

NEW YORK SUPREME COURT - COUNTY OF BRONX

IAS PART 27

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ALIDA RODRIGUEZ,  
Plaintiff(s),

INDEX Nº. 15703/99

-against-

FORD MOTOR COMPANY,  
PETER NYIRI and BETTY F. GERENDASY,  
Defendant(s).

Present:  
HON. STANLEY GREEN  
J.S.C.

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The following papers numbered 1 to 3 read on this motion

	<u>PAPERS NUMBERED</u>
Notice of Motion -Exhibits and Affidavits Annexed.....	1
Answering Affidavit and Exhibits.....	2
Replying Affidavit and Exhibits.....	3
Sur-reply Affidavits and Exhibits.....	
Stipulation(s) - Referee's Report - Minutes.....	
Memoranda of Law.....	

**FILED**

NOV 06 2003

BRONX COUNTY CLERK'S OFFICE

Upon the foregoing papers this motion is decided in accordance with the attached memorandum.

Dated: October 30, 2003

  
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STANLEY GREEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: IAS PART 27

-----X  
ALIDA RODRIGUEZ,  
Plaintiff(s),

INDEX Nº. 15703/99

-against-

~~DECISION~~

FORD MOTOR COMPANY,  
PETER NYIRI and BETTY F. GERENDASY,  
Defendant(s).

NOV 06 2003

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BRONX COUNTY CLERK'S OFFICE

The motion by plaintiff to allow evidence of other similar occurrences and the motion by defendant to exclude evidence of accidents, incidents, claims or lawsuits are consolidated for purposes of this decision, plaintiff's motion is denied and defendant's motion is granted.

Plaintiff was injured when a car driven by defendant Nyiri and manufactured by defendant Ford mounted the sidewalk and pinned her against a wall. Plaintiff claims that defendant Nyiri was negligent in the way he operated the car and that defendant Ford was negligent, and otherwise liable for, the design of the car, in particular the speed control devise.

Plaintiff wants to offer evidence of other similar incidents to establish the existence of a design defect which allows transient signals generated by the cruise control to cause the throttle to open which in turn causes sudden acceleration. A Frye hearing was conducted after which this Court determined that the expert offered by plaintiff, Sam Sero, was not qualified as an expert regarding the subject matter of his testimony and that the opinion he offered was not generally accepted in the scientific or engineering community. Among the reasons for this determination was the fact that neither Sero nor anyone else had published any paper in support of this theory of design defect, that neither Sero nor anyone else had replicated the occurrence of this alleged

defect and that no one other than Sero had advanced this theory. Now plaintiff wants to offer evidence of other allegedly similar incidents to establish a theory that has not been accepted by anyone but Sero, who, this Court has found, is not competent to propound this theory. In other words, plaintiff wants to use evidence of other allegedly similar incidents to establish indirectly that which has not been established or accepted in the scientific community. Not only has plaintiff's theory not been generally accepted, it has been examined and rejected twice by the National Highway Traffic Safety Administration, even after a lawyer on behalf of another plaintiff submitted much of the same evidence that is being offered here.

In this case, plaintiff, a pedestrian was severely injured when defendant Nyiri, drove onto the sidewalk and pinned her against a wall. Nyiri was backing his car into a parking space after having been double-parked. The car had operated for approximately 90,000 miles without incident. Defendant Ford contends that Nyiri was intoxicated at the time of the incident based upon the testimony of police officers and eyewitnesses that Nyiri smelled of alcohol, was unsteady on his feet and spoke with slurred speech, the testimony of a bartender who had refused to serve Nyiri prior to the accident because he appeared intoxicated and a blood test taken pursuant to a Court Order after Nyiri's arrest. Nyiri denies that he was intoxicated and contends that he had only one glass of wine prior to the accident.

