

SUPERIOR COURT OF DECATUR COUNTY
STATE OF GEORGIA

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CECILIA WILLIS
CLERK OF SUPERIOR COURT
DECATUR, GEORGIA
2012-1965

JAMES BRYAN WALDEN and
LINDSAY WALDEN, Individually and
on Behalf of the Estate of Their Deceased Son,
REMINGTON COLE WALDEN,

Plaintiffs,

vs.

CHRYSLER GROUP, L.L.C., and
BRYAN L. HARRELL,

Defendants.

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CIVIL ACTION

FILE NO. 12-02492

**COMPLAINT FOR PERSONAL INJURY AND WRONGFUL DEATH
AND DEMAND FOR JURY TRIAL**

Plaintiffs James Bryan Walden and Lindsay Walden, individually and on behalf of the estate of their deceased son Remington Cole Walden (collectively "Plaintiffs") file this Complaint for Personal Injury and Wrongful Death and Demand for Jury Trial against Defendants Chrysler Group, L.L.C. and Bryan L. Harrell (collectively "Defendants"), showing the following:

I. PARTIES, JURISDICTION, VENUE AND SERVICE OF PROCESS

1.

Plaintiffs James Bryan Walden and Lindsay Walden are the surviving parents of Remington ("Remi") Cole Walden. Plaintiffs Bryan and Lindsay Walden bring this action for wrongful death as the surviving parents of Remi Walden, pursuant to O.C.G.A. §§ 51-4-4 and 19-7-1 and other applicable law. Plaintiffs Bryan and Lindsay Walden bring this action for

personal injury as the Administrators¹ of the Estate of Remington Cole Walden pursuant to O.C.G.A. §§ 9-2-40 and 9-2-41 and other applicable law.

2.

Plaintiffs Bryan and Lindsay Walden live at 2813 Old Whigham Road, Bainbridge, Georgia 39817, are subject to the jurisdiction of this Court, and are deemed to be residents of the State of Georgia for purposes of venue and jurisdiction.

3.

Chrysler Group, L.L.C. (“Chrysler”) is organized and incorporated under the laws of Delaware, with its principal place of business located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. Chrysler is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in the State of Georgia, throughout the United States, and elsewhere.

4.

Chrysler is subject to the jurisdiction of this Court because it transacts business in this state and maintains a registered agent in this state. Chrysler is a foreign corporation that transacts business in Georgia. Chrysler maintains a registered agent in Georgia: The Corporation Company, 328 Alexander Street, Suite 10, Marietta, Georgia 30060. Chrysler may be served with legal process there.

¹ The Petition for Letters of Administration was filed on behalf of James and Lindsay Walden in the Probate Court of Decatur County on June 21, 2012. The Georgia Probate Court Standard Forms (“GPCSF”) require a four-week publication period in which heirs to Remington Walden’s estate may object to the appointment of James and Lindsay Walden as administrators. Because Mr. and Mrs. Walden are the estate’s only heirs, and are also the parties to be named as administrators, there is no heir who might object to their appointment. (Phrased differently, James and Lindsay Walden will not object to their own appointments as administrators.) Plaintiffs insert this footnote, however, to note that because the publication period has not yet expired, James and Lindsay Walden have not yet been formally confirmed as administrators. Plaintiffs anticipate that the formal confirmation will occur later in July 2012.

5.

Defendant Bryan L. Harrell (“Harrell”) is a resident of Decatur County, Georgia, and is subject to the personal jurisdiction and venue of this Court. Defendant Harrell’s permanent address is 208 Dollar Drive, Bainbridge, Decatur County, Georgia 39819. Defendant Harrell is currently incarcerated and may be served at the Decatur County Jail, 912 Spring Creek Road Bainbridge, Decatur County, Georgia 39817.

6.

Venue is proper in this Court and county as to all Defendants pursuant to O.C.G.A. § 14-2-510, § 40-12-3, § 9-10-93 as this is the county where the cause of action arose and thus where Defendant Chrysler is deemed to reside under § 14-2-510 and Defendant Harrell is deemed to reside under §§ 9-10-93 and 40-12-3. Venue is also proper as to all Defendants in this Court and county because this is an action against joint tortfeasors and may be brought against all Defendants in the county where any one of such Defendants is deemed to reside.

7.

Jurisdiction and venue are not proper, originally or by removal, in the U.S. District Court because complete diversity is lacking and because one or more of the Defendants are residents of Georgia.

II. OPERATIVE FACTS

8.

