

IN THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT OF FLORIDA

CASE NO. 5D11-2787  
L.T. CASE NO. 2004-CA-000013

FORD MOTOR COMPANY,  
a foreign corporation,  
Appellant,

v.

PEGGY T. STIMPSON and her  
husband, RALPH M. STIMPSON,

Appellees

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**BRIEF OF**  
***AMICUS CURIAE* ALLIANCE OF AUTOMOBILE MANUFACTURERS,**  
**INC. IN SUPPORT OF FORD MOTOR COMPANY**

On Appeal from a Final Order of the Fifth Judicial Circuit,  
In and For Sumter County, Florida

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## **INTEREST OF THE AMICUS**

The Alliance of Automobile Manufacturers, Inc. (“Alliance”) is a nonprofit trade organization formed in 1999. Its mission is to improve the environment and motor vehicle safety through the development of global standards and the establishment of market-based, cost effective solutions to emerging challenges associated with the manufacture of new automobiles. Defendant-appellant Ford Motor Company (“Ford”) is a member of the Alliance, along with BMW Group, Chrysler Group LLC, General Motors Corporation, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Cars North America. The Alliance frequently participates as *amicus curiae* or as an intervenor in cases addressing federal regulation and oversight of motor vehicles. In so doing, the Alliance presents the broad perspective of vehicle manufacturers.

This case, which concerns an allegation of unintended acceleration (“UA”) in a 1991 Ford Aerostar van, raises issues of considerable importance to the Alliance and its members. UA has been investigated by agencies of the United States and other countries for decades. By attacking the integrity and results of such investigations—especially, the investigations by the Federal agency with responsibility for regulating motor vehicle safety—and substituting the views of a single judge for the conclusions of expert agencies, the trial court’s decision

exposes Alliance members to groundless litigation, threatens to create public anxiety that electromagnetic interference may cause vehicles to crash, and obscures the true causes of UA, potentially hindering solutions to UA. The Alliance's members and the consumers of their products benefit from the certainty and safety improvements that come from data-driven determinations about the causes of safety-related problems like UA, and from knowing that judges will not disregard the evidence-based safety decisions of expert deliberative bodies.

### **INTRODUCTION**

Plaintiffs allege that “their 1991 Ford Aerostar van suddenly accelerated from their carport during gear engagement, traveled in excess of one hundred (100) feet during which time the brakes were unable to stop the van and thereafter struck a utility pole, causing disabling injuries to Peggy Stimpson.” (R44:11935).<sup>1</sup> Specifically, they allege that electromagnetic interference (“EMI”) (generally understood as an unwanted disturbance that affects an electrical circuit due to electromagnetic radiation), acting through their vehicle’s cruise control system when the vehicle was started and shifted into gear, caused the vehicle to race out of control and crash. (*Id.*). Plaintiffs claim that a defect “made defendant’s cruise control electronics susceptible to an uncontrolled acceleration at gear engagement caused by electromagnetic interference.” (*Id.*; *see also* R44:11938).

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<sup>1</sup> The record will be designated “(RVol.:Page).”

After a jury verdict in Ford's favor, the trial court struck Ford's answer (including its affirmative defenses), entered judgment on liability in favor of Plaintiffs, and ordered a new trial to assess the amount of compensatory damages and to determine whether punitive damages are appropriate and, if so, in what amount. (R44:11975).<sup>2</sup>

The court stated that Ford had engaged in misconduct calculated to "interfere with the judicial system's ability to adjudicate a matter by improperly influencing the jury." (*Id.*). Among other things, according to the court, Ford allegedly concealed information from the National Highway Traffic Safety Administration ("NHTSA") and repeatedly relied for its defense at trial on NHTSA analyses of UA—especially in a 1989 study ("1989 Study")—that Ford allegedly knew to be incorrect and to have been based on allegedly deceptive information provided by Ford to NHTSA in the 1980s. (R44:11973).

