

FEB 13 2017

JULIA S. DUDLEY, CLERK
BY: 
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLARENCE EDWARD WHITAKER,)
Individually and as Executor)
of the Estate of Shannon Marie Whitaker,)
a/k/a Shannon Hill Whitaker,)
Deceased, and as Personal Representative)
of the Heirs and Next of Kin of)
Shannon Marie Whitaker, a/k/a)
Shannon Hill Whitaker, Deceased)
36 Seventh Street, N.W.)
Pulaski, VA 24301)

Plaintiff,)

vs.)

HYUNDAI MOTOR COMPANY,)
A Foreign Corporation)
231 Yangjae-Dong, Seocho-Gu,)
Seoul, Korea 02-3464-1114)

and)

HYUNDAI MOTOR AMERICA, INC.)
A California Corporation)
10550 Talbert Avenue)
Fountain Valley, CA 92708)

Defendants.)

CIVIL ACTION NUMBER: 7:17CV55

JUDGE

COMPLAINT

(Jury Demand Endorsed Hereon)

Plaintiff, Clarence Edward Whitaker, Individually, as parent, natural guardian, and next friend of two minor children, and as Executor of the Estate of Shannon Marie Whitaker, deceased, alleges as follows:

PARTIES

1. Plaintiff, Clarence E. Whitaker, is, and has been at all times mentioned in this Complaint, a resident of Pulaski County, Commonwealth of Virginia.

2. Plaintiff Clarence E. Whitaker is the surviving spouse and duly appointed Executor of the Estate of Shannon Marie Whitaker, deceased.

3. Plaintiff Clarence E. Whitaker is, and has been at all times pertinent hereto, the father, natural guardian and next friend of the two minor children of Shannon M. Whitaker, deceased, all of whom have been at all times pertinent hereto, residents of Pulaski County, Commonwealth of Virginia.

4. Defendant Hyundai Motor Company (hereinafter "HMC") was and is a foreign corporation authorized to do business and doing business in the Commonwealth of Virginia, with its principal place of business at 231 Yangjae-Dong, Seocho-Gu, Seoul, Korea 02-3464-1114.

5. Defendant Hyundai Motor America, Inc. (hereinafter "HMA") was and is a California corporation with its principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708. Defendant HMA, at all times pertinent hereto, conducts business throughout the Commonwealth of Virginia.

6. Defendant HMA was and is a wholly owned subsidiary of Defendant HMC, which HMC formed and organized as its exclusive sales, marketing, and distribution entity for, *inter alia*, the sale and servicing of Hyundai motor vehicles in the United States.

JURISDICTION AND VENUE

7. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §1332, *et seq.* and Federal Rule of Civil Procedure 8 (a) (1). Venue is proper in this Court because a substantial part of the events giving rise to the claims set forth herein occurred in Pulaski County, Virginia.

FACTUAL ALLEGATIONS

8. On or about March 24, 2015, Plaintiff Clarence E. Whitaker and his wife, Shannon M. Whitaker (a/k/a Shannon Hill Whitaker), purchased a 2007 Hyundai Santa Fe, bearing vehicle identification number 5NMSH13E57H041555 (hereinafter "the subject vehicle") from Motor Mile Kia (a/k/a Shelor Motor Mile, Inc.) in Christiansburg, Virginia, a dealer authorized by HMA to sell Hyundai motor vehicles designed, manufactured and/or assembled by HMC and distributed by HMA for sale to consumers throughout the United States of America, including throughout the Commonwealth of Virginia.

9. The subject vehicle was sold in Virginia as a new vehicle in 2007. Clarence and Shannon Whitaker purchased the subject vehicle from the dealer as a used vehicle without substantial modification or alteration of its original condition, save for normal wear and tear.

10. On or about October 16, 2015, with the subject vehicle's engine turned off, and the ignition key removed from the ignition cylinder, the subject vehicle rolled forward from the driveway of the Whitaker residence, located at 36 Seventh Street, N.W. in Pulaski, Virginia, ultimately rolling up against the side of the Whitaker residence before coming to a stop.

