

10/14/2006 11:47 AM FRD-THE COONE LAL RM PC

+8175501846

T-304 P.003/004 F-251

REPORT DATE: 03-06-2006  
ACCIDENT DATE: 03-06-2006  
TIME OF ACCIDENT: 03:00 PM  
LOCATION: 316 W. Kiphance Cleburne, TX 76033  
VEHICLE NUMBER: 400 Phillips #708  
DRIVER'S NAME: Tammie, Tamiya, Daniel  
DRIVER'S ADDRESS: 400 Phillips St. Cleburne, TX 76033  
DRIVER'S PHONE NUMBER: 817-550-1846  
DRIVER'S DRIVERS LICENSE NUMBER: 03060600000000000000  
DRIVER'S GENDER: Male  
DRIVER'S AGE: 21  
DRIVER'S HEIGHT: 5'6  
DRIVER'S WEIGHT: 140  
DRIVER'S COLOR: Black  
DRIVER'S HAIR: Short  
DRIVER'S EYES: Brown  
DRIVER'S GENDER: Female  
DRIVER'S AGE: 21  
DRIVER'S HEIGHT: 5'6  
DRIVER'S WEIGHT: 140  
DRIVER'S COLOR: Black  
DRIVER'S HAIR: Short  
DRIVER'S EYES: Brown  
PASSENGER'S NAME: Tammie, Callie  
PASSENGER'S ADDRESS: 400 Phillips St. Cleburne, TX 76033  
PASSENGER'S PHONE NUMBER: 817-550-1846  
PASSENGER'S DRIVERS LICENSE NUMBER: 03060600000000000000  
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PASSENGER'S WEIGHT: 140  
PASSENGER'S COLOR: Black  
PASSENGER'S HAIR: Short  
PASSENGER'S EYES: Brown  
PASSENGER'S NAME: Tammie, Cassidy  
PASSENGER'S ADDRESS: 400 Phillips St. Cleburne, TX 76033  
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<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	VEHICLE REMOVED TO	316 W. Kiphance Cleburne, TX 76033	BY	Painted Wrecker
REASON FOR REMOVAL					
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02-02-0306 11:47am FROM THE COOKE LAW DA PC

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7-304 P.002/004 F-251

 CRIMINAL  CIVIL INVOLVED SCHOOL BUS RELATED RAILROAD RELATED MEDICAL ADVISORY BOARD CRASH OCCURREDCOUNTY JacksonCITY OR TOWN CleburneIF CRASH VEHICLE OUTSIDE CITY LIMITS  
DISTANCE FROM NEAREST TOWN \_\_\_\_\_MILES 4 5 E W ofROAD ON WHICH  
CRASH OCCURRED

(900 S. Main St. (Texas Hwy 174))

ROUTE NUMBER

STREET OR ROAD NAME

ROUTE NUMBER OR STREET CODE

CONSTRUCTION ZONE  
WORKERS PRESENT YES  NOSPEED  
LIMIT 60INTERSECTING STREET  
OR OTHER SIGNIFICANT

BLOCK NUMBER

STREET OR ROAD NAME

ROUTE NUMBER OR STREET CODE

CONSTRUCTION ZONE  
WORKERS PRESENT YES  NOSPEED  
LIMIT

NOT AT INTERSECTION

4/10

FL.    

OR

TEXAS Hwy 174 South

NOTE: INDICATE IF VEHICLE INVOLVED IN THIS ACCIDENT WAS  
INVOLVED IN ANOTHER ACCIDENT OR INCIDENT

MILEPOST

LATITUDE

LONGITUDE

DATE OF  
CRASH February

12

YEAR  
WEEK

Sunday

MONTH  
HOUR1725  AM IF EXACTLY NOON  
 PM OR MIDNIGHT, SO STATE  11-MOTOR VEHICLE  
2-BICYCLE  
3-TRAILER  
4-PEDESTRIAN  
5-BOAT6-PEDESTRIAN  
7-STRUCTURE CONVEYANCE  
8-OTHER9-ROCK-CONTACT  
10-CONTACT  
11-OTHERVIN # 2G1WL54T211133393ALTERED  
VEHICLE HEIGHT  YES  
 NO