The evidence of other allegedly similar incidents is being offered to establish the existence of an unseen condition, not that a known existing condition is dangerous. Thus, the cases relied upon by plaintiff are not relevant, because they all deal with the issue of whether a condition is dangerous, not whether one exists.

In Ramirez v. Sears, Roebuck & Co. (236 AD2d 530) the issue was the admissibility of

similar accidents regarding a table saw. The question was whether the saw was defectively designed. The Appellate Division reversed a finding in favor of the plaintiff because the prior incidents involving the same table saw were not substantially similar to the subject accident. There was no issue as to the existence of the condition complained, only whether it was dangerous or not.

In Mudy v. Moore Business Forms, Inc. (262 AD2d 375), the Court found the evidence of prior accidents was properly admitted but did not indicate the nature of the incident or the prior accidents. Thus, this case provides no guidance.

In Doty v. Navistar International Transportation Corp. (219 AD2d 32), the issue was the admissibility of other combine accidents. The infant plaintiff had lost his left arm when it got caught in a combine. Plaintiffs presented evidence of a design defect which was observable but not readily discernible to an infant user. Proof of a similar accident was admissible as proof that the combine was unreasonably dangerous and defective, not to establish the existence of the condition itself.

In Herbert v. Sivaco Wire Corp. (289 AD2d 71), plaintiff was injured when wire manufactured and spooled by Sivaco became tangled while being unspooled and snapped. The Court allowed discovery of other incidents in which wire manufactured by Sivaco became snarled while unspooling

In Kaplan v. City of New York (10 AD2d 319), plaintiff offered proof of other accidents to demonstrate that a pillar supporting an elevated train was not constructed in a reasonably safe manner to allow safe use of the roadway by a reasonably prudent driver. The Appellate Division reversed the admission into evidence of evidence of other accidents because the other accidents

were not shown to be similar in nature.

In Bolm v. Triumph Corp. (71 AD2d 429), plaintiff contended that the gas tank on a motorcycle he was riding was defectively designed. Evidence of another accident was admitted solely to prove that the product was hazardous because of the design of the motorcycle.

In Hyde v. County of Rensselaer (51 NY2d 927), plaintiff was injured in an automobile accident allegedly caused because the County had allowed rotten delineator posts to become covered with foliage and hidden from view along the highway. The Court allowed evidence of a prior accident at the same location on the issue of constructive notice.

In Sawyer v. Dreis & Krump Mfg. Co. (67 NY2d 328), plaintiff was injured when his hand was caught in a brake press. He claimed that the press was defectively designed and sought to introduce evidence of other accidents with the press to establish that the press was dangerous. The Court of Appeals found that admission of such evidence was improper because plaintiff failed to establish that the prior accidents were similar to his.


In Mickle v. New York State Thruway Auth. (182 Misc.2d 967), the issue was whether a highway design, including the issue of the adequacy of signage, was dangerous. No proof of prior accidents was offered on the issue of whether a condition was dangerous or whether defendant had notice.

As seen from a review at all of these cases, evidence of other similar incidents have been held to be admissible on the question of whether a condition is dangerous. Plaintiff has submitted no case in which evidence of other similar incidents were admitted to establish the existence of a condition.

In order for evidence of other accidents to be admitted, plaintiff must establish that they were substantially similar to this accident. The evidence offered is the testimony of other persons who contend that the Ford vehicles they were driving experienced sudden acceleration without driver error or physical evidence of another cause of the acceleration. The issue in those events is the precise issue in this case - was the sudden acceleration caused by a manufacturing defect or driver error. The introduction of such evidence would result in a mini-trial regarding each of those events, because defendant Ford must have adequate opportunity to challenge the similarity of these events. This would result in confusion and prejudice to Ford without sufficient probative value and reliability.

Admission of other similar incidents as this case would only permit the jury to speculate as to the cause of the accident. Speculation is not a substitute for proof, which in this case, does not exist.

Dated: October 30, 2003

  
STANLEY GREEN, J.S.C.