

# **Court Will Hear Public Citizen's Motion To Unseal Volvo Documents**

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A Florida judge has granted the advocacy group Public Citizen a hearing next month to determine if the court should again make public “critically important auto safety documents” on roof strength that helped the plaintiffs win a \$10.2 million verdict in *Duncan v. Ford*.

On Feb. 7, Judge Charles O. Mitchell of Florida's Fourth Judicial Circuit Court will hear Public Citizen's motions to intervene and to unseal the documents which demonstrated that Volvo, a wholly-owned subsidiary, considered roof strength a critical part of occupant protection in rollovers, while the Ford Explorer was manufactured under a weaker company standard. At trial, the plaintiffs argued that the defective design of the Explorer's roof structure caused Claire Duncan's death in a rollover accident. [*Gregory Scott Duncan, et al V. Ford Motor Company, et al* (Circuit Court, Fourth Judicial Circuit, Duval County, Florida, Case: A01-7230-CA. Div.: CV-F)].

Public Citizen says that it needs those documents to educate the public about the “hazards of Ford Explorers (and of similar vehicles) and to use them in its efforts to convince the federal government to strengthen its regulations governing roof strength.” (See “States Rights Advocates Attack NHTSA Roof Crush Preemption Proposal”)

Judge Mitchell was originally set to consider Public Citizen's motion on March 8. At that hearing, Judge Mitchell would also hear arguments on whether Ford can depose Sean Kane and Donald Friedman, auto safety experts, and who, Ford contends, released the Volvo documents in violation of a protective order. Ford is also seeking to depose Gina Dawson, the daughter of now-deceased reporter, who also got copies of the documents. In granting Public Citizen's request, Judge Mitchell severed the hearings. (The hearing regarding the depositions is still scheduled for March.)

The Volvo documents had been available to the public in the clerk's office of the Duval County courthouse in Jacksonville and on the National Highway Transportation Safety Administration's roof strength rulemaking docket. Their contents also have been widely reported by the national media, following the unanimous jury verdict on March 18, 2005 (see *The Safety Record* “Ford Fights to Keep Volvo Documents Sealed” V2, I3). Over the course of the six-week trial, the jury heard evidence regarding confidential Volvo memorandums showing Ford's concern about Volvo's contradictory position on roof strength and the need for the company to reach an understanding with its division because of its negative effect on litigation.

For more than a month after the trial concluded, those documents were included in the public domain in the Duval County Clerk's office. But after stories about the corporate rift began to appear in the news, and Kane's submission of the documents to NHTSA's roof crush docket, Ford sought to have the documents sealed, claiming that they were confidential under a protective order issued during pre-trial discovery. The clerk withdrew them from the file and Ford withdrew its motion. Judge Mitchell said he would consider a motion by a third party to unseal them. Ford's lawyers also succeeded in having NHTSA grant confidentiality for the Volvo test documents submitted by Kane; however, the company did not seek protection for the Ford test

documents and the agency reposted that portion of the submission. In the meantime, the Volvo documents have remained in legal limbo.

In its current attempt to bring the Volvo memos and test reports back into the public realm, Public Citizen makes two basic arguments. First, it contends that Ford waived its right to secrecy when it failed to move that the exhibits be sealed when they were presented at trial. Second, the advocacy group maintains that keeping the documents sealed violates the first amendment of the U.S. Constitution and Florida law, all which forbid the unwarranted sealing of trial exhibits. In addition, the state's broadly written Sunshine Law prohibits court orders that hide information about a public hazard – even if that information is considered a trade secret, Public Citizen argues.

In its motion, Public Citizen also accused the automaker of launching an “aggressive campaign” against anyone attempting to disseminate the documents and claimed that Ford's requests to depose Kane, and Dawson are simply attempts to intimidate them.

Ford has already lost the right to keep the documents from public view in a Texas case. In September, Judge Robert Vargas deemed that the documents were non-confidential *Marroquin V. Ford Motor Company, et. al. (Cause No. 05-61218-2, Nueces County, TX)*. Judge Vargas ruled that the documents were available publicly from the Duval County Clerk's office and the NHTSA website, that they were obtained by the media and others and widely reported. He also found that Ford offered no evidence that they attempted to reclaim the documents from the media, that the documents were obtained through any “suspicious” circumstances as Ford asserted during the hearings, or how the widespread disclosure affected their basis for secrecy. The matter is now before the Texas Supreme Court.