WERE PROXIMATELY CAUSED BY THE ALLEGEDLY
2 DEFECTIVE SUPPLEMENTAL RESTRAINT SYSTEM IN THE 2010 FORD ESCAPE.

3 **PROXIMATE CAUSE: CRASHWORTHINESS**

4 IN THIS CASE, PLAINTIFF DOES NOT ALLEGE THAT A DEFECT CAUSED THE
5 CRASH. INSTEAD, PLAINTIFF ALLEGES THAT THE 2010 FORD ESCAPE WAS NOT
6 CRASHWORTHY BECAUSE IT CONTAINED A DEFECT WHICH CAUSED JOHN
7 WICKERSHAM TO SUFFER ADDITIONAL INJURIES HE WOULD NOT HAVE
8 OTHERWISE SUFFERED IN THE CRASH.

9 IF A DEFENDANT FAILS TO DESIGN A REASONABLY CRASHWORTHY
10 VEHICLE, THIS BREACH ONLY MAKES THE DEFENDANT RESPONSIBLE FOR THE
11 ENHANCED INJURIES SUFFERED BECAUSE OF THE DEFECT IN THE PRODUCT'S
12 DESIGN. THIS DOES NOT INCLUDE THE INJURIES YOU FIND THAT THE DRIVER
13 WOULD HAVE RECEIVED IN ANY EVENT. THEREFORE, IF YOU FIND THAT THE
14 VEHICLE WAS NOT CRASHWORTHY, THE BURDEN OF PROOF WOULD BE UPON
15 PLAINTIFF TO EITHER ESTABLISH THAT JOHN WICKERSHAM WOULD HAVE
16 RECEIVED NO INJURY IF THE VEHICLE HAD BEEN PROPERLY DESIGNED BY THE
17 DEFENDANT, OR TO ESTABLISH THE EXTENT OF THE INJURY THAT JOHN
18 WICKERSHAM WOULD HAVE RECEIVED HAD THE VEHICLE BEEN PROPERLY
19 DESIGNED BY THE DEFENDANT.

20 **PROXIMATE CAUSE: WRONGFUL DEATH CLAIM**

21 EARLIER, I EXPLAINED THAT PLAINTIFF IS BRINGING A WRONGFUL DEATH
22 ACTION TO RECOVER DAMAGES SUSTAINED BY THE STATUTORY BENEFICIARIES
23 RESULTING FROM THE DEATH OF JOHN WICKERSHAM. THIS REQUIRES

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 23 of 41

1 PLAINTIFF TO PROVE, BY THE PREPONDERANCE OF EVIDENCE, THAT
2 DEFENDANT WAS LIABLE FOR JOHN WICKERSHAM'S DEATH. TO FIND FOR
3 PLAINTIFF IN THE WRONGFUL DEATH ACTION, YOU MUST FIRST FIND THAT
4 DEFENDANT IS LIABLE FOR JOHN WICKERSHAM'S INJURIES UNDER AT LEAST
5 ONE OF PLAINTIFF'S CLAIMS. ONLY THEN WILL YOU REACH THE QUESTION OF
6 WHETHER DEFENDANT IS LIABLE FOR JOHN WICKERSHAM'S DEATH.

7 **PROXIMATE CAUSE: SUICIDE**

8 FORD CLAIMS THAT, EVEN IF IT IS LIABLE FOR JOHN WICKERSHAM'S
9 INJURIES, IT IS NOT LIABLE FOR JOHN WICKERSHAM'S DEATH BECAUSE ITS
10 ACTIONS DID NOT PROXIMATELY CAUSE JOHN WICKERSHAM'S DEATH.
11 SPECIFICALLY, FORD CLAIMS THAT JOHN WICKERSHAM'S SUICIDE WAS AN
12 INTERVENING CAUSE OF HIS DEATH, FOR WHICH FORD IS NOT LIABLE. AN
13 INTERVENING CAUSE IS AN INDEPENDENT EVENT WHICH INTERVENES BETWEEN
14 THE ORIGINAL WRONGFUL ACT OR OMISSION AND THE INJURY, TURNS ASIDE
15 THE NATURAL SEQUENCE OF EVENTS, AND PRODUCES A RESULT WHICH WOULD
16 NOT OTHERWISE HAVE FOLLOWED AND WHICH COULD NOT HAVE BEEN
17 REASONABLY ANTICIPATED.