At approximately 3:45 p.m. on March 6, 2012, Emily Newsome was the driver and four year-old Remi Walden was the rear-seat passenger of a 1999 Jeep Grand Cherokee (“the subject Jeep Cherokee”). Remi was Emily Newsome’s nephew. Emily Newsome was driving Remi to tennis lessons on Old Quincy Road in Bainbridge, Decatur County, Georgia. She had stopped

the vehicle, activated the turn signal and was waiting for traffic to clear so that she could turn left onto Hubert Dollar Drive.

9.

At that time and place, traveling behind Emily Newsome, was Defendant Bryan Harrell. He was driving a 1997 Dodge Dakota. In operating his vehicle, Defendant Harrell negligently failed to keep a proper lookout ahead, was following too closely, and failed to keep his vehicle under control so as to prevent it from striking the rear of the subject Jeep Cherokee. As a result, Defendant Harrell's vehicle struck the rear of the subject Jeep Cherokee when the Jeep Cherokee slowed to a stop to make a left turn.

10.

As a result of that rear impact, which was foreseeable to Chrysler, the vulnerable, rear-mounted fuel tank on the subject Jeep Cherokee ruptured and failed allowing the release of gasoline. The gasoline ignited, and the subject Jeep Cherokee and Remi Walden were engulfed in flames.

11.

At the time of rear impact, Emily Newsome was properly seated and seat belted in the driver's seat, and Remi Walden was properly restrained in his booster seat in the back seat, directly behind the front passenger's seat.

12.

Consumed by the fire and smoke engulfing the Jeep Cherokee, Remi suffered extreme and conscious shock, terror, fright, physical and mental pain, suffering and injuries up until the time of his death. Numerous witnesses saw Remi struggling to escape and heard him screaming for help. Remi ultimately died from his injuries from the fire.

13.

Defendant Chrysler designed, manufactured, distributed, marketed and sold the subject Jeep Cherokee, including its fuel tank.

14.

In designing the subject Jeep Cherokee Chrysler located the fuel tank in a known crush zone - behind the rear axle, adjacent to the rear bumper and hanging down below the rear bumper. The fuel tank was thus located in an area which would foreseeably be crushed in a rear impact. Rear impacts are among the most common types of vehicular collisions. Chrysler knew of the dangers of locating a fuel tank in that crush zone, and Chrysler knew that in foreseeable rear impacts the fuel tank so located was dangerous. Defendant Chrysler also failed to properly protect the fuel tank to avoid ruptures like the one occurring here.

15.

The pain, suffering, injuries and death suffered by Remi Walden as described above were proximately caused by the tortious acts and omissions of Defendants, jointly and severally. The tortious acts and omissions of each Defendant, which in concert caused the personal injuries to, and wrongful death of Remi Walden, are described more fully and specifically in the paragraphs below.

III. CHRYSLER'S WILLFUL, WANTON AND RECKLESS DESIGN

16.

Since at least the 1960s and 1970s and its experience with fires in vehicles with rear-mounted tanks, and certainly at the time of the design and manufacture of the subject Jeep Cherokee and prior to this incident, Chrysler has had actual knowledge that placing a fuel tank in the vehicle's crush zone between the rear bumper and the rear axle, adjacent to and hanging

down below the rear bumper, renders the fuel tank highly vulnerable to failure, loss of fuel, and resulting post-collision fuel-fed fire in the event of a foreseeable rear-end collision from another vehicle.

17.

Chrysler has actual knowledge--based upon, among other things, its notice of other incidents involving its vehicles in the real world--that rear-end collisions in fact occur and that people are burned, maimed, and seriously injured when fuel ignites after fuel tanks are punctured in rear-end collisions.

18.

Despite knowing that the design and placement of a fuel tank in the crush zone between the rear axle and the rear bumper, adjacent to and hanging down below the rear bumper, greatly increases the risk of the post-collision fuel-fed fires and that such a design without doubt causes horrific fires, injuries and deaths, Chrysler consciously designed the fuel tank of the subject Jeep Cherokee to be located in the crush zone between the rear bumper and the rear axle.

19.

Because Chrysler knowingly placed the fuel tank in a known, vulnerable location that made it prone to being punctured, Chrysler also knew that the fuel tank as designed, placed and affixed would require substantial, additional, and effective protection to avoid failure in a rear-end collision.

20.

Chrysler knew or should have known that, having chosen a willful, wanton and reckless design in terms of placement and assembly of its fuel tank, it was required to take other design steps to guard against the dangers of that design.

21.

