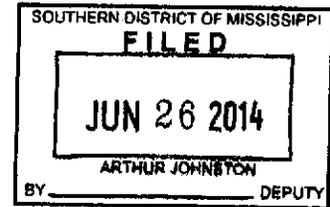


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



ELIZA JEAN SHOTWELL, as Guardian Ad Litem for
D.S. a minor child

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:14cv94 KS-MTP

GENERAL MOTORS, LLC

DEFENDANT

COMPLAINT FOR DAMAGES (JURY TRIAL REQUESTED)

COME NOW, ELIZA JEAN SHOTWELL, as Guardian ad Litem for D.S. a minor child, wrongful death beneficiary hereinafter sometimes referred to as Plaintiff, complaining of GENERAL MOTORS, LLC ("GM"), hereinafter sometimes referred to as Defendant, and for cause of action would respectfully show unto the Court and Jury as follows:

PARTIES

1. The Plaintiff ELIZA JEAN SHOTWELL, as Independent Executor of the Estate of Mary S. Bolton, Deceased and as Guardian ad Litem for D.S. a minor child is the adult resident citizen of Columbia, County of Marion, Mississippi.

2. D.S. is the only child of the decedent Mary S. Bolton, who resides with ELIZA JEAN SHOTWELL in Columbia, County of Marion, Mississippi.

3. The Defendant, General Motors LLC, (hereinafter "GM"), is a foreign corporation incorporated in the State of Delaware, having its principle place of business in the State of Michigan, and doing business in Mississippi.

4. This action is of a civil nature involving, exclusive of interest and costs, a sum in excess of Seventy Five Thousand Dollars (\$75,000.00). Every issue of law and fact herein is wholly between citizens of different states. As a consequence, jurisdiction is conferred upon this

Court pursuant to 28 D.S.C. § 1332. Venue lies in this Division pursuant to 28 U.S.C. § 1391(a)(2).

FACTS

5. Defendant General Motors design, assembles, manufactures, and sells its automobiles, or causes to be designed, assembled, manufactured and sold its automobiles, occupant restrain and protection systems, including but not limited to: airbags, surrounding interior and all component parts relating thereto, including electronic control module sensors (hereinafter collective referred to as the "airbag system"); steering mechanism, ignition system and ignition switch, restrain and protection systems, including the driver's seatbelt system in a 2006 Pontiac G6, which was operated by the deceased driver Mary S. Bolton.

6. Defendant General Motors designed, manufactured, advertised, marketed, sold and placed in the stream of commerce a 2006 Pontiac G6, Vehicle Identification No 1G2ZG558764135013 (hereinafter, the "Subject Vehicle").

7. On or about April 3, 2010, Mary S. Bolton, deceased, was driving the Subject Vehicle, own by her, on Hwy 43, heading north, near the intersection between Hwy 43 and Clear Creek Church Road, Marion County, Mississippi, when she lost control over the Subject Vehicle and was unable to make a right curve. The Subject Vehicle went off the Hwy 43, made an impact with an embankment, overturned and made an impact with trees. As a result of this foreseeable collision, Mary S. Bolton was ejected from the Subject Vehicle. The Subject Vehicle came to final rest facing west, in woodline on east side of Mississippi Hwy 43. Mary S. Bolton was found under the Subject Vehicle. Her body was lying underneath the Subject Vehicle and her feet were sticking out from the underneath the northern side of the Subject Vehicle. Mary S. Bolton was

killed in this fatal collision.

8. Because of the malfunction of steering mechanism, which was caused by defective ignition system and defective ignition switch, Mary S. Bolton was unable to steer the Subject Vehicle, to make a curve to the right, lost control of the Subject Vehicle, went off the Hwy 43 in the direction to the right of Hwy 43, Mississippi, collided with an embankment, then the Subject Vehicle overturned and made an impact with trees. (See Exhibit "A").