18 AS A GENERAL RULE, A PERSON'S SUICIDE WILL CONSTITUTE AN
19 INDEPENDENT AND INTERVENING EVENT WHICH BREAKS THE LINE OF
20 CAUSATION BETWEEN THE DEFENDANT'S ACTIONS AND THE PERSON'S DEATH.
21 HOWEVER, WHEN A PERSON'S SUICIDE IS THE RESULT OF AN
22 "UNCONTROLLABLE IMPULSE" AND THE UNCONTROLLABLE IMPULSE WAS
23 PROXIMATELY CAUSED BY THE DEFENDANT'S ACTIONS, THE DEFENDANT MAY

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 24 of 41

1 BE LIABLE FOR THE PERSON'S SUICIDE. AN UNCONTROLLABLE IMPULSE IS A
2 FORCE ARISING WITHIN A PERSON OF SUCH FORCE THAT THE PERSON COULD
3 NOT CONTROL THAT FORCE. PUT DIFFERENTLY, A PLAINTIFF MAY RECOVER
4 FOR THE WRONGFUL DEATH WHEN THE DEFENDANT'S ACTIONS MADE THE
5 PERSON INCAPABLE OF CONTROLLING HIS OR HER OWN ACTIONS.

6 THE CRUCIAL QUESTION IS WHETHER MR. WICKERSHAM HAD THE
7 ABILITY TO CONTROL HIS ACTIONS. IN DETERMINING WHETHER HE
8 EXPERIENCED AN UNCONTROLLABLE IMPULSE, YOU MAY CONSIDER (1) HIS
9 MENTAL CONDITION PRIOR TO THE ACCIDENT, (2) THE DURATION OF TIME
10 BETWEEN THE ACCIDENT AND SUICIDE, AND (3) THE INFLUENCE OTHER
11 FACTORS MAY HAVE HAD ON HIS ACTIONS IN COMMITTING SUICIDE. HOWEVER,
12 NONE OF THESE FACTORS ARE DISPOSITIVE OF THE ISSUE. IT IS POSSIBLE FOR A
13 PERSON TO SUFFER FROM AN UNCONTROLLABLE IMPULSE, EVEN IF HE
14 UNDERSTANDS HE IS COMMITTING SUICIDE AND/OR INTENDS TO COMMIT
15 SUICIDE. IT IS ALSO POSSIBLE FOR A PERSON TO SUFFER FROM AN
16 UNCONTROLLABLE IMPULSE, EVEN IF HE DOES NOT SUFFER FROM ANY FORM
17 OF INSANITY, DELIRIUM, PSYCHOSIS, OR OTHER SPECIFIC MENTAL DISORDER. IT
18 IS ALSO POSSIBLE FOR A PERSON TO SUFFER FROM AN UNCONTROLLABLE
19 IMPULSE, EVEN IF IT IS NOT A SUDDEN IMPULSE AND THE PERSON MAKES THE
20 DECISION TO COMMIT SUICIDE OVER A LONG PERIOD OF TIME. THE ULTIMATE
21 QUESTION IS WHETHER MR. WICKERSHAM HAD THE ABILITY TO CONTROL HIS
22 ACTIONS.

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 25 of 41

1 PLAINTIFF BEARS THE BURDEN OF PROVING AN UNCONTROLLABLE
2 IMPULSE BY A PREPONDERANCE OF THE EVIDENCE.

3 **COMPARATIVE FAULT**

4 FORD ASSERTS THE DEFENSE OF COMPARATIVE FAULT. IF YOU FIND
5 THAT THE 2010 FORD ESCAPE WAS DEFECTIVE AND THAT THE DEFECT WAS A
6 PROXIMATE CAUSE OF JOHN WICKERSHAM'S INJURIES, THEN YOU MUST
7 CONSIDER THE DEFENSE OF COMPARATIVE FAULT. ON THIS DEFENSE, FORD
8 CLAIMS THAT EVEN IF IT WAS AT FAULT IN BRINGING ABOUT JOHN
9 WICKERSHAM'S INJURIES, JOHN WICKERSHAM WAS ALSO AT FAULT IN HIS USE
10 OF THE 2010 FORD ESCAPE BECAUSE HE WAS AN OUT OF POSITION OCCUPANT,
11 AND MR. WICKERSHAM'S FAULT WAS A PROXIMATE CAUSE OF HIS OWN
12 INJURIES.

