JONES DAY

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AUTOMOTIVE ALERT: RECALL LETTER AND CORRESPONDENCE DO NOT SAVE DESIGN DEFECT CLAIMS AGAINST FORD FROM STATUTE OF LIMITATIONS

A federal judge recently dismissed claims that a vehicle was negligently designed, tested, and assembled, along with a claim that the manufacturer failed to warn or instruct users about a defect in vehicles. *See Rosario-Davila v. Ford Motor Co.*, 2009 U.S. Dist. LEXIS 102176 (D. P.R. Oct. 29, 2009). The case was dismissed pursuant to Rule 12(b)(6) on statute of limitations grounds.

The plaintiff claimed that he suffered second- and third-degree burns on his body and suffered other injuries after a ball of fire emerged from the area near the vehicle's steering wheel in January 2006. Although Ford sent a recall letter to the plaintiff in September 2007, the court found that "[t]he recall letter does not alter the accrual date," noting another decision finding that "product recall was irrelevant for accrual purposes when plaintiffs were put on notice of potential legal cause of action at time of injury." *Id.* at *7. The court also held that an extrajudicial letter sent to the manufacturer in September 2008 did not toll the statute of limitations because the one-year period had already run by the time the letter was sent. *See id.* Finally, the court rejected the plaintiff's argument that he was unable to bring the case until January 2007 because of the injuries suffered and, in any event, the claims would be barred where the lawsuit was not filed until April 2009. *Id.* at *7-8.

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