9. When the Subject Vehicle sustained severe impacts, with the embankment and later with trees, both front airbags of the Subject Vehicle failed to deploy and failed to protect Mary S. Bolton as it was designed to do and as a result of this malfunction, she was killed.

10. When the Subject Vehicle sustained severe impacts, with the embankment and later with trees, the Subject Vehicle's driver's seatbelt system malfunctioned because it failed to restrain Mary S. Bolton as it was designed to do.

11. As a result of this failure, Mary S. Bolton was ejected from the Subject Vehicle and killed.

12. General Motors designed, manufactured, marketed and sold the Subject Vehicle in a defective and unreasonable dangerous condition which rendered the vehicle unfit for its intended use, which defective and unreasonable dangerous condition was a proximate cause of Mary S. Bolton's death. The injuries and the death suffered by Mary S. Bolton in this collision were caused by inadequate and non-functioning safety equipment in 2006 Pontiac G6 as fully detailed in the Pontiac G6 Safety Recall (see Exhibit "B").

13. As a direct and proximate result of the failure of safety equipment and/or defective vehicle design, Mary S. Bolton was killed in this fatal collision. As a result, Plaintiff suffered

conscious pain and suffering of Plaintiff's decedent; loss of companionship; emotional distress; medical expenses; punitive damages; burial and funeral expenses.

14. Defendant General Motors was aware of the specific defects in the manufacture and design of the Subjected Vehicle. In fact, General Motors issued a recall of the vehicle for the defects which caused Plaintiff's injuries. The recall regarding defective steering power and defective ignition system and defective ignition system switch occurred only in March 2014, 4 years after the collision described herein. (See Exhibit "B"). Although a Safety Recall regarding other defects occurred before this fatal accident, the Defendant General Motors kept putting defective vehicles in the stream of commerce.

15. Defendant General Motors fraudulently concealed the defects in the 2006 Pontiac G6 in question from the knowledge of Mary S. Bolton. Mary S. Bolton was the driver, who was also the owner of Subject Vehicle, exercising reasonable diligence, could not have, nor did discover the defect of steering mechanism and other defects set in this complaint before the collision described herein.

16. Upon information and belief, one or more class action lawsuits have been filed for the cause of action described herein. This has suspended the applicable statute of limitations.

COUNT ONE-DESIGN DEFECT & STRICT LIABILITY

17. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

18. The Subject Vehicle was originally designed, manufactured and sold by the Defendant General Motors, LLC. Defendant General Motors, LLC is in the business of manufacturing and selling vehicles, as well as the ignition system, ignition system switch,

steering system, airbag system and seatbelt system with which the Subject Vehicle was equipped.

19. At the time the Subjected Vehicle was designed, manufactured and sold to dealers by the Defendant General Motors, and then sold to the general public, the same was defective in design, unreasonably dangerous and unfit for its intended use as a passenger vehicle, as a result of:

- a) Designing, assembling, manufacturing, selling, supplying, and distributing an airbag, ignition, steering, and seatbelt systems in a defective condition;
- b) Designing, assembling, manufacturing, selling, supplying, and distribution an airbag, ignition, steering and seatbelt systems which were unreasonably dangerous to users;
- c) Designing, assembling, manufacturing, selling, supplying, and distribution an airbag, ignition, steering and seatbelt systems that was not safe for its intended uses an purposes;
- d) Designing, assembling, manufacturing, selling, supplying, and distribution an airbag, ignition, steering and seatbelt systems which lacked the necessary features to make it safe for its intended use and purpose so that it would provide adequate protection to the driver in a frontal or near frontal crash;
- e) Designing, assembling, selling, supplying, and distribution an airbag, ignition, steering and seatbelt systems which lacked adequate warnings;
- f) Violating Applicable State, Local and industry standards;
- g) Failing to adequate and properly test Subject Vehicle and/or airbag, ignition, steering and seatbelt systems after its design and/or assembly;
- h) Failing to insure that ultimate end users of the Subject Vehicle and/or airbag, ignition, steering and seatbelt systems were adequately protected in the event of a front-end or other collisions;
- i) Failing to investigate, retain and analyze prior accident information in order to warn and/or notify ultimate users of an airbag, ignition, steering and seatbelt systems design defects and dangers and avoid subsequent accidents;
- j) Failing to properly design the seatbelt restrain system allowing and permitting