11. At the sound of the vehicle striking their home, the two minor children of Clarence and Shannon Whitaker came out of their house and discovered their mother, Shannon Whitaker, trapped between the driver's door and the frame of the subject vehicle, with her torso and lower extremities outside of the vehicle and a portion of her upper body, including her neck and head, trapped between the car door and the vehicle frame.

12. The minor children called 911 to summon emergency personnel, then called their father, Plaintiff Clarence E. Whitaker, who arrived home approximately 15 minutes later to find

rescue personnel attempting to free his wife who was, by that time, determined to have been deceased.

13. Shannon M. Whitaker was born on November 23, 1972, and died on October 16, 2015.

14. Her cause of death was asphyxia due to torso compression by the subject motor vehicle.

15. At the time of the incident described hereinabove (“the subject incident”), the ignition key had been removed from the ignition cylinder, the ignition cylinder was in a position other than “LOCK”, and the gear shift selector was in a position other than “Park”.

16. Notwithstanding the fact that the ignition key had been removed from the ignition cylinder and the engine was off, the subject vehicle rolled forward as a result of the force of gravity, dragging Shannon Whitaker, until the vehicle came to a forceful stop against the side of the Whitaker residence with the driver’s side door crushing Shannon Whitaker’s upper body, neck and head between the driver’s side door and the subject vehicle’s frame, including the B-pillar.

17. Shannon Whitaker was determined to be dead at the scene by the County of Pulaski, Virginia Regional Emergency Medical Services.

18. By letter dated April 15, 2009, Defendant HMC notified the National Highway Traffic Safety Administration that it was conducting a safety recall (NHTSA Recall No. 09V122) to replace the stop lamp switches on certain of its vehicles, including the 2007 Hyundai Santa Fe, but HMC failed to include the subject 2007 Hyundai Santa Fe bearing VIN 5NMSH13E57H041555 in the recall.

19. According to the Recall Notice, and the results of the defect investigation conducted by the National Highway Traffic Safety Administration, the failure of the stop lamp switch could cause, *inter alia*, “interference with proper functioning of antilock brakes . . .and inability to move the gear shift lever out of park position.”

20. In March and April, 2013, Defendants HMC and HMA (hereinafter “the Hyundai Defendants”), through the Hyundai-Kia America Technical Center, Inc., issued another safety recall (13V-113, a/k/a 13-01-021 internally) because of a potentially malfunctioning stop lamp switch, which “when the ignition is in the ‘ON’ position, the transmission shifter may be able to be moved out of Park without first applying the brake. This may lead to unintentional movement of the car which may increase the risk of a crash.”

21. The safety recall in 2013 only applied to Hyundai Santa Fe vehicles manufactured after April 1, 2007 and thus did not include the subject vehicle, bearing VIN 5NMSH13E57H041555 which was manufactured and produced for distribution in October, 2006.

22. The subject vehicle was not included in, or subject to, either the 2009 safety recall to replace the defective stop lamp switch, or the 2013 safety recall to replace the defective stop lamp switch.

COUNT I

23. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 22 as if fully rewritten herein.

24. The Hyundai Defendants negligently designed, manufactured, assembled, distributed and placed into the stream of commerce, the subject 2007 Hyundai Santa Fe vehicle, bearing VIN 5NMSH13E57H041555 (“the subject vehicle”), specifically marketing and selling said vehicle through Defendants’ authorized dealer network to consumers in the Commonwealth of Virginia.

25. The subject vehicle was defective and unreasonably dangerous for its ordinary and foreseeable use and in violation of Federal Motor Vehicle Safety Standards and industry customs and standards in that the ignition key could be removed from the ignition cylinder in a cylinder position other than “LOCK” and in that the ignition key could be removed from the ignition cylinder with the gearshift selector in a position other than “Park” and in that, with the ignition key removed from the ignition cylinder, the shift selector could be moved from the “Park” detent to any other gearshift locator position and the gearshift selector could be moved from the “Park” detent without actuation of the brake transmission shift interlock (“BTSI”).