13 IF YOU FIND THAT MR. WICKERSHAM'S INJURIES WERE PROXIMATELY
14 CAUSED BY THE FAULT OF FORD AND NOT BY FAULT ON THE PART OF MR.
15 WICKERSHAM, THEN PLAINTIFF IS ENTITLED TO RECOVER THE FULL AMOUNT
16 OF ANY DAMAGES YOU MAY FIND SHE SUSTAINED A RESULT OF THE FAULT.
17 BUT IF YOU FIND THAT MR. WICKERSHAM'S INJURIES WERE PROXIMATELY
18 CAUSED BY THE FAULT OF BOTH MR. WICKERSHAM AND FORD, THEN YOU MUST
19 COMPARE MR. WICKERSHAM AND FORD'S PERCENTAGES OF FAULT. THE
20 PERCENTAGES ALLOCATED BETWEEN MR. WICKERSHAM AND FORD MUST
21 TOTAL 100%.

22 EVEN IF YOU FIND JOHN WICKERSHAM WAS AT FAULT, YOU MUST
23 DETERMINE THE TOTAL AMOUNT OF DAMAGES SUSTAINED BY PLAINTIFF AND

9:13-cv-01192-DCN Date Filed 11/08/16 Entry Number 143-4 Page 26 of 41

1 ENTER THIS AMOUNT ON THE VERDICT FORM. YOU ARE NOT PERMITTED TO
2 MAKE ANY REDUCTION BASED ON THE PERCENTAGE OF FAULT ATTRIBUTED TO
3 MR. WICKERSHAM. AFTER YOUR VERDICT IS RETURNED, THE COURT WILL
4 ADDRESS ANY MATTERS RELATED TO REDUCTION THAT MAY BE APPROPRIATE
5 AS A MATTER OF LAW.

6 FORD BEARS THE BURDEN OF PROVING JOHN WICKERSHAM'S FAULT IN
7 THE USE OF THE 2010 FORD ESCAPE BY A PREPONDERANCE OF THE EVIDENCE.

8 **DAMAGES**

9 FINALLY, IF YOU FIND THAT PLAINTIFF HAS PROVEN, BY A
10 PREPONDERANCE OF THE EVIDENCE, THAT FORD IS LIABLE UNDER ANY OF THE
11 CLAIMS ASSERTED ABOVE, THEN YOU MUST DETERMINE THE DAMAGES
12 SUSTAINED BY PLAINTIFF. I WILL NOW INSTRUCT YOU ON THE
13 CONSIDERATIONS TO BE MADE WHEN DETERMINING DAMAGES.

14 **CAUTIONARY INSTRUCTION**

15 PLEASE NOTE THAT INSTRUCTIONS AS TO THE MEASURE OF DAMAGES
16 ARE GIVEN ONLY FOR YOUR GUIDANCE. THE FACT THAT I HAVE INSTRUCTED
17 YOU ON THE PROPER MEASURE OF DAMAGES IS NOT AN INDICATION OF ANY
18 VIEW OF MINE AS TO WHETHER YOU SHOULD FIND DAMAGES FOR THE
19 PLAINTIFF. THAT DECISION IS ENTIRELY UP TO YOU, BASED ON THE GUIDELINES
20 THAT I AM GIVING YOU.

21

9:13-cv-01192-DCN Date Filed 08/26/16 Entry Number 131 Page 1 of 4

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA BEAUFORT DIVISION

CRYSTAL L. WICKERSHAM, Plaintiff, vs. FORD MOTOR COMPANY, Defendant. CRYSTAL L. WICKERSHAM, as Personal Representative of the Estate of John Harley Wickersham, Jr., Plaintiff, vs. FORD MOTOR COMPANY, Defendant.

No. 9:13-cv-1192-DCN

No. 9:14-cv-0459-DCN

VERDICT

WE, THE JURY, FIND AS FOLLOWS:

We, the jury, unanimously find

- (1) Did Plaintiff Crystal Wickersham prove, by a preponderance of the evidence, that the Defendant Ford Motor Company's 2010 Ford Escape was in a defective condition unreasonably dangerous for its intended use because of its restraint system, and, if so, that this defective condition was a proximate cause of Plaintiff's injuries?