YEAR

2001

COLOR White

CHEVROLET

MODEL  
NAME

Lumina

BODY  
STYLE

4 Door

LICENSE  
PLATE06 TX K61852DRIVER'S  
NAMEDAVISON, Delbert JoeLAST  
NAME

2204 Malone Rd.

CITY  
STATEPHONE  
NUMBER(817) 558-4649DRIVER'S  
LICENSETX-07349797

C

EXPIRATION  
DATE

A

12-05-36

LICENSE  
STATUSWIELD  
WEAPONS  
EXEMPT  
DISABLING WEAPONSDRIVER'S  
ETHNICITY 1

WHITE

BLACK

ASIAN

AMERICAN  
INDIAN

HISPANIC

UNKNOWN

POLICE, FIREFIGHTER, EMS, OR EMERGENCY  FOREIGN LANGUAGEDRUG  
CATEGORY

TYPE OF ALCOHOL SPECIMEN TAKEN

1-BREATH  2-BLOOD  3-URINE  4-NONE  5-REFUSED 4 TEST

RESULTS

1-BLOOD

2-URINE  3-NONE  4-REFUSED

3 TEST

RESULTS

LEASER  
OWNERDelbert J. DAVISON

2204 Malone Rd.

CITY  
STATEPHONE  
NUMBER

LIABILITY

 YES

INSURANCE

 NO

EXCEPT

NAME

EXCEPT NAME

AIG 3227529

VEHICLE DAMAGE RATING

12-FD-4DRIVER'S  
LICENSE 2

1-MOTOR VEHICLE

2-BICYCLE

3-TRAILER

4-PEDESTRIAN

VIN # 1J4GZ58S6PC64216ALTERED  
VEHICLE HEIGHT  YES

YEAR

1993

COLOR Red

Jeep

MODEL  
NAME

Green Cherokee

YEAR  
STATE

Canyonall

LICENSE  
PLATE06 TX V621HDRIVER'S  
NAMETaylor, Jennifer DawnLAST  
NAME

400 Phillips #708

CITY  
STATEPHONE  
NUMBER(817) 558-1367DRIVER'S  
LICENSETX-1623158

C

EXPIRATION  
DATE

01-37-78

LICENSE  
STATUS5DRIVER'S  
ETHNICITY 1

WHITE

BLACK

ASIAN

AMERICAN  
INDIAN

HISPANIC

POLICE, FIREFIGHTER, EMS, OR EMERGENCY  FOREIGN LANGUAGEDRUG  
CATEGORY

TYPE OF ALCOHOL SPECIMEN TAKEN

1-BREATH  2-BLOOD  3-URINE  4-NONE  5-REFUSED 4 TEST

RESULTS

1-BLOOD

2-URINE  3-NONE  4-REFUSED

3 TEST

RESULTS

LEASER  
OWNERTaylor, J. D. StonerLAST  
NAME

203 Creek Dr.

CITY  
STATEPHONE  
NUMBER817-558-1367

LIABILITY

 YES

INSURANCE

 NO

EXCEPT

NAME

PREVIOUS

VEHICLE DAMAGE RATING

6-8A-5

DAMAGE TO PROPERTY OTHER THAN VEHICLES

NAME

PREVIOUS

NAME

NAME

NAME

PREVIOUS

PREVIOUS

IN YOUR OPINION, DID THIS CRASH RESULT IN AT LEAST \$1,500.00 DAMAGE TO ANY ONE PERSON'S PROPERTY?