In concluding that EMI caused Plaintiffs' vehicle suddenly to accelerate (with an accompanying loss of braking power), the court embraced a theory that

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<sup>2</sup> As alternative relief, the court also ordered a new trial, finding, among other things, that the verdict was against the manifest weight of the evidence because "the only reasonable inference from the evidence is that Ford's electronic cruise control system was negligently designed in that Ford knew or should have known that the system was susceptible to sudden unintended throttle opening, and likewise that there was a design defect in the 1991 Aerostar that was a cause of the Stimpsons' accident. The jury was also deceived as to the credibility of the evidence and influenced by considerations outside the record." (R44:11980).

has never been validated in a scientific study and that, accordingly, has been repeatedly rejected by other courts (*see* cases collected at page 39 of Ford's initial appellate brief), thereby dismissing the conclusions and findings from decades of government and scientific investigations by multiple agencies and governments.<sup>3</sup> If affirmed, the decision would allow a single judge to upend an unbroken train of scientific research that has consistently found no evidence that transient EMI has ever caused a UA incident, and that has found that UA incidents like Plaintiffs' here—that is, UA accompanied by alleged loss of braking power—are the result of pedal misapplication or, rarely, *detectable* mechanical flaws.

### **SUMMARY OF ARGUMENT**

NHTSA, the federal government agency responsible for regulating motor vehicle safety, has exhaustively examined UA through investigations of alleged UA incidents, as well as through numerous studies and analyses. These examinations of UA have consistently found that incidents like that complained of by Plaintiffs here, are almost always the result of pedal misapplications—that is,

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<sup>3</sup> *See, e.g.,* NTSB, *Pedal Misapplication in Heavy Vehicles* (PB2009-917003) (2009); NTSB, *Rear-End Collision and Subsequent Vehicle Intrusion into Pedestrian Space at Certified Farmers' Market, Santa Monica, CA, July 16, 2003* (PB2004-916204) (2004); Transport Canada, *Investigation of "Sudden Acceleration" Incidents* (Dec. 1988); Japanese Ministry of Transport, *An Investigation on Sudden Starting and/or Acceleration of Vehicles with Automatic Transmissions* (Apr. 1989), *cited in* NHTSA, Denial of Motor Vehicle Defect Petition DP99-004, 65 Fed. Reg. 25,026, 25,028 n.12 (Apr. 28, 2000).



the driver simply steps on the wrong pedal—or, rarely, detectable mechanical faults. In all the years that it has exhaustively examined UA, NHTSA has never found evidence that transient EMI can cause a car to race out of control from a stop or slow speed while also losing braking power.

NHTSA's analyses of UA include a detailed study issued in 1989 ("1989 Study"). That study was undertaken at NHTSA's request by an independent multidisciplinary team and involved exhaustive examinations of vehicles, analyses of consumer complaints, and independent laboratory testing. No evidence was found that transient EMI causes UA, and the 1989 Study's authors justifiably concluded that, in the absence of manifest, detectable mechanical defects, sudden acceleration of vehicles with allegations of concomitant loss of braking power nearly always results from pedal misapplication. Contrary to the court's decision, there is no evidence that Ford's prior statement to NHTSA influenced these results.

A decade after its publication, the 1989 Study's findings were challenged in a petition for a defect investigation. The petitioner made substantially similar allegations to the ones accepted by the court here. In response to the petition, NHTSA conducted another exhaustive examination of the issue, including analyses of new evidence, and rejected the criticisms of the 1989 Study.

NHTSA's longstanding conclusions about UA were validated again in 2011 and 2012, when exhaustive studies by NHTSA, the National Aeronautics and

Space Administration (“NASA”), and the National Research Council were released. These studies confirmed that EMI has not been shown to cause UA and the pedal misapplication is the most common cause of UA incidents.

