

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates to:

Hon. Jesse M. Furman

Barthelemy, et al. v. General Motors LLC

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**DEFENDANT GM LLC'S STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Local Rule 56.1(a), defendant General Motors LLC ("GM LLC") respectfully submits the following Statement of Undisputed Material Facts:

1. At all times relevant to this lawsuit, Plaintiffs Dionne Spain and Lawrence Barthelemy were Louisiana residents. (2d Am. Compl. ¶ 8.)

2. Ms. Spain purchased a used 2007 Saturn Sky (the "Vehicle") from Banner Chevrolet in New Orleans, Louisiana in April 2013. (2d Am. Compl. ¶ 2; Ex. 1, Spain Dep. 40:2-14.)¹

3. On the night of January 24, 2014, Ms. Spain was driving westbound on Highway 90-Business West across the Crescent City Connection bridge when she was involved in an accident. (Ex. 2, State of Louisiana Uniform Motor Vehicle Traffic Crash Report (the "Crash Report").)

4. Mr. Barthelemy was riding in the passenger seat of the Vehicle at the time of the accident. (2d Am. Compl. ¶27.)

¹ Citations to Ex. are to Exhibits to the Affirmation of Nicholas F. Wasdin in support of GM LLC's Motion for Partial Summary Judgment.

5. Ms. Spain was driving approximately 40-45 miles per hour at the time of the accident. (Ex. 3, Statement of Dionne Spain to GoAuto Insurance Company, SPAIDM-MDL2543-MRC-03620 (the “Insurance Statement”); Ex. 1, Spain Dep. 122:3-123:1, 125:5-12; Ex. 4, Barthelemy Dep. 110:6-15.)

6. On the night of the accident, it was cold, raining, and icy on the bridge. (Ex. 2, Crash Report at SPAIDM-MDL2543-MRC-109-110; Ex. 5, Barthelemy Supplemental PFS at No. 40(h); Ex. 6, Spain PFS at No. 40(h); Ex. 7, Manuel Dep. 16:8-17:5; Ex. 8, Rankins Dep. 15:13-17; Ex. 1, Spain Dep. 107:12-16; Ex. 3, Insurance Statement.)

7. The responding police officer, David Kramer, testified that “it had been rainy conditions all day. And as the temperature dropped below freezing, the bridges usually ice up first,” and that “black ice” had formed on the Crescent City Connection bridge. (Ex. 9, Kramer Dep. 19:6-17, 25:11-26:15.)

8. Other drivers involved in accidents on the Crescent City Connection bridge the same night testified that the icy road conditions caused cars to slide. (Ex. 10, Philson Dep. 19:25-23:7, 28:18-29:3; Ex. 7, Manuel Dep. 16:8-17:5.)

9. Mr. Barthelemy testified that the car in front of plaintiffs began “swerving and sliding, like it was out of control.” (Ex. 4, Barthelemy Dep. 124:7-16.)

10. Ms. Spain told her insurance company that: “I was going about 40 something, [e]verybody was going slowly because it was raining . . . I [had] never driven on ice,” and “as we started going down the bridge, the car in front of me I noticed started to look like it was sliding and . . . [then] my car felt like it was sliding, it was like turning like the back part started turning” (Ex. 3, Insurance Statement.)

11. Ms. Spain testified that, after she saw the car in front of her sliding, she stepped on her brakes. (Ex. 1, Spain Dep. 127:10-18.)

12. Ms. Spain testified that, after applying her brakes, she “couldn’t stop” and “felt the car sliding.” (Ex. 1, Spain Dep. 129:19-130:1.)

13. Ms. Spain testified that her steering wheel “wasn’t locked up,” but it “wasn’t responding” to her steering inputs. (Ex. 1, Spain Dep. 131:14-132:1.)

14. After Ms. Spain lost control of the Vehicle, it began to rotate in a counterclockwise direction, and the front driver’s side of the Vehicle scraped the bridge. (Ex. 1, Spain Dep. 130:2-11; Ex. 4, Barthelemy Dep. 126:22-127:1, 127:18-25.)

15. The Vehicle did not hit another vehicle and no vehicle hit it during the accident sequence. (Ex. 1, Spain Dep. 186:2-17.)

16. The Vehicle came to rest “facing the oncoming traffic.” (Ex. 1, Spain Dep. 127:9; Ex. 3, Insurance Statement.)

17. Several cars in the lane next to Ms. Spain collided at or around the time of Ms. Spain’s accident. (Ex. 1, Spain Dep. 133:13-14, 136:18-25; Ex. 2, Crash Report at SPAIDM-MDL2543-MRC-108-111; Ex. 3, Insurance Statement.)