26. By reason of the foregoing defective and unreasonably dangerous conditions of the subject vehicle as described in the preceding paragraph, the Hyundai Defendants breached their duty to foreseeable users and consumers such as, and including, Plaintiff Clarence Whitaker and his deceased spouse, Shannon Whitaker, of the subject vehicle to exercise that degree of ordinary and due care owed by a reasonable manufacturer to provide a motor vehicle which was reasonably safe for its intended and foreseeable uses.

COUNT II

27. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 26 as if fully rewritten herein.

28. By reason of the defective and unreasonably dangerous conditions as set forth hereinabove, the Hyundai Defendants breached their implied warranties of merchantability and fitness for a particular purpose to all foreseeable consumers of the subject vehicle, specifically including Plaintiff Clarence Whitaker and his deceased spouse, Shannon Whitaker, in that the subject vehicle was not reasonably safe and fit for its ordinary and/or foreseeable purposes, and that it was not of merchantable quality.

COUNT III

29. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 28 as if fully rewritten herein.

30. The Hyundai Defendants knew or should have known of the defective and unreasonably dangerous conditions described hereinabove and hereafter, but failed to warn foreseeable users and consumers, including specifically Plaintiff Clarence Whitaker and his deceased spouse, Shannon Whitaker, of the dangers, risks and hazards associated with the foreseeable use and operation of the subject vehicle.

COUNT IV

31. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 30 as if fully rewritten herein.

32. The Hyundai Defendants knew that the subject 2007 Hyundai Santa Fe incorporated, at the time of manufacture, sale, and distribution to Clarence Whitaker and Shannon Whitaker incorporated a defective and unreasonably dangerous stop lamp switch, the failure of which was known by Defendants HMC and HMA to affect the function of the

transmission shift lever and the brake transmission shift interlock (“BTSI”), including the potential for unintentional movement of the car.

33. Despite the issuance of two safety recall campaigns relating to the defective stop lamp switch in the 2007 Hyundai Santa Fe, Hyundai failed to include in such recalls the owner of the subject 2007 Hyundai Santa Fe, Clarence and Shannon Whitaker, or any prior owner of said vehicle. Moreover, the Hyundai Defendants failed to notify the dealer, including its service technicians, of the application of the safety recall campaigns relating to the defective stop lamp switch, to apply the safety fix for such defect to the subject vehicle, even though the vehicle was sold to Clarence and Shannon Whitaker by Hyundai’s authorized dealer, Motor Mile Kia, nearly two years after the issuance of the second safety recall.

34. The Hyundai Defendants failed to give adequate warning to Plaintiff Clarence Whitaker and his deceased spouse, Shannon Whitaker of the existence and potential consequences of the defective stop lamp switch which had been incorporated into the design and manufacture of the subject vehicle.

COUNT V – PROXIMATE CAUSE

35. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 34 as if fully rewritten herein.

36. The Hyundai Defendants’ breach of their duty to exercise ordinary care to design, manufacture, distribute and sell a product that is reasonably safe for the purpose for which it is intended was a direct and proximate cause of the catastrophic failures of the ignition and transmission systems of the subject vehicle described hereinabove and of the fatal injuries, wrongful death, damages and loss arising, including decedent’s conscious pain and suffering, out

of the subject incident in which Plaintiff's decedent, Shannon Whitaker, died on October 16, 2015 in Pulaski, Virginia.

37. The fatal injuries and wrongful death of Plaintiff's decedent, Shannon Whitaker, and the damages and loss, including conscious pain and suffering resulting therefrom, are a direct and proximate result of the Hyundai Defendants' breaches of their warranties that the subject vehicle was reasonably fit and safe for its ordinary and/or foreseeable purposes and of merchantable quality throughout.

38. The fatal injuries and wrongful death of Shannon Whitaker and the damages and loss, including conscious pain and suffering resulting therefrom, are a direct and proximate result of the Hyundai Defendants' failure to include the subject vehicle in their two safety recall campaigns of 2009 and 2013, by reason of which negligence, the subject vehicle's original stop lamp switch was not replaced before it was sold by Motor Mile Kia (a/k/a Motor Mile Kia, LLC, a/k/a Shelor Motor Mile, Inc.) to Plaintiff Clarence Whitaker and Plaintiff's decedent Shannon Whitaker on or about March 24, 2015.