YES  NO

CHARGES FILED

CHARGES

**CAUSE NO. 200600134**

**PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COME NOW Plaintiffs, Jennifer Jarmon and Cassius Jarmon, Individually and as Co-Administrators of The Estate of Cassidy Jarmon, Deceased, and as Next Friends to Callie Jarmon, a minor child, in the above styled and numbered cause of action, and file this their Second Amended Original Petition, complaining of Defendant Delbert J. Davidson (hereafter "Davidson"), Daimler Chrysler Corporation and Daimler Chrysler Company LLC (hereafter collectively "DC"), and for cause therefore would respectfully show this honorable Court the following:

I.

1. Pursuant to Rule 190.1 TEX. R. CIV. P., Plaintiffs allege that this case is one which will require a discovery control plan tailored to the circumstances of the case. The Court has entered a discovery control plan pursuant to Level 3, Rule 190.4 TEX. R. CIV. P.

**II.**  
**PARTIES**

2. Plaintiffs Jennifer and Cassius Jarmon are individuals residing in Cleburne, Johnson County, Texas.

3. Defendant Delbert J. Davidson is an individual residing in Johnson County, Texas, and has already made an appearance in this case. No service is necessary at this time.

4. Defendant Daimler Chrysler Corporation is a Michigan corporation, and is authorized to do business in the State of Texas. Process was previously served upon DCC, by serving its registered agent, CT Corporation Systems of Dallas, Texas. Defendant Daimler Chrysler Company LLC has entered an appearance in this case as the successor to Daimler Chrysler Corporation by conversion, effective March 31, 2007. Daimler Chrysler Corporation was the successor to Chrysler Corporation, by merger in 1998.

**III.**  
**JURISDICTION, VENUE AND STANDING**

5. Jurisdiction is proper in the District Court as the amount in controversy greatly exceeds the minimal jurisdictional limits of this Court and is within the maximum jurisdictional limits of any other state court in Johnson County, Texas.

6. Venue is proper in Johnson County pursuant to §15.002(a)(1) and (2) TEX. CIV. PRAC. & REM. CODE in that the event giving rise to this case occurred in Johnson County, Texas, and Defendant Davidson resided in Johnson County, Texas at the time of the event complained of. Venue is proper as to the remaining Defendants pursuant to §15.005 TEX. CIV. PRAC. & REM. CODE.

IV.  
STATUS OF DEFENDANTS

7. At all times material hereto, Defendant DC was engaged in the business of designing, manufacturing, marketing, and distributing automobiles, including the vehicle made the subject of this lawsuit, for sale to and for use by members of the general public.

V.  
FACTS

8. On or about February 12, 2006, Jennifer Jarmon was operating her 1993 Jeep Grand Cherokee, Vehicle Identification Number 1J4GZ58S6DC640210 (the subject vehicle), manufactured by Defendant DC. Also in the vehicle were Jennifer and Cassius Jarmon's two children, Cassidy Jarmon and Callie Jarmon. At that time and on that occasion, the Jarmon vehicle was struck in the rear by a 2001 Chevrolet Lumina 4-door sedan being operated by Defendant Davidson. Following the impact, the Jarmon vehicle came to rest on the road way, and due to a leaking fuel system component, a fuel-fed fire immediately began at the rear of the Jeep Grand Cherokee. Although Cassidy Jarmon survived the impact, due to the fire that erupted because of a defective fuel tank in the Jeep vehicle, Cassidy was trapped in the second seat of the Jeep and could not be rescued from the vehicle. Flames from the post-collision fuel-fed fire entered into the passenger compartment of the Jeep, and caused injury to Jennifer Jarmon, Callie Jarmon, and caused smoke inhalation and thermal injuries to Cassidy Jarmon, resulting in her death.

9. Plaintiffs would show that at all times they have performed all conditions precedent to bringing this lawsuit, and to recover under the various causes of action stated herein.

10. At all material times, Plaintiffs would show that wherein it is alleged that Defendants did, did not, and/or failed to act, it may be shown that Defendants acted individually and/or by and through duly authorized employees, servants, agents, and/or officers. Plaintiffs would further show that at all times material hereto, these persons were expressly authorized to so act, or alternatively, were acting within the apparent authority and/or authority necessarily implied in order for the agents to perform and exercise the authority expressly granted. Plaintiffs further allege *respondeat superior* liability.