during a foreseeable collision the body of Mary S. Bolton to be violently thrown out of the driver's side of Subject Vehicle and to be ejected from the Subject Vehicle upon the impact with embankment and/or a trees;

k) Failing to provide for adequate torso restraint during a foreseeable collision.

20. The said defective conditions were never remedied by the Defendant General Motors, and the defective and unreasonably dangerous conditions of the Subjected Vehicle were a proximate cause of Plaintiff's injury, which makes the Defendant, General Motors, strictly liable.

COUNT TWO-BREACH OF EXPRESS AND IMPLIED WARRANTIES

21. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

22. Prior to the date of the subject matter incident, April 3, 2010, the Defendant, General Motors, placed said automobile into the stream of commerce, thereby creating express warranties and implied warranties of merchantability and implied warranty of fitness for a particular and ordinary purpose for which the automobile was to be used, and further, represented said automobile was designed, constructed, manufactured, assembled and/or sold by the Defendant, General Motors, in a careful and safe manner and that the automobile was free from all defects. The deceased, Mary S. Bolton relied upon these express and implied warranties of the Defendant, General Motors. Contrary to said express and implied warranties of the Defendant, General Motors, breached express and implied warranties, or one or more of them, which said breach or breaches, prior to the date of the subject incident April 3, 2010, directly and proximately caused Plaintiff's injury.

COUNT THREE-DESIGN AND USE DEFECT & FAILURE TO WARN

23. Plaintiff reaffirms and incorporates by reference all allegations previously set forth

herein.

24. Both prior to and subsequent to the sale of the Subject Vehicle, Defendant General Motors designed and marketed the vehicle by heavily promoting its supposed safety advantages, yet never provided consumers with warning as to the deficiencies in the airbag system, seatbelt system, steering system design, or ignition system, including the defective design of the airbag system, seatbelt system, ignition system and steering system utilized by Defendant General Motors.

25. Defendant General Motors failed to give adequate and proper warning and instructions regarding the danger of one or more of the following:

- a) That the Subject vehicle's airbag would not deploy after a foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- b) That the Subject vehicle's sensor mechanism would not trigger deployment of the airbag after a foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- c) That the steering system's power could suddenly go off and cause the crash of the Subjected vehicle;
- d) That the Subject Vehicle's seatbelt system would fail to adequately restrain the driver from being ejected from the Subject Vehicle after a foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- e) That Defendant General Motors knew from testing conducted by itself and/or other motor vehicle entities that the Subject Vehicle's airbag would not deploy after a foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- f) That Defendant General Motors knew from testing conducted by itself and/or other motor vehicle entities that the Subject Vehicle's sensor mechanism would not trigger deployment of the airbag after foreseeable and appropriate frontal or near frontal impact, including subject accident;
- g) That Defendant General Motors knew from testing conducted by itself and/or

other motor vehicle entities that the Subject Vehicle's seatbelt system would fail to adequately restrain Mary S Bolton from being ejected from the Subject Vehicle after a foreseeable an appropriate frontal or near frontal impact;

- h) That Defendant General Motors knew that it has not conducted testing which would reasonably have shown that he Subject Vehicle's airbag would not deploy after foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- i) That Defendant General Motors knew that it has not conducted testing which would reasonably have shown that the Subject Vehicle's sensor mechanism would not trigger deployment of the airbag after a foreseeable and appropriate frontal or near frontal impact, including the subject accident;
- j) That Defendant General Motors knew that it had not conducted testing which would reasonably have shown that the Subject Vehicle's seatbelt system would fail to adequately restrain Mary S. Bolton from being ejected from the Subject Vehicle after a foreseeable and appropriate frontal or near frontal impact.