39. The Hyundai Defendants knew or should have known that the subject vehicle was designed, manufactured, distributed and sold with a defective stop lamp switch, but nevertheless, failed to give any warning to potential users and consumers of all 2007 Hyundai Santa Fe vehicles. Such failure to warn all such users and consumers, including Plaintiff Clarence E. Whitaker and Plaintiff's decedent Shannon Whitaker, was a direct and proximate cause of the fatal injuries and wrongful death of Shannon Whitaker and the damages and loss, including conscious pain and suffering, occasioned thereby.

40. At all times prior to October 16, 2015, the Hyundai Defendants knew or should have known that the ignition and transmission systems of the 2007 Hyundai Santa Fe were defective and unreasonably dangerous for the reasons described hereinabove. However, the Hyundai Defendants failed to warn foreseeable users and consumers of the subject 2007 Hyundai Santa Fe of such defective and unreasonably dangerous conditions. As a direct and proximate result of such negligent failure to warn, on October 16, 2015, Shannon Whitaker sustained fatal injuries, including conscious pain and suffering, wrongful death, and Plaintiff's decedent, individually and on behalf of the Estate of Shannon Whitaker, has sustained damages and loss.

41. All of the defective and unreasonably dangerous conditions in the subject vehicle as described in detail hereinabove, existed at the time the subject vehicle left the Hyundai Defendants' hands.

42. As a further direct and proximate result of the defective and unreasonably dangerous condition of the subject vehicle and the conduct of the Hyundai Defendants, all as set forth hereinabove, Plaintiff's decedent, Shannon Whitaker, experienced conscious pain and suffering, severe crushing injuries to her body and head and asphyxiation, which combined to cause her wrongful death.

43. As a further direct and proximate result of the defective and unreasonably dangerous condition of the subject vehicle and of the wrongful conduct of the Hyundai Defendants as described hereinabove, including Defendants' breaches of their implied warranties, Plaintiff Clarence Whitaker, individually, as Executor of the Estate of Shannon Whitaker, Deceased, and as the parent, natural guardian and next friend of the two minor children of Clarence and Shannon Whitaker, sustained a loss of Shannon Whitaker's wages and earning capacity, incurred first responder, medical and funeral expenses, experienced grief,

anxiety, and the loss of the services, society, comfort, companionship, advice, guidance, love and support of Clarence Whitaker's wife and of the mother of the two minor children.

COUNT VI – CLAIM FOR PUNITIVE DAMAGES

44. Plaintiff incorporates and reavers each and every allegation set forth in paragraphs 1 through 43 as if fully rewritten herein.

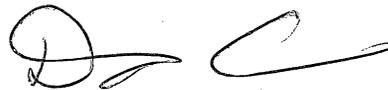
45. All of the injuries, wrongful death, damages and loss described hereinabove are the direct and proximate result of the Hyundai Defendants' willful and wanton negligence in conscious disregard and/or reckless indifference to the consequences of their conduct, which the Hyundai Defendants were aware of from their knowledge of existing circumstances and conditions would probably result in and cause injury to another. Defendants acted consciously in disregard of the rights of Clarence and Shannon Whitaker and with reckless indifference to the consequences, knowing from the existing circumstances that their conduct would probably cause harm to others.

WHEREFORE, Plaintiff Clarence E. Whitaker, individually and as Executor of the Estate of Shannon Whitaker, Deceased, and as the parent, natural guardian and next friend of the two minor children of Clarence and Shannon Whitaker, hereby respectfully demands judgment against Defendants Hyundai Motor Corporation and Hyundai Motor America, Inc., jointly and severally, individually and collectively, in the amount of Seventeen Million, Five Hundred Thousand and 00/100 Dollars (\$17,500,000.00) as and for compensatory damages, as well as their costs herein, and in addition, and in the amount of Three Hundred, Fifty Thousand and 00/100 Dollars (\$350,000.00) as and for punitive damages, together with any other additional relief as may be available.

JURY DEMAND

Plaintiff hereby requests a jury in the within cause in the maximum number permitted by law at the time of trial of the within action.

Respectfully submitted,



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