Despite knowledge of the need to guard and protect the dangerously placed and designed fuel tank from being ruptured in a rear-end collision, Defendant Chrysler knowingly designed the fuel tank and fuel tank assembly in the subject Jeep Cherokee with no effective protective device between the rear bumper and the fuel tank to properly protect or shield the fuel tank from failure in the event of a rear-end collision.

22.

Thus, after knowingly selecting a dangerous location for the fuel tank, Chrysler compounded its design error by failing to guard against the known consequences of that design.

23.

At the time of the manufacture of the subject Jeep Cherokee, Chrysler knew that its decision not to utilize effective external protective features to guard against failures of the fuel tank would increase the number and severity of post-collision fuel-fed fires in rear-end collisions. Chrysler also knew that deaths and injuries by fire would result from that decision.

24.

Chrysler's own documents going back to the 1960s and 1970s reflect Chrysler was aware of the need to redesign its vehicles to move the gas tank on Chrysler vehicles ahead of the rear axle and inside the frame rails to a "midship" location so as to "protect" the gas tank in a crash.

25.

Chrysler's own documents also reflect Chrysler's knowledge that "due care" required a midship tank location.

26.

As of the date of the subject incident, all of the passenger vehicles currently designed and sold by Chrysler have fuel tanks in the midship location for the protection and safety of occupants. Starting with the 2005 model, Chrysler moved the fuel tank in its Jeep Cherokee vehicles to the midship location ahead of the rear axle and inside the frame rails.

27.

Chrysler's former Mercedes-Benz affiliate boasted that location of the fuel tank on the Mercedes-Benz M class SUV ahead of the rear axle and inside the frame rails was a "secure location" where the fuel tank is "least vulnerable."

28.

Because Chrysler knowingly designed and placed the fuel tank for the Jeep Cherokee in an unreasonably dangerous location, Chrysler knew or should have known it was obligated to adequately warn consumers and the public of the danger of a catastrophic fire in the event of a rear-end collision.

29.

Because Chrysler elected not to include effective external protective devices to guard against the known danger of its fuel tank design, Chrysler knew or should have known it was obligated to adequately warn consumers of that election and of the danger of a catastrophic fire in the event of a rear-end collision.

30.

Despite the knowledge described above, Chrysler chose not to provide any adequate warnings to the consuming public in general, or the Walden/Newsome family in particular, of the danger of a catastrophic fire in the event a rear-end collision befell the Jeep Cherokee. Chrysler

has failed to provide such warnings since the date it first sold the subject Jeep Cherokee.

Chrysler has likewise failed to provide such warnings about any of its vehicles which had the same bumper-tank fuel system design.

31.

At the time of manufacture of the subject Jeep Cherokee, Chrysler knew or should have known of other technologically feasible, economically practicable, and fundamentally safer alternative designs for the fuel tank and fuel tank assembly of the Jeep Cherokee.

32.

At the time of manufacture of the subject Jeep Cherokee, Chrysler knew it was technologically feasible, economically practicable, and fundamentally safer to redesign the Jeep Cherokee to place the fuel tank in the "midship" of the vehicle, meaning that the fuel tank would be located inside the frame rails and ahead of the rear axle and away from immediate crush zones.

33.

At the time of manufacture of the subject Jeep Cherokee, Chrysler knew it was technologically feasible, economically practicable, and fundamentally safer to design the fuel tank assembly with an effective guard or other effective protective device that would reduce the likelihood of the fuel tank being punctured or crushed in the foreseeable event of a rear-end collision.

34.

Despite knowing that all of the safer alternative designs described in the paragraphs above were technologically feasible, economically practicable, and fundamentally safer at the time of manufacture of the subject Jeep Cherokee, Chrysler chose not to implement any of those

alternative designs in the subject Jeep Cherokee and instead chose a fuel tank location, fuel tank design, and fuel tank assembly design it knew would result in fires, injuries, and deaths in rear-end collisions.

35.

Despite the knowledge set forth in the paragraphs above, Chrysler continued to sell vehicles with that bumper-tank design and without adequate protective devices to the consuming public and to place such vehicles in the stream of commerce without a recall, or any effort to remedy the known danger, or any warning of the known danger.

36.

At the time of manufacture of the subject Jeep Cherokee and at all times since then, Chrysler has known that its vehicles will be involved in rear-end collisions at foreseeable speeds.

IV. LIABILITY OF DEFENDANTS

COUNT ONE

(Defendant Chrysler's Willful, Reckless, and/or Wanton Negligence)

37.

Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-36 above as if set forth fully herein verbatim.

38.

As set forth more fully in the facts above, Defendant Chrysler acted willfully, wantonly and recklessly in its negligent design of the subject Jeep Cherokee.