26. Such negligent failure to warn and failure to adequately warn directly and proximately caused the Plaintiff's injury.

COUNT FOUR-NEGLIGENCE & NEGLIGENCE PER SE

27. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

28. Defendant General Motors committed acts of omission and commission, which collectively and severally, constituted negligence, which negligence was a proximate cause of Plaintiff's injury.

29. Defendant General Motors breach its duty by:

- a) Failing to design and manufacture and sell, or failing to cause to be designed and manufactured, the Subject Vehicle and its airbag system in such a manner so that the Subjected Vehicle's air bag would deploy upon moderate to severe frontal and near frontal crashes that exceed the predetermined deployment of the airbag;
- b) Failing to integrate into the design of the Subject Vehicle and/or airbag system

the appropriate sensor attachments which would facilitate and ensure deployment of the airbag;

- c) Failing to manufacture the subject airbag system without manufacturing defects;
- d) Failing to manufacture the subject airbag system without manufacturing defects in the sensor mechanism;
- e) Failing to design, manufacture and sell the Subject Vehicle without providing a safe and adequate occupant restrain system to keep the driver properly protected in a foreseeable collision;
- f) Failure to properly locate the sensor and/or triggering mechanism for deployment of the airbag;
- g) Failing to provide sufficient warning as to the reasonably foreseeable danger intended in the use or operation of the Subject Vehicle and/or airbags;
- h) Failing to test and/or inspect the Subject Vehicle and/or its airbags to determine whether the subject Vehicle and/or airbags could be used for its intended purpose and deploy as designed;
- i) Failing to properly install the airbag system and/or sensor in the Subject Vehicle;
- j) Failing to exercise due and reasonable care under the circumstances in view of the foreseeable danger and foreseeable accidents and injuries that could occur as a result of using or operating the Subject Vehicle and/or airbags;
- k) Designing, manufacturing and/or distributing certain component parts of the Subject Vehicle, including certain safety devices know as airbags, ignition system, steering system, seatbelt system which were improperly designed, manufactured, distributed, installed and maintained;
- l) Carelessly and negligently creating and allowing a dangerous condition to exist by failing to properly install the airbags and/or sensor, ignition system, steering system, seatbelt system in the Subject Vehicle;
- m) Failing to properly design the seatbelt system by allowing and permitting, during a foreseeable collision, the body of Mary S. Bolton upon impact with embankment and/or the tree be violently ejected from the Subject Vehicle;
- n) Failing to properly design the seatbelt system to provide for adequate torso restrain during a foreseeable collision;

- o) Negligently designing the airbag system and its components in the 2006 Pontiac G6;
- p) Negligently designing the seatbelt system in the 2006 Pontiac G6.
- q) Negligently designing the power steering system in the 2006 Pontiac G6;
- r) Negligently designing the ignition system in the 2006 Pontiac G6;
- s) Failing to recall the vehicle in a timely manner.

30. General Motors is guilty of negligence per se due to the fact that it violated Federal Statute with regard to the vehicle at issue, including specifically the legislative mandate of the United States Chapter 301, Motor Vehicle Safety, which are regulations to which manufactures of motor vehicles, including General Motors, must conform and certify compliance. General Motors specifically provided notification to the national Highway Safety Traffic Administration of its non-compliance with federal Motor Vehicle Safety Standard 201. Under 49 U.S.C. § 30112(a), it is illegal for anyone, including an auto manufacture like General Motors to sell an item of equipment or vehicle that fails to comply with all applicable Federal Motor Vehicle Safety standards. General Motor's admission and notification of its non-compliance is what resulted in the non-compliance Safety Recall.

31. Plaintiff further pleads doctrine of res ipsa loquitur.

32. All previously mentioned acts of negligence were a proximate and producing cause of the injuries and damages suffered by the Plaintiff. The dangers were reasonably foreseeable or scientifically discovered by the Defendant prior to sale and/or the subject incident.