## ARGUMENT

### I. **NHTSA HAS EXAMINED UA FOR DECADES AND NEVER FOUND THAT EMI HAS CAUSED UA**

NHTSA is the U.S. government agency with responsibility for regulating motor vehicle safety at the Federal level. Created in 1970 by an Act of Congress, NHTSA has delegated authority (from the Secretary of Transportation) to implement 49 U.S.C. Chapter 301, “Motor Vehicle Safety” (originally known as the “National Traffic and Motor Vehicle Safety Act of 1966,” as amended, or “Safety Act”). Among its many responsibilities, NHTSA has the authority to investigate potential safety defects in motor vehicles and order manufacturers to conduct owner notification and remedy campaigns—recalls—to address defects that relate to motor vehicle safety. In addition, NHTSA has the authority to obtain civil penalties from manufacturers for violations of the Safety Act, including violations of certain reporting and remedy requirements.

In a June 2010 presentation to the National Research Council, Richard Boyd, then Acting Director of NHTSA’s Office of Defects Investigation, noted that in the 25 preceding years, NHTSA had conducted 109 defect investigations addressing UA issues, resulting in numerous recalls. *See* Richard Boyd, *Known Vehicle*

*Causes of Unintended Acceleration*, at 24 (available at <http://onlinepubs.trb.org/onlinepubs/UA/100630DOTSlidesBoyd.pdf> (last visited Feb. 23, 2012)).

For more than 20 years, NHTSA has consistently concluded that there is no credible evidence that UA (sometimes referred to as “Sudden Acceleration” (“SA”) or “Sudden Acceleration Incidents” (“SAI”)) is caused by malfunctions in vehicle electronics. NHTSA’s investigations, research, and studies have reached consistent conclusions about UA incidents in which a stopped or slow-moving vehicle suddenly accelerates uncontrollably and, at the same time, experiences apparent brake failure. The overwhelming majority of such incidents are caused by pedal misapplications—that is, they result from the driver accidentally stepping on the accelerator pedal, instead of the brake, or on both pedals at once.

In a few cases, mechanical causes of UA have been identified. These include the physical entrapment of the accelerator pedal by floor mats or trim panels, issues with throttle linkages, and mechanical faults in cruise control mechanisms. But in those cases, the mechanical flaw is always *discernable or reproducible*: after the accident, investigators can see or replicate the problem. For instance, they can see how a floor mat entrapped the accelerator or they can reproduce the failure mechanism (fault).

Based upon NHTSA’s numerous UA investigations, as well as the work of authorities in other countries, such as Canada and Japan (*see* note 3, *supra*), the

following has emerged as the typical UA scenario: A driver in a parked car or slow-moving vehicle mistakenly presses the accelerator pedal instead of the brake (or presses both pedals at once). Startled that the car is accelerating when the driver intends to brake, the driver presses the pedal harder, not realizing that he or she is pressing the accelerator pedal. As the vehicle continues to accelerate, rather than slow down, the driver panics and presses still harder—on the wrong pedal—causing the vehicle to gain speed until a crash occurs.

Typically, after such accidents, no physical evidence of hard braking is found, even though the driver insists that he or she was braking the whole time. Nor is there evidence of brake failure. Plaintiffs' accident here closely resembles these kinds of cases, which NHTSA has reviewed and evaluated numerous times.

NHTSA's conclusions in this regard have been confirmed by—among other things—the success of mechanical devices, such as brake transmission shift interlocks (“BTSI”), which prevent a vehicle from being put into gear unless the *brake* is depressed. By ensuring that the brake pedal is being pushed by the driver when the gear is engaged, BTSI prevents the type of UA that typically was experienced previously—that is, UA occurring when a driver was pressing the accelerator at the same time he moved the transmission lever into gear, resulting in a rapid, unexpected take-off of the vehicle. *See Boyd, supra*, at 31 (“When first

implemented, vehicles with BTSI experienced a 60% drop in UA”; end-of-trip UA became most prevalent type).

The trial court’s explanation of Plaintiffs’ accident eschews this common-sense explanation for UA. Rather, following Plaintiffs’ lead, the court embraced the scientifically unfounded notion that transient EMI caused the Aerostar’s cruise control to malfunction, resulting in both sudden acceleration and loss of braking power. The theory that EMI, which leaves no physical mark and cannot be reproduced by investigators (including by the Plaintiffs’ own expert), can cause sudden acceleration and a loss of braking power has never been validated by NHTSA—or anyone else using credible scientific evidence.

