

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION**

JOHN WITTEN TUNNELL,)	
Plaintiff,)	
)	
v.)	Case No. 4:03CV00074
)	
FORD MOTOR COMPANY,)	By: Michael F. Urbanski
Defendant.)	United States Magistrate Judge

REPORT AND RECOMMENDATION

This matter is before the court for report and recommendation on plaintiff's motion for default judgment based on defendant's discovery conduct in this case. Specifically, plaintiff contends that default judgment should be entered because defendant Ford: (1) Did not reveal in discovery that Jaguar automobiles used an inertia switch to shut off certain electrical functions, and (2) Has not produced any QFD documents related to electrical system source fires.

For the reasons set forth at the hearing on April 15, 2005, it does not appear that default judgment is an appropriate discovery sanction in this case at this time. It is recommended, therefore, that plaintiff's motion for default judgment be denied.

I

First, as regards the Jaguar issue, plaintiff had the opportunity to depose Gerard Lancaster, of Coventry, England, Senior Manager for Architecture and Diagnostic Systems for Jaguar Cars Limited of Coventry on December 13, 2002. At that deposition, plaintiff had the opportunity to take discovery directly from Jaguar regarding the inertia switch at issue and to inquire as to how such a system related to the issues in this case. See Lancaster Dep. at 57-58, 69, 87, 92 and 125-130. Further, later in December, 2002, Ford produced to plaintiff a CD Rom with electrical guides for Jaguar vehicles which

schematically outlined the operation of the inertia switch. Thus, Ford contends that plaintiff has had the Jaguar information since late 2002.

Despite this discovery, plaintiff contends that Ford's discovery responses were lacking, particularly given the fact that a document describing the on/off operation of the inertia switch was not produced in discovery. See Plaintiff's Appendix (Docket 381) at 15-16.

While the Lancaster deposition and subsequent production of Jaguar schematics makes it clear that the plaintiff had an opportunity to take discovery on the Jaguar inertia switch, the court does have some concern that the document found at plaintiff's Appendix (Docket 381) pages 11-17 was not produced in discovery in this case. As such, by separate Order, Ford will be required to produce to plaintiff by May 1, 2005 any documents in its possession, custody or control which refer or relate to the operation or characteristics of the inertia switch used on Jaguar motor vehicles. Ford further will be **ORDERED** to provide the Court with a description and certification, under oath, of its efforts undertaken to obtain any remaining responsive documents.

II

Second, as regards discovery of documents referring or relating to Ford's QFD (Quality Functional Deployment) analysis regarding electrical ignition of automobile fires, worldwide customer requirements and "No Fires" QFDs, counsel for plaintiff Tunnell provided examples of various documents which suggest that such QFD analysis existed. See, e.g., Plaintiff's Appendix (Docket 381) at 110, 116, 123, 125, 133, 136, 137, 140, 147, 152, 168. Further, Appendix page 152 indicates that:

The 'No Fires' QFD developed recently and is being used as the mechanism to determine if all customer wants are being satisfied by current test procedures and corporate vehicle requirements.

Plaintiff argues that this document establishes that such "No Fires" QFD documents must have existed. Plaintiff suggests that these documents go to the heart of the consumer expectations issue in this case, and that Ford's failure to produce them mandates a finding of default. Additional documents suggest that Ford has undertaken analysis of Worldwide Customer Requirements ("WCR") for fire prevention, see, e.g., Plaintiff's Appendix at 123, 183, 153-57. Plaintiff argues that despite references for WCR, no documents containing any analysis of WCR were produced by Ford.

For its part, Ford counters that QFD does not signify a document, but rather a tool used by engineers to ascertain what its customers may want. Ford indicates that six witnesses were deposed on this issue, and plaintiff was given an ample opportunity to discover information regarding QFD relating to electrical ignition of automobile fires. Both Ford's retained counsel and in-house counsel represented at the hearing that Ford has rigorously searched for and interviewed persons who may have any responsive QFD and WCR documents and that all such documents have been produced. Given these assurances by Ford, granting default judgment would be inappropriate. By separate Order, Ford will be required to make further efforts to locate any additional responsive documents.

III

The Clerk is directed immediately to transmit the record in this case to the Hon. Norman K. Moon, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to

within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk is directed to send a copy of this Report and Recommendation to all counsel of record.

ENTER: This 22nd day of April, 2005.

/s/ Michael F. Urbanski
UNITED STATES MAGISTRATE JUDGE

