

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PHILLIP A. TUTEIN, JR.,

PLAINTIFF,

V.

**FORD MOTOR COMPANY AND METRO
MOTORS S.C., INC.,**

DEFENDANTS.

SX-2010-CV-018

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Ford Motor Company (hereinafter "Ford") and Defendant Metro Motors S.C., Inc.'s (hereinafter "Metro" and together with Defendant Ford, "Defendants") motion *in limine* to exclude any reference to the vehicle owned by Defendants' witnesses and attorneys, filed on August 29, 2016.¹ Thereafter, Plaintiff Phillip Tutein, Jr.'s (hereinafter "Plaintiff") filed an opposition and Defendants filed a reply.

BACKGROUND²

On January 13, 2010, Plaintiff filed a complaint against Defendants for injuries Plaintiff sustained as the result of alleged defects in the vehicle he was driving on or about November 2, 2008. Plaintiff alleged that the vehicle was designed and manufactured by Defendant Ford and sold by Defendant Metro.

STANDARD OF REVIEW

It is not uncommon for parties to file and for the courts to rule on motions *in limine*³ prior to trial in this jurisdiction. *See e.g., Corriette v. Morales*, 50 V.I. 202, 203-04 (V.I. 2008) (noting that

¹ Defendants technically filed one single motion *in limine* seeking relief on various bases and filed separate memoranda of law in support of the independent relief requested. For the sake of clarity and efficiency, the Court will address and enter separate memorandum opinions and/or orders for each independent relief requested.

² This memorandum opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court's decision.

³ Black's Law Dictionary defines "motion *in limine*" as "[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial" and explains that, "[t]ypically, a party makes this motion when it believes that mere

the trial court ruled on the defendant's motions *in limine* prior to trial); *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 232 (V.I. 2013) (noting that the trial court ruled on the plaintiff's motion *in limine* at the beginning of the trial); *Creative Minds, LLC v. Reef Broad., Inc.*, ST-11-CV-131, 2014 V.I. LEXIS 81, *23 (Super. Ct. 2014) (the court denied the motion *in limine* prior to trial). In considering a motion *in limine*, there are certain situations where the court should defer ruling on an evidentiary issue, such as when the nature and/or relevance of the evidence is unclear before trial. However, if parties had the opportunity to fully brief an issue and the Court is able to make a definitive ruling, then it is practical for the Court to rule on the evidentiary issue raised in the pretrial motion *in limine* to avoid unnecessary interruptions during trial.

DISCUSSION

In their motion *in limine*, Defendants argued that "[a]ny reference to the vehicles owned by the parties' experts and attorneys is inadmissible because it is wholly irrelevant to any element of Plaintiff's case." Thus, Defendants requested the Court to grant their motion and exclude any reference to the vehicles owned by the parties' experts and attorneys." In his opposition, Plaintiff noted that, "[a]t the outset, Plaintiff has no intention of making any reference to the vehicles owned by Defendants' Witnesses and Attorneys." However, Plaintiff indicated that "if in fact these witnesses drive Ford vehicles and/or these vehicles were provided to them by Defendants, this goes to bias" and such references should not be excluded. In their reply, Defendants asserted that "[j]ust because a non-party might happen to drive a Ford vehicle of some sort does not show bias." Defendants pointed out that "Plaintiff has not identified any evidence or argument why a non-party who fortuitously happens to drive a Ford would offer biased testimony."

It appears that Defendants misunderstood Plaintiff's concern with regard to excluding all references to the vehicles owned by Defendants' witnesses and attorneys. Unlike what Defendants

mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard." Black's Law Dictionary, 10th ed. 2014.

suggested, Plaintiff did not assert that “[j]ust because a non-party might happen to drive a Ford vehicle of some sort” shows bias. Rather, Plaintiff is concerned that the vehicles—Ford vehicles or non-Ford vehicles—owned by Defendants’ witnesses were provided by Defendants for free or at a reduced price, in which case, he should be able to inquire into vehicles owned by Defendants’ witnesses to show bias. The Court agrees. The bias of a witness is always a relevant subject of inquiry. Accordingly, any testimony or evidence showing bias for, prejudice against, or interest in any person or matter that might cause the witness to testify falsely is relevant and therefore, admissible. Fed. R. Evid. 401⁴ (“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”); Fed. R. Evid. 402 (Relevant evidence is admissible unless provided otherwise in the United States Constitution, a federal statute, the Federal Rules of Evidence, or other rules prescribed by the Supreme Court of the United States.). However, on the other hand, if the vehicles owned by Defendants’ witness were not provided by Defendants for free or at a reduced price, then this evidence does not show witness bias, which makes the evidence irrelevant and therefore, inadmissible. Ergo, upon Plaintiff providing evidence to the Court that such bias exists for a particular witness or witnesses, the Court will allow Plaintiff to include reference to the vehicle(s) owned by that particular witness or witnesses for the limited purpose of showing potential bias. To be clear, Plaintiff is not permitted to include any reference to the vehicles owned by Defendants’ witnesses without first showing the Court that there is evidence of such bias.

As to Defendants’ request to exclude “[a]ny reference to the vehicles owned by the parties’...attorneys,” the Court finds this evidence irrelevant and therefore, inadmissible. An attorney is not a witness but an advocate for his/her client, and by the nature of that relationship, the attorney

⁴ Act No. 7161 repealed the Uniform Rules of Evidence and officially adopted the Federal Rules of Evidence to be used in the courts of the U.S. Virgin Islands. See *Simmonds v. People*, 59 V.I. 480, 502 (V.I. 2013).

expectedly has a bias towards his/her client. Thus, even if the vehicles owned by Defendants' attorneys were provided by Defendants, it is unnecessary for Plaintiffs to inquire at trial.

CONCLUSION

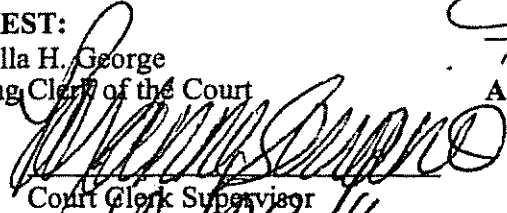
Based on the foregoing, the Court will grant in part and deny in part Defendants' motion *in limine* to exclude any reference to the vehicle owned by Defendants' witnesses and attorneys, filed on August 29, 2016. An order consistent with this memorandum opinion will follow.

DONE and so ORDERED this 27th day of December, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court

By:


Court Clerk Supervisor

Dated:

12/29/16


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court