The trial court’s answer to this is that Ford hoodwinked NHTSA into rejecting EMI as a cause of UA—leading NHTSA astray in the 1989 Study and somehow undermining NHTSA’s UA analyses ever since. The court concluded that in 1987 Ford misled NHTSA by stating that electronic malfunctions that could cause UA “‘would be expected to reveal physical evidence of causal origin.’” (R44:11943). As a result, the court concluded, the 1989 Study set forth conclusions that Ford allegedly knew to be incorrect. (R44:11944). Thus, the court rejected NHTSA’s long-held conclusions about the causes of UA and found that Ford’s references to NHTSA’s views were a fraud on the court. (R44:11936, 11943, 11944, 11951-53).

**II. THE 1989 STUDY WAS BASED ON EXTENSIVE AND INDEPENDENT RESEARCH AND TESTING, AND WAS NOT AFFECTED BY FORD'S PRIOR COMMUNICATIONS WITH NHTSA**

In October 1987, in the wake of numerous UA reports, and, in particular, a NHTSA defect investigation and subsequent safety recall of Audi 5000 models to address UA concerns (NHTSA Recall No. 87V-008), NHTSA contracted with the U.S. Department of Transportation's Transportation Systems Center ("TSC") in Cambridge, Massachusetts, to conduct an independent review of the UA phenomenon. The TSC final report is referred to in this brief as the "1989 Study."<sup>4</sup>

After assessing extensive data, reviewing hundreds of complaints, conducting interviews with people who experienced UA, testing numerous vehicles, and examining crash scenes, the study concluded, "For [UA] in which there is no evidence of throttle sticking or cruise-control malfunction, the inescapable conclusion is that these definitely involve the driver inadvertently pressing the accelerator instead of, or in addition to, the brake pedal." 1989 Study at 49. As part of this study, TSC contracted with NHTSA's Vehicle Research and Test Center to conduct a series of braking tests associated with potential cruise control malfunctions. Those tests "demonstrat[ed] that vehicle brakes are capable

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<sup>4</sup> Also known as the "Silver Book," its actual title was "An Examination of Sudden Acceleration," DOT-HS-807-367; DOT-TSC-NHTSA-89-1 (*available at* <http://www-odi.nhtsa.dot.gov/acms/cs/documentList.xhtml?docId=DP99004&docType=INV> (last visited Feb. 24, 2012)).

of stopping such accelerations with relatively low brake pedal efforts.” NHTSA, Denial of Motor Vehicle Defect Petition DP99-004, 65 Fed. Reg. 25,026, 25,034 (Apr. 28, 2000) (describing results of 1989 Study).

Ford relied, in part, on the 1989 Study to rebut Plaintiffs’ claims about the cause of their crash. Plaintiffs, in turn, attacked the 1989 Study (and Ford for relying on it), disparaging the 1989 Study’s conclusion that (contrary to Plaintiffs’ theory) “at least two simultaneous and detectable faults would have to occur for the cruise control electronics to cause a sudden acceleration; and that, in the absence of such detectable faults, the most plausible explanation was driver pedal error.” (R44:11944 (internal quotation marks omitted)). Despite a lack of evidence supporting Plaintiffs’ attack on years of scientifically sound conclusions, the court adopted Plaintiffs’ position.

According to the court, the 1989 Study’s “findings showed that NHTSA had accepted the representations regarding its electronics Ford made to the agency prior to the publication of the TSC study.” (*Id.*; *see also* R44:11953 (characterizing the 1989 Study as “untrue”); R44:11973 (“Had Ford disclosed [documents and reports that Ford had allegedly generated but allegedly disposed of], the government would have discovered years ago that electronic failures in the cruise control system is [sic] a cause of sudden acceleration.”); R44:11974 (because Ford made misrepresentations to NHTSA, “Ford knew that NHTSA’s

1989 “Examination of Sudden Acceleration” was predicated upon false information.”)).