18. Ms. Spain testified that, after the Vehicle came to rest, plaintiffs were “looking at [a] pileup happening, like, right next to us.” (Ex. 1, Spain Dep. 133:13-14.)

19. Ms. Spain witnessed approximately 15 other accidents on the Crescent City Connection bridge that evening. (Ex. 1, Spain Dep. 133:21-24; Ex. 3, Insurance Statement.)

20. Officer Kramer “counted 39 cars involved in crashes in that mile and a half stretch of road.” (Ex. 9, Kramer Dep. 20:9-11.)

21. Officer Kramer testified that “while responding to this accident, [his] police car was involved in an accident.” (*Id.* at 19:18-19.) Officer Kramer testified that his police car was “rear-ended by an ambulance,” which Officer Kramer testified was “responding to the same accident.” (*Id.* at 19:19-21.)

22. Officer Kramer testified that, in his estimation, “every vehicle involved was exceeding the safe speed limit for driving on ice,” and that was the “root cause” of all of the crashes. (*Id.* at 40:2-8.)

23. Ms. Spain was able to drive the Vehicle away from the accident. (Ex. 1, Spain Dep. at 158:8-11.)

24. Mr. Barthelemy testified that he is “really not sure” whether the Vehicle experienced a “moving stall” or loss of “engine power” during the accident. (Ex. 4, Barthelemy Dep. 70:24-71:2.)

25. Ms. Spain claims that the Vehicle experienced a “moving stall” or loss of “engine power” during the accident. (Ex. 11, Spain Supplemental PFS at No. 44) When asked to “state each fact that supports that claim,” Ms. Spain stated only that: “Ms. Spain was the driver of the Subject Vehicle when it experienced a sudden loss of vehicular control.” (*Id.*)

26. Ms. Spain testified that she did not look to see what position the ignition switch was in after the accident. (Ex. 1, Spain Dep. 155:1-156:12.)

27. Ms. Spain did not tell the responding officer that the Vehicle had experienced a moving stall or loss of power steering or power braking during the accident. (Ex. 9, Kramer Dep. 31:25-32:11, 37:18-38:2; Ex. 1, Spain Dep. 166:25-168:6; Ex. 2, Crash Report at SPAIDM-MDL2543-MRC-00111.)

28. Ms. Spain testified that:

Q: So at any time, prior to this litigation, did you ever tell anyone that your car turned off at the time of the accident?

A: Not that I can remember, no. (Ex. 1, Spain Dep. 169:7-10.)

29. In Ms. Spain's medical records, one doctor reported on January 25, 2014, that Ms. Spain "slid on ice, spun around, hit divider, but no other vehicle hit her car." (Ex. 12, Tulane Medical Center records, SPAIDM-MDL2543-MRC-00245.)

30. Another of Ms. Spain's medical records, dated March 12, 2014, states Ms. Spain "had a MVA at the end of January when New Orleans was dealing with an ice storm - she slid on black ice." (Ex. 13, Ochsner Medical Center records, SPAIDM-MDL2543-MRC-01766.)

31. After the accident, Ms. Spain agreed with a representative from her insurance company that she slid on black ice during the accident. (Ex. 3, Insurance Statement.)

32. After the accident, Ms. Spain told a GM LLC customer service representative that: "the road is slippery due to the ice on the road. My vehicle was spinning and the front hit the bridge first and then the rear end." (Ex. 14, GM-MDL2543-300121584.)

33. The airbags in the Vehicle did not deploy during the accident. (2d. Am. Compl. ¶ 31.)

34. Plaintiffs' expert, Robert Caldwell, states in his report that: "[T]here is no CDR or other physical evidence to support that this crash was a deployment level event." (Ex. 15, Caldwell Rpt. at 10.)

35. Mr. Caldwell testified that "the [accident] severity was below that which you'd expect an airbag deployment." (Ex. 16, 11/20/15 Caldwell Dep. at 10:21-22.)

36. Mr. Caldwell agreed during his deposition that "the ignition switch played no role in bag deployment in the Barthelemy/Spain case." (Ex. 17, 9/15/15 Caldwell Dep. 84:12-85:23.)

37. Mr. Caldwell agreed during his deposition that “this accident would not have crossed the threshold for airbag deployment.” (*Id.* at 97:4-7.)

38. Mr. Caldwell testified at his deposition that the delta-v “was under the -- probably under the threshold that would have dictated bag deployment.” (*Id.* at 85:4-19.)

39. Mr. Caldwell testified that he has “no opinion as to whether a power loss occurred,” is not offering an opinion “that the ignition switch moved out of the run position at any time during the accident sequence,” and is not offering an opinion “whether anything related to the ignition switch caused a loss of control.” (*Id.* at 84:12-85:3.)

40. GM LLC did not manufacture the Vehicle. (2d Am. Compl. ¶ 354.)