COUNT FIVE-WILLFUL, WANTON, RECKLESS AND MALICIOUS CONDUCT

33. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

34. Defendant General Motors committed acts of omission and commission, which collectively and severally, constituted willful, wanton, reckless and malicious conduct and/or gross negligence, all of which was a proximate cause of Mary S. Bolton's wrongful death. General Motor's action constitutes fraud.

COUNT SIX-STATUTE OF LIMITATIONS

35. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

36. All applicable statute of limitations should be tolled by Defendant General Motors knowing and active fraudulent concealment and denial of the facts alleged herein. Mary S. Bolton did not discover, and did not know of facts that would have caused a reasonable person to suspect, that General Motors did not report information within their knowledge of federal authorities (NHTSA) or consumer, nor would a reasonable and diligent investigation have disclosed General Motors had information in their possession about the existence and dangerousness of the defect and opted to conceal that information.

37. Defendant General Motors was under a continuing duty to disclose to NHTSA, Mary S. Bolton and other consumers the true character, quality, and nature of the Defective Vehicles; that this defect is based on dangerous, inadequate, and defective design and/or substandard material; and that it will require repair, poses a severe safety concern, and diminishes the value of

the Defective Vehicles.

38. Because of the active concealment by Defendant General Motors, any and all limitations period otherwise applicable to Plaintiff's claim should be tolled. Further, class actions addressing these issues have been filed. These class actions serve to suspend or toll the applicable statute of limitations.

COUNT SEVEN-DAMAGES

39. Plaintiff reaffirms and incorporates by reference all allegations previously set forth herein.

40. As a direct and proximate result of the wrongful acts of the Defendant as set forth hereinabove, Plaintiff is entitled to recover damages for the wrongful death of her loved one, Mary S. Bolton. As a result of the untimely and wrongful death of Mary S. Bolton, Plaintiff is entitled to recover for the following damages caused by Defendant's wrongful acts:

- a) the loss of Ms. Bolton's future earnings;
- b) the loss of Ms. Bolton's household and childcare services;
- c) the loss to S.D. of her mother's society, companionship, instruction, training and guidance;
- d) the loss to S.D. of her mother's love and affection
- e) the funeral and burial expenses; and
- f) the cost of administration of Ms. Bolton's estate.

41. Plaintiff further states that the actions of the Defendant in the defective design, manufacturing, inspecting, testing, distribution, and sale of the product in an unreasonably dangerous condition; and in the negligence also associated therewith; and in its intentional failure

to correct the defects and to warn of the defects and of the hazards resulting from the design and/or manufacture of the defective product, and the use of the defective product, and in its failure to take action promptly to correct these defects, constituted actual malice and gross negligence which evidences a willful, wanton and reckless disregard for the safety of others, including the decedent, Mary S. Bolton, and punitive damages should be awarded.

JURY TRIAL

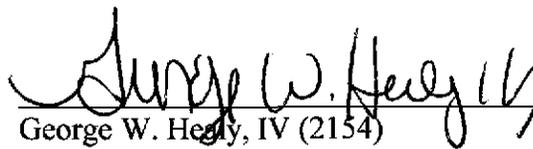
42. The Plaintiffs demand a trial by jury on all issues.

43. Plaintiffs affirmatively state that they each place in controversy a sum in excess of \$75,000, exclusive of interest cost.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that the jury selected to hear this case render a verdict for the Plaintiff, and against the Defendant, General Motors, including but not limited to pre-judgment interest, post-judgment interest, compensatory damages, punitive damages, attorney's fees, in a sum excess of \$75,000.00 (exclusive of interest and cost) per client, and any and all other relief the Court may deem appropriate. Plaintiff reserves her right to opt in or opt out of any applicable class action filed in this cause.

Respectfully submitted this the 24th day of June, 2014.

BY ELIZA JEAN SHOTWELL, as Guardian Ad Litem for D.S. a minor child



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