This revisionist history is absolutely false, and is belied by the report itself. There simply is no evidence that Ford’s representations to NHTSA in 1987 influenced the 1989 Study’s conclusions or misled its authors. To the contrary, the 1989 Study’s authors reviewed information from all major manufacturers (not just Ford), and conducted extensive *independent* inquiries into UA.

This independent review involved analyses of UA incidents and tests of numerous manufacturers’ vehicles. *See id.* at 1 (“In order to secure an independent review of the current state of understanding of [UA] and to explore topics not fully investigated previously, NHTSA requested that the [TSC] collect the relevant literature and case documentation, examine the braking and fuel-system controls of ten vehicles . . . , conduct experiments as required, and engage a Panel of outside experts in various disciplines to review this material and report its findings and conclusions.”); *id.* at viii (independent tests included “[e]xtensive laboratory testing of the operation of cruise controls under stress from temperature extremes, power supply variations, EMI/[radio-frequency interference] and high-voltage discharges”); *id.* at 4 (similar).

Nothing in the 1989 Study provides any grounds for concluding that Ford’s prior statements to NHTSA could have influenced the study’s findings. Indeed,



apart from listing Ford as one of the many manufacturers from which the 1989 Study's authors requested information, copies of test reports, other studies of sudden acceleration, and various technical manuals, the 1989 Study makes no mention of Ford or of specific incidents related to EMI or cruise control difficulties in Ford vehicles. *Id.* at 3-4, Apps. B, D. Rather, the 1989 Study was an exhaustive, fact-based investigation that was grounded in independent testing and multidisciplinary analyses. The court's criticisms of the 1989 Study and conclusion that Ford's reliance upon it at trial was fraudulent are baseless.

### **III. NHTSA HAS CONSIDERED AND REJECTED A SIMILAR ATTACK ON THE 1989 STUDY**

In the decades since the publication of the 1989 Study, NHTSA has continued to examine UA through investigations, the evaluation of petitions for defect investigations, and studies of UA. None of these efforts has called the 1989 Study's conclusions into question.

Further, in May 1994, Wolfgang Reinhart, who had been the NHTSA lead investigator in the Audi 5000 investigation and other UA investigations, delivered a paper entitled "The Effect of Countermeasures to Reduce the Incidence of Unintended Acceleration Accidents" (Paper No. 94 S5 O 07) at the Fourteenth International Technical Conference on Enhanced Safety of Vehicles. This paper provided additional support for NHTSA's view that virtually all instances of traditional UA (defined as "high-powered unwanted vehicle acceleration from a

stationary position or very slow speed, accompanied by reportedly ineffective brakes” (*id.* at 821)) were due to pedal misapplications. The paper also confirmed that the BTSI remedy used in the Audi 5000 recall reduced UA incidents by approximately 60 percent.

More importantly, approximately ten years after the 1989 Study was issued, Sandy S. McMath, an attorney from Little Rock, Arkansas, filed a petition requesting NHTSA to “reopen its investigation into the phenomenon known as ‘sudden acceleration.’” 65 Fed. Reg. 25,026, 25,026 (Apr. 28, 2000). McMath made allegations about Ford’s conduct and the 1989 Study that are substantially similar to Plaintiffs’ claims here, and McMath relied on the same expert in support of his petition as the one that Plaintiffs proffered below. NHTSA denied McMath’s petition. *Id.*

But NHTSA did not deny McMath’s petition *summarily*. Rather, NHTSA conducted a thorough analysis of new information regarding UA that had been developed during the ten years that had passed since the publication of the 1989 Study, and reaffirmed the 1989 Study’s conclusions.<sup>5</sup>

NHTSA concluded that the EMI theory put forth by McMath (and by Plaintiffs here) “was addressed, and rebutted” in the 1989 Study. *Id.* at 25,030.

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<sup>5</sup> NHTSA’s list of the activities undertaken and the materials consulted in responding to McMath’s petition stretches to almost two and a half columns of a *Federal Register* page—close to three dozen bullet points. 65 Fed. Reg. at 25,027.