11. In the further alternative, and without waiver of the foregoing, if it be shown that persons purporting to act on Defendants' behalf as alleged were not so authorized, then Defendants have in all things ratified the actions or inactions of those persons, and have accepted the benefits thereof.

12. Further, in the design, marketing, and distribution of the Jeep Grand Cherokee, the Plaintiffs would show that decisions with regard to the placement of the fuel tank, failure to adequately guard or shield the fuel tank, and in testing and evaluating the function of the vehicle fuel tank, those agents and employees of Defendant DC were acting in their capacity as vice-principals.

## VI. CAUSES OF ACTION

### A. Negligence of Defendant Davidson

13. The injuries and damages suffered by the Plaintiffs, and the death of Cassidy Jarmon were proximately caused by the negligence of Defendant Davidson in operating the 2001 Chevrolet Lumina at the time of the occurrence in question in:

- a. failing to keep a proper lookout to avoid the collision in question;

- b. failing to turn his vehicle in a timely manner to avoid the collision in question;  
and

- c. failing to timely and properly apply his brakes to avoid the collision in question;

**B. Negligence of Defendant DC**

14. The injuries and damages suffered by the Plaintiffs, and the death of Cassidy Jarmon were proximately caused by the negligence of Defendant DC in designing, testing, assembling, supplying, and distributing the 1993 Jeep Grand Cherokee sport utility vehicle including, but not limited to the following particulars:

- a. In failing to design the vehicle fuel supply system to be crashworthy;
- b. In failing to design the vehicle in such manner that gasoline would not escape from the fuel supply system in the event of foreseeable collisions;
- c. In failing to construct the fuel supply system so that it would contain fuel in the event of foreseeable collisions;
- d. In failing to design the fuel supply system in such a manner so as to prevent post-collision fuel fed fires;
- e. In failing to properly test and evaluate the vehicle;
- f. In failing to properly guard or shield the vehicle's fuel tank and delivery system;
- g. In the placement and packaging of the vehicle's fuel tank and fuel supply system;
- h. In its design of the fuel supply system in positioning the vehicle's fuel tank at a location on the vehicle that subjected it to hazards associated with the environment in which it was located;
- i. In designing the fuel supply system such that the vehicle's tank was inadequately protected from environmental hazards in, on, and about its surrounding tank;

- j. Failing to warn of dangers associated with the design of the fuel supply system and its position on the vehicle;
- k. In its design of the fuel supply system in an uncrashworthy manner;
- l. Failing to conduct adequate testing of the design of the fuel supply system for the subject vehicle;
- m. In failing to warn of the inadequate testing of the design of the fuel supply system for the subject vehicle;
- n. Failing to provide adequate warnings to the public in general, and to these Plaintiffs and deceased specifically of the dangerous propensities of the flawed design of the fuel supply system on the subject vehicle;
- o. In acting to conceal defects and dangers in its products from the public, from injured persons and governmental entities rather than fulfilling its common law and statutory obligations to provide adequate warnings and to remedy such defects;
- p. In continuing to design, market, and sell this line of sport utility vehicles without substantial change after receiving sufficient knowledge as to the nature of the defects and the danger to the public;
- q. In the design of the subject vehicle which failed to correct serious rear structure design deficiencies in location, mounting, and protection of the fuel tank from environmental hazards;
- r. In the design of the subject vehicle which failed to restrict foreseeable fires from rapidly entering into the occupant compartment of the vehicle thus limiting the timely rescue of accident victims;

- s. In failing to provide adequate warnings concerning the rear structural crash performance of the vehicle when fitted with a trailer two hitch;
- t. In failing to design the vehicle in such a manner that the rear structure was crashworthy when fitted with a trailer hitch;
- u. In failing to design the rear structure of the vehicle in such a manner that the vehicle would be crashworthy in rear impacts;
- v. In failing to design the vehicle with adequate rear under-ride protection in the event of a rear crash; and
- w. In designing the fuel tank for the vehicle in such a manner that it was dangerously exposed to impacts and was not adequately protected within structure of the vehicle.