39.

Defendant Chrysler's willful, wanton, and reckless conduct proximately caused the injuries to, and death of, Remi Walden.

40.

Plaintiffs are entitled to recover damages from Chrysler pursuant to O.C.G.A. §§ 51-1-11 (c), 51-4-4, 51-4-5, 9-2-40, 9-2-41, and other applicable law.

41.

Defendant Chrysler is jointly and severally liable, along with the other Defendant, for Remi Walden's injuries and death.

COUNT TWO

(Defendant Chrysler's Failure to Warn)

42.

Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 41 as if set forth fully herein verbatim.

43.

As a manufacturer of vehicles distributed and sold to the public, Defendant Chrysler has a duty to warn the public adequately of, and remedy unreasonably dangerous conditions in, its vehicles.

44.

Chrysler's decision not to convey an adequate warning to consumers of the dangerous conditions in the subject Jeep Cherokee, or remedy those conditions, rendered the Jeep Cherokee defective and unreasonably dangerous to consumers. That misconduct also amounted to negligence.

45.

Chrysler failed to warn the public adequately of, and failed to remedy, the known defective and unreasonably dangerous conditions in the subject Jeep Cherokee, and thereby

breached its duty and obligation to the consuming public generally, including the Newsome/Walden family.

46.

Chrysler's failure to warn the public adequately of the known defective and unreasonably dangerous conditions in the subject Jeep Cherokee, and failure to remedy those conditions, proximately caused the injuries to, and death of, Remi Walden.

47.

Plaintiffs are entitled to recover damages from Chrysler pursuant to O.C.G.A. §§ 51-1-11 (c), 51-4-4, 51-4-5, 9-2-41, 9-2-42 and other applicable law.

48.

Defendant Chrysler is jointly and severally liable, along with the other Defendant, for Remi Walden's injuries and death.

COUNT THREE

(Negligence of Defendant Harrell)

49.

Plaintiffs incorporate by reference the allegations of Paragraphs 1-48 as if set forth fully herein verbatim.

50.

Defendant Harrell had a duty to exercise reasonable care in the operation of his vehicle in a manner so as to not cause harm or injury to other drivers on public roadways.

51.

Defendant Harrell breached his duty by failing to operate his vehicle in a safe and prudent manner by failing to keep a proper lookout ahead, by following too closely, and by

failing to keep his vehicle under control so as to avoid colliding with the rear of the subject Jeep Cherokee.

52.

Defendant Harrell's failure to exercise reasonable care caused the rear end collision to the subject Jeep Cherokee and, together with Chrysler's acts and omissions, proximately caused the wreck in which Remi Walden died.

53.

Plaintiffs are entitled to recover damages from Defendant Harrell pursuant to O.C.G.A. §§ 51-4-4, 51-4-5, 9-2-41, 9-2-42, and other applicable law.

54.

Defendant Harrell is jointly and severally liable, along with Defendant Chrysler, for the injuries to, and death of, Remi Walden.

IV. SPECIFIC DAMAGES CLAIMED

55.

Plaintiffs Bryan and Lindsay Walden, individually as the surviving parents of Remi Walden, claim general damages against all Defendants, jointly and severally, for the full value of the life of Remi Walden, both economic and intangible, pursuant to O.C.G.A. §§ 51-4-4 and 19-7-1.

56.

Plaintiffs, as Administrators of the Estate of Remi Walden, claim general damages against all Defendants, jointly and severally, for all elements of the pain and suffering, physical and mental, including shock, fright and terror, endured by Remi Walden from the time of the

incident up until the time of his death, in an amount determined by the enlightened conscience of the jury after hearing the evidence at trial.

57.

Plaintiffs, as administrators of the estate, also claim special damages for all medical expenses and funeral expenses incurred on behalf of the estates in an amount which reflects the reasonable value of those services and property as established by the evidence at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- 1) That summons and process issue requiring these Defendants to be served and appear as provided by law to answer the allegations of this Complaint;
- 2) that Plaintiffs have a trial by jury of all issues so triable;
- 3) that Plaintiffs have and recover all damages to which they are entitled under Georgia law, including but not limited to:
 - a) general damages for the full value of the life of Remi Walden, both economic and intangible;
 - b) general damages for all elements of the pain and suffering, physical and mental, including shock, fright and terror, endured by Remi Walden from the time of the incident up until the time of his death; and
 - c) special damages for all medical expenses, funeral expenses, and property damage incurred on behalf of his estates.
- 4) For such other and further relief as this Court deems just and appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY.

This 9th day of July, 2012.

Respectfully submitted,

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