NHTSA also noted that the fact that there is no “credible evidence that simultaneous, undetectable electrical and mechanical cruise control system failures have resulted in a single [sudden acceleration incident] . . . supports the Study’s original finding that ‘the occurrence of such simultaneous, undetectable failures is virtually impossible.’” *Id.* at 25,037.

The trial court sought to sidestep NHTSA’s analysis of the McMath petition by mounting a lengthy attack on the work of Dr. Richard A. Schmidt, a human factors expert whose work was cited in the McMath petition denial. (R44:11962-71). Dr. Schmidt’s work, however, was just one of *many* resources cited by NHTSA in the McMath denial. His name is mentioned *six* times in the 11-page document (including two references to him in lists of resources and references), and NHTSA’s substantive discussion of Schmidt’s work occupies a mere four paragraphs. Moreover, the court’s attack on Schmidt ignores the fact that his work has been cited favorably by other agencies, such as the NTSB (*see* note 3, *supra* (citing studies)), and that the conclusion that pedal misapplications are responsible for the lion’s share of UA incidents has been confirmed repeatedly.

#### **IV. THE 1989 STUDY’S CONCLUSIONS HAVE BEEN VALIDATED BY NHTSA AND OTHER AGENCIES**

The 1989 Study’s conclusions have been vindicated repeatedly in the years since it was issued. Thus, in 2009, the NTSB—an agency that is completely independent from NHTSA—found that pedal misapplication explains a number of

high profile accidents. In one of the reports cited in note 3, above, the NTSB stated that “[i]nvestigations completed by other agencies have confirmed NHTSA’s findings that most sudden acceleration events are likely pedal misapplications.” NTSB, *Pedal Misapplication in Heavy Vehicles* (note 3, *supra*), at 3; *see also id.* at 6 (“To summarize, the majority of organizational efforts to understand [UA] have concluded that these events typically do not have a mechanical cause. . . . [P]edal misapplication remains the most likely reason for unintended acceleration events where no mechanical cause can be found.”).

And in an investigation of a highly publicized accident in which an out-of-control car raced through a farmer’s market in Santa Monica, California, the NTSB concluded that the vehicle’s driver mistakenly pressed the accelerator while he was out of position in his vehicle—a result that confirms NHTSA’s long-held conclusions about the role of pedal misapplications in UA incidents. *See* NTSB, *Rear-End Collision and Subsequent Vehicle Intrusion into Pedestrian Space* (note 3, *supra*).

The 1989 Study’s conclusions were validated again in 2011 when NHTSA announced the results of its ten-month study of potential electronic causes of unintended acceleration in Toyota vehicles. *See* NHTSA, *Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems* (Feb. 2011). At the same time, NHTSA also released a report prepared by NASA engineers with expertise in areas

such as computer-controlled electronic systems, EMI, and software integrity. In NASA's report, which NHTSA called "the most exacting study of a motor vehicle electronic control system ever performed by a government agency" (*id.* at vii), the NASA engineers assessed whether electronic systems or EMI played a role in incidents of UA in Toyota vehicles. See NASA Engineering and Safety Center, *Technical Support to the National Highway Traffic Safety Administration (NHTSA) on the Reported Toyota Motor Corporation (TMC) Unintended Acceleration (UA) Investigation* (Jan. 18, 2011).<sup>6</sup>

The primary focus of the NHTSA and NASA studies was on the electronic throttle control system in various Toyota vehicles. NHTSA did not find a vehicle-based cause of UA incidents other than the physical and mechanical interference issues that were being addressed by several Toyota recalls, and NASA found no credible evidence that the vehicles' electronics could cause the sort of large throttle openings that would be needed to create a UA incident.

A particularly noteworthy portion of NHTSA's analysis involved its analysis of pre-crash event data recorder ("EDR") data from vehicles in reported UA incidents. *NHTSA Toyota Pre-Crash EDR Field Inspections During March –*

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<sup>6</sup> Links to the public versions of these documents, and their appendices, can be found at <http://www.nhtsa.gov/UA> (last visited Feb. 28, 2012).