**C. Strict Liability of Defendant DC**

15. Plaintiffs further allege that the 1993 Jeep Grand Cherokee sport utility vehicle was defective and unsafe for its intended purposes at the time of its design by Defendant DC and its sale and/or transfer into the stream of commerce, and that at the time Plaintiffs Jennifer Jarmon and Cassius Jarmon took possession of the vehicle. The 1993 Jeep Grand Cherokee sport utility vehicle was in substantially the same condition at the time of the collision involved in this suit as when it was manufactured and distributed by Defendant DC. The Plaintiffs would further show that there were safer alternative designs for the subject vehicle fuel containment system, pursuant to §82.005(a) and (b) TEX. CIV. PRAC. & REM. CODE. The product was defectively designed, and unreasonably dangerous to Plaintiffs in that the design of the vehicle made it unsafe for the following reasons:

- a. In failing to design the vehicle fuel supply system to be crashworthy;

- b. In failing to design the vehicle in such manner that gasoline would not escape from the fuel supply system in the event of foreseeable collisions;
- c. In failing to construct the fuel supply system so that it would contain fuel in the event of foreseeable collisions;
- d. In failing to design the fuel supply system in such a manner so as to prevent post-collision fuel fed fires;
- e. In failing to properly test and evaluate the vehicle;
- f. In failing to properly guard or shield the vehicle's fuel tank and delivery system;
- g. In the placement and packaging of the vehicle's fuel tank and fuel supply system;
- h. In its design of the fuel supply system in positioning the vehicle's fuel tank at a location on the vehicle that subjected it to hazards associated with the environment in which it was located;
- i. In designing the fuel supply system such that the vehicle's tank was inadequately protected from environmental hazards in, on, and about its surrounding tank;
- j. Failing to warn of dangers associated with the design of the fuel supply system and its position on the vehicle;
- k. In its design of the fuel supply system in an uncrashworthy manner;
- l. Failing to conduct adequate testing of the design of the fuel supply system for the subject vehicle;
- m. In failing to warn of the inadequate testing of the design of the fuel supply system for the subject vehicle;
- n. Failing to provide adequate warnings to the public in general, and to these

Plaintiffs and deceased specifically of the dangerous propensities of the flawed design of the fuel supply system on the subject vehicle;

- o. In acting to conceal defects and dangers in its products from the public, from injured persons and governmental entities rather than fulfilling its common law and statutory obligations to provide adequate warnings and to remedy such defects;
- p. In continuing to design, market, and sell this line of sport utility vehicles without substantial change after receiving sufficient knowledge as to the nature of the defects and the danger to the public;
- q. In the design of the subject vehicle which failed to correct serious rear structure design deficiencies in location, mounting, and protection of the fuel tank from environmental hazards;
- r. In the design of the subject vehicle which failed to restrict foreseeable fires from rapidly entering into the occupant compartment of the vehicle thus limiting the timely rescue of accident victims;
- s. In failing to provide adequate warnings concerning the rear structural crash performance of the vehicle when fitted with a trailer two hitch;
- t. In failing to design the vehicle in such a manner that the rear structure was crashworthy when fitted with a trailer hitch;
- u. In failing to design the rear structure of the vehicle in such a manner that the vehicle would be crashworthy in rear impacts;
- v. In failing to design the vehicle with adequate rear under-ride protection in the event of a rear crash; and

w. In designing the fuel tank for the vehicle in such a manner that it was dangerously exposed to impacts and was not adequately protected within structure of the vehicle.

16. Plaintiffs further allege that such defects in the design of the vehicle were a producing cause of the death of Cassidy Jarmon, and the injuries and damages sustained by Plaintiffs.

D. Breach of Implied Warranty of Merchantability

17. The vehicle in question is a "good" for purposes of the TEX. BUS. & COMM. CODE, and Defendant DC was a "merchant" with respect to goods of that kind. Defendant DC breached the implied warranty of merchantability set forth in Tex. Bus. & COMM. CODE, §2.314, by selling the vehicle in question when it was defective; that is, not fit for the ordinary purposes for which such goods are used because of the and crashworthiness deficiencies described more fully herein. Such breach of warranty was a proximate cause of the injuries and damages to Plaintiffs.

E. Breach of Warranty of Fitness for Particular Purpose

18. Defendant DC impliedly warranted to the public generally and specifically to Plaintiffs that the 1993 Jeep Grand Cherokee was fit for the particular purpose for which the vehicle was intended. Defendant DC, at the time of the design, manufacture, and sale of the vehicle, had reason to know of the particular purpose for which the vehicle and its fuel supply system were required. The Plaintiffs relied upon Defendant DC's skill and judgment to select and furnish suitable goods and components. The vehicle in question was unfit for the purpose for which it was intended to be used, in one or more of the following particulars:

- a. In failing to design the vehicle fuel supply system to be crashworthy;
- b. In failing to design the vehicle in such manner that gasoline would not escape from the fuel supply system in the event of foreseeable collisions;

- c. In failing to construct the fuel supply system so that it would contain fuel in the event of foreseeable collisions;
- d. In failing to design the fuel supply system in such a manner so as to prevent post-collision fuel fed fires;
- e. In failing to properly test and evaluate the vehicle;
- f. In failing to properly guard or shield the vehicle's fuel tank and delivery system;
- g. In the placement and packaging of the vehicle's fuel tank and fuel supply system;
- h. In its design of the fuel supply system in positioning the vehicle's fuel tank at a location on the vehicle that subjected it to hazards associated with the environment in which it was located;
- i. In designing the fuel supply system such that the vehicle's tank was inadequately protected from environmental hazards in, on, and about its surrounding tank;
- j. Failing to warn of dangers associated with the design of the fuel supply system and its position on the vehicle;
- k. In its design of the fuel supply system in an uncrashworthy manner;
- l. Failing to conduct adequate testing of the design of the fuel supply system for the subject vehicle;
- m. In failing to warn of the inadequate testing of the design of the fuel supply system for the subject vehicle;
- n. Failing to provide adequate warnings to the public in general, and to these Plaintiffs and deceased specifically of the dangerous propensities of the flawed design of the fuel supply system on the subject vehicle;

- o. In acting to conceal defects and dangers in its products from the public, from injured persons and governmental entities rather than fulfilling its common law and statutory obligations to provide adequate warnings and to remedy such defects;
- p. In continuing to design, market, and sell this line of sport utility vehicles without substantial change after receiving sufficient knowledge as to the nature of the defects and the danger to the public;
- q. In the design of the subject vehicle which failed to correct serious rear structure design deficiencies in location, mounting, and protection of the fuel tank from environmental hazards;
- r. In the design of the subject vehicle which failed to restrict foreseeable fires from rapidly entering into the occupant compartment of the vehicle thus limiting the timely rescue of accident victims;
- s. In failing to provide adequate warnings concerning the rear structural crash performance of the vehicle when fitted with a trailer tow hitch;
- t. In failing to design the vehicle in such a manner that the rear structure was crashworthy when fitted with a trailer hitch;
- u. In failing to design the rear structure of the vehicle in such a manner that the vehicle would be crashworthy in rear impacts;
- v. In failing to design the vehicle with adequate rear under-ride protection in the event of a rear crash; and
- w. In designing the fuel tank for the vehicle in such a manner that it was dangerously exposed to impacts and was not adequately protected within structure of the vehicle.

19. Plaintiffs suffered injuries and damages as set forth hereafter as a proximate result of the breach of this warranty.

**F. Misrepresentation/Strict Liability of Defendant DC**

20. Plaintiffs allege that Defendant DC was in the business of marketing and selling automobiles and made misrepresentations to the public of material facts concerning the character and/or quality of the vehicle that is the subject of this lawsuit. Purchasers of the vehicle justifiably relied upon these misrepresentations that induced and influenced them to purchase and transport others in the Jeep Grand Cherokee sport utility vehicle, including the vehicle in question. As a result, Plaintiffs sustained severe, traumatic, debilitating injuries during the incident, and Cassidy Jarmon lost her life. Plaintiffs, therefore, invoke the Doctrine of Strict Liability contained in Section 402B of the RESTATEMENT (2ND) OF TORTS. Furthermore, Plaintiffs allege that these misrepresentations of material fact were a producing cause of the injuries and damages sustained by Plaintiffs. Defendant DC misrepresented its product as being safe, in spite of the following defects:

- a. In failing to design the vehicle fuel supply system to be crashworthy;
- b. In failing to design the vehicle in such manner that gasoline would not escape from the fuel supply system in the event of foreseeable collisions;
- c. In failing to construct the fuel supply system so that it would contain fuel in the event of foreseeable collisions;
- d. In failing to design the fuel supply system in such a manner so as to prevent post-collision fuel fed fires;
- e. In failing to properly test and evaluate the vehicle;
- f. In failing to properly guard or shield the vehicle's fuel tank and delivery system;

- g. In the placement and packaging of the vehicle's fuel tank and fuel supply system;
- h. In its design of the fuel supply system in positioning the vehicle's fuel tank at a location on the vehicle that subjected it to hazards associated with the environment in which it was located;
- i. In designing the fuel supply system such that the vehicle's tank was inadequately protected from environmental hazards in, on, and about its surrounding tank;
- j. Failing to warn of dangers associated with the design of the fuel supply system and its position on the vehicle;
- k. In its design of the fuel supply system in an uncrashworthy manner;
- l. Failing to conduct adequate testing of the design of the fuel supply system for the subject vehicle;
- m. In failing to warn of the inadequate testing of the design of the fuel supply system for the subject vehicle;
- n. Failing to provide adequate warnings to the public in general, and to these Plaintiffs and deceased specifically of the dangerous propensities of the flawed design of the fuel supply system on the subject vehicle;
- o. In acting to conceal defects and dangers in its products from the public, from injured persons and governmental entities rather than fulfilling its common law and statutory obligations to provide adequate warnings and to remedy such defects;
- p. In continuing to design, market, and sell this line of sport utility vehicles without substantial change after receiving sufficient knowledge as to the nature of the defects and the danger to the public;

- q. In the design of the subject vehicle which failed to correct serious rear structure design deficiencies in location, mounting, and protection of the fuel tank from environmental hazards;
- r. In the design of the subject vehicle which failed to restrict foreseeable fires from rapidly entering into the occupant compartment of the vehicle thus limiting the timely rescue of accident victims;
- s. In failing to provide adequate warnings concerning the rear structural crash performance of the vehicle when fitted with a trailer tow hitch;
- t. In failing to design the vehicle in such a manner that the rear structure was crashworthy when fitted with a trailer hitch;
- u. In failing to design the rear structure of the vehicle in such a manner that the vehicle would be crashworthy in rear impacts;
- v. In failing to design the vehicle with adequate rear under-ride protection in the event of a rear crash; and
- w. In designing the fuel tank for the vehicle in such a manner that it was dangerously exposed to impacts and was not adequately protected within structure of the vehicle.

**G. Joint and Several Liability**

21. Plaintiffs would further show this honorable Court and jury that each and all of the foregoing acts and omissions taken singularly, or in combination with the other, were the proximate and/or producing cause of the death of Cassidy Jarmon and the injuries and damages suffered by Plaintiffs. Therefore, Plaintiffs complain of Defendants, jointly and severally.

VII.

SURVIVAL ACTION - §71.021 *et seq.* TEX. CIV. PRAC. & REM. CODE

22. Plaintiff's Jennifer Jarmon and Cassius Jarmon, Individually and as Co-Administrators of the Estate of Cassidy Jarmon, sue pursuant to §71.021 *et seq.* TEX. CIV. PRAC. & REM. CODE, for Defendants' negligence and strict liability in tort, misrepresentations and breach of warranty which were a proximate/producing cause of the injuries and damages sustained by Cassidy Jarmon prior to her death as well as for all other damages allowed by law, including the following elements, in an amount within the jurisdictional limits of this Court:

- a. The reasonable and customary expenses for autopsy, funeral, and burial for decedent;
- b. Reasonable and necessary hospital and medical expenses;
- c. Physical pain, agony, and suffering experienced by decedent; and
- d. Mental anguish and suffering, including the fear and distress associated with imminent death.

VIII.

WRONGFUL DEATH - § 71.001 *et seq.* TEX. CIV. PRAC. & REM. CODE

23. In addition to the other legal bases previously pleaded herein, this action is brought by Plaintiffs Jennifer Jarmon and Cassius Jarmon, Individually, as statutory beneficiaries of Cassidy Jarmon, pursuant to §71.001 *et seq.* of the TEX. CIV. PRAC. & REM. CODE, commonly referred to as the "Wrongful Death Act", on behalf of statutory beneficiaries of Cassidy Jarmon, pursuant to §71.004 TEX. CIV. PRAC. & REM. CODE, for damages sustained by Plaintiffs of which the negligence and strict liability in tort of Defendants was a producing/proximate cause.

Plaintiffs should be compensated in an amount in excess of the jurisdictional limits of this Court, considering the following elements of damages:

- a. Pecuniary loss, including loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child, would in reasonable probability have received from the decedent, Cassidy Jarmon, had she lived;
- b. Loss of companionship and society, including the loss of the positive benefits flowing from the love, comfort, affection, companionship, and society that Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child, would in reasonable probability have received from the decedent, Cassidy Jarmon, had she lived
- c. Mental depression and mental anguish; and
- d. Reasonable and necessary expenses associated with autopsy, funeral, and burial.

**IX.  
DAMAGES**

24. As a result of the injuries to and death of Cassidy Jarmon, Deceased, as herein set out, Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child, are entitled to the recovery of survival and wrongful death damages including, but not limited to, the following:

- a. The reasonable and customary funeral and burial expenses for decedent;
- b. Physical pain, agony, and suffering; and

- c. Mental anguish and suffering, including the fear and distress associated with imminent death.
- 25. As a result of the injuries to and death of Cassidy Jarmon as herein set out, Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child, are entitled to the recovery of survival and wrongful death damages including, but not limited to the following:
  - a. Mental anguish, grief, sorrow, emotional pain, torment, and suffering experienced by Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child, in the past associated with the loss of the decedent;
  - b. Mental anguish, mental depression, grief, sorrow, emotional pain, torment, and suffering experienced by Plaintiffs Jennifer and Cassius Jarmon, Individually, and as Co-Administrators of the Estate of Cassidy Jarmon, and as Next Friends of Callie Jarmon, a minor child which in all reasonable probability will continue in the future;
  - c. Loss of consortium and society in the past;
  - d. Loss of consortium and society which, in all reasonable probability, will continue in the future;
  - e. Loss of pecuniary benefits in the past; and
  - f. Loss of pecuniary benefits which, in all reasonable probability, will continue in the future.

X.  
PERSONAL INJURY DAMAGES TO CALLIE JARMON

26. Plaintiffs Jennifer and Cassius Jarmon, as Next Friends of Callie Jarmon, a minor child, would show that as a proximate/producing result of the conduct of the Defendants, both in negligence and strict liability, Callie Jarmon sustained severe, permanent, disability and disfiguring injuries, which have caused her