YES X NO

If your answer to Question 1 is NO, then your verdict is for the Defendant, so simply sign the verdict form and end your deliberations. If your answer to Question 1 is YES, please proceed to Question 2.

Wickersham v. Ford Motor Company, Verdict Form

- (2) Did Plaintiff Crystal Wickersham prove, by a preponderance of the evidence, that Defendant was negligent with respect to the design of the restraint system and that Defendant's negligence was a proximate cause of Plaintiff's injuries?

YES X NO _____

Please proceed to Question 3.

- (3) Did Plaintiff Crystal Wickersham prove, by a preponderance of the evidence, that the Defendant made and breached any express warranty with respect to the 2010 Ford Escape, and that this breach of Defendant's express warranty was a proximate cause of Plaintiff's injuries?

YES X NO _____

Please proceed to Question 4.

- (4) Did Plaintiff Crystal Wickersham prove, by a preponderance of the evidence, that the Defendant breached the Implied Warranty of Merchantability, and that this breach of the Implied Warranty of Merchantability was a proximate cause of Plaintiff's injuries?

YES X NO _____

Please proceed to Question 5

- (5) Did Defendant Ford Motor Company prove, by a preponderance of the evidence, that John Harley Wickersham was at fault in his use of the 2010 Ford Escape restraint system, and that John Harley Wickersham's fault was a proximate cause of his injuries?

YES X NO _____

If you answered NO to Question 5, then proceed to Question 7. If you answered YES to Question 5, please answer Question 6.

- (6) What are John Harley Wickersham and Defendant Ford Motor Company's respective percentages of fault, as proven by the preponderance of the evidence? Recall that these percentages must add up to 100%.

JOHN HARLEY WICKERSHAM: 30 %

FORD MOTOR COMPANY: 70 %

Please proceed to Question 7.

Wickersham v. Ford Motor Company, Verdict Form

(7) What is the total amount of actual damages that will fairly compensate the Estate of John Harley Wickersham for the pain and suffering he experienced between the time of the accident and the time of his death?

one million two hundred and fifty thousand ⁰⁰/₁₀₀ — Dollars
\$ 1,250,000.00
Please proceed to Question 8.

(8) What is the total amount of actual damages that will fairly compensate Plaintiff Crystal Wickersham for her loss of consortium from the date of the accident until the time of John Harley Wickersham's death?

\$ 650,000.00 six hundred and fifty thousand and ⁰⁰/₁₀₀ Dollars
Please proceed to Question 9.

(9) Did Plaintiff Crystal Wickersham prove, by a preponderance of the evidence, that John Harley Wickersham suffered from an uncontrollable impulse to commit suicide, and that the Defendant's wrongful conduct was a proximate cause of John Harley Wickersham's uncontrollable impulse to commit suicide?

YES X NO _____

If you answered NO to Question 9, please proceed to Question 12. If you answered YES, please answer Questions 10 and 11.

(10) What is the total amount of actual damages that will fairly compensate John Harley Wickersham's beneficiaries for his wrongful death?

\$ 1,375,000.00
one million three hundred and seventy five thousand and ⁰⁰/₁₀₀ Dollars

Please proceed to Question 11.

(11) What is the total amount of actual damages that will fairly compensate Plaintiff Crystal Wickersham for her loss of consortium for the time following John Harley Wickersham's death?

\$ 1,375,000.00
one million and three hundred and seventy five thousand ⁰⁰/₁₀₀ Dollars

Please proceed to Question 12.

9:13-cv-01192-DCN Date Filed 08/26/16 Entry Number 131 Page 4 of 4

Wickersham v. Ford Motor Company, Verdict Form

(12) Did Plaintiff Crystal Wickersham prove, by clear and convincing evidence, that Defendant acted recklessly, willfully, wantonly, maliciously, or in reckless disregard of Plaintiff's rights?

YES _____ NO X _____

If you answered NO to Question 2, Plaintiff is not entitled to punitive damages. Similarly, if you answered NO to Question 12, Plaintiff is not entitled to punitive damages, so simply sign the verdict form and end your deliberations. If you answered YES to both Question 2 and Question 12, please answer Question 13.

(13) What is the reasonable amount of punitive damages that will fairly punish Defendant Ford Motor Company for its willful, wanton, malicious, or reckless action and deter such action in the future?

_____ Dollars

PLEASE SIGN AND DATE THE VERDICT FORM.

8/26/16
DATE FOREPERSON