*August 2010* (Feb. 2011) (“EDR Study”) (*available at* <http://www.nhtsa.gov/UA> (last visited Feb. 28, 2012)).

[EDRs] are usually part of the air bag control module, and they are triggered to save data by a crash event in which an air bag is deployed or the sensors in the air bag system detect rapid deceleration or multidirectional acceleration. The records typically capture a few seconds of vehicle data before a crash, including vehicle speed, accelerator pedal position, throttle position, and brake switch position.

National Research Council, *The Safety Promise and Challenge of Automotive Electronics* at 41 (Transp. Research Bd. Special Rep. 308) (2012) (*available at* [http://www.nap.edu/catalog.php?record\\_id=13342](http://www.nap.edu/catalog.php?record_id=13342)) (last visited Feb. 28, 2012).

The EDR readouts that NHTSA examined showed that of the 40 UA incidents reviewed, 39 “turned out to be pedal misapplication – drivers placing their feet on the accelerator pedal rather than the brake immediately prior to impact,” and the other incident involved floor mat interference with the accelerator pedal. EDR Study at 22. These findings further confirm the overall conclusions of the 1989 Study, as well as the McMath petition denial.

The National Research Council (“Council”) report cited above (hereinafter “Council Report”) further validates the 1989 Study’s conclusion that the overwhelming majority of UA events like the one involving Plaintiffs here are the result of pedal misapplication. The Council is part of the National Academies of Sciences and plays a leading role in providing research and advisory services to the

government. In 2010, while investigating UA in Toyota vehicles, NHTSA asked the Council “to review investigations of unintended acceleration and to recommend ways to strengthen the agency’s safety oversight of automotive electronics systems.” Council Report, *supra*, at xii; *see also id.* at 17 (describing NHTSA request).

The Council appointed a distinguished multi-disciplinary committee, which launched an intensive examination of NHTSA procedures, investigations, and studies, as well as the practices of major manufacturers. *See id.* at xiii & 1 (describing inter-disciplinary committee); *see also id.* at 17 (describing study). Although the committee did not assess the 1989 Study’s testing of the electronics systems of 1980s-era cars (*id.* at 23), the committee did consider and *validate* the 1989 Study’s conclusion that “[a]bsent physical evidence of damaged or malfunctioning brakes, NHTSA has long concluded that complaints of [UA] involving reports of unexplainable loss of braking result from pedal misapplication and do not warrant examination for other causes. The committee finds this rationale to remain valid and relevant for NHTSA’s allocation of its investigative resources, but with the caveat that it should not preclude further consideration of vehicle-related factors that can prompt or contribute to pedal misapplication.” *Id.* at 2. The committee formally found that “*NHTSA’s rationale for attributing certain unintended acceleration events to pedal misapplication is valid.*” *Id.* at 115.

## CONCLUSION

Thus, the longstanding conclusions of NHTSA rejected by the trial court have been validated repeatedly both by NHTSA and numerous independent agencies. The trial court did not explain how Ford's communications with NHTSA in 1987—more than two decades ago—could have improperly influenced independent experts in *other* agencies and, indeed, in other *countries*, all of whom reviewed UA issues after 1987, and all of whom consistently concluded that the most common cause of UA is pedal misapplication. None of these other experts—including most recently NASA and the National Research Council—has ever found evidence that EMI can cause a large throttle opening in a vehicle, sustain it, and simultaneously cause the vehicle's braking system to fail. The trial court's findings are without any factual support, and its judgment should be reversed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail on this 12<sup>th</sup> day of March, 2012, to counsel listed on the attached service list.

  
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**CERTIFICATE OF TYPEFACE COMPLIANCE**

In compliance with Florida Rule of Appellate Procedure 9.210(2), counsel for *amicus curiae* certifies that this Brief is submitted in Times New Roman 14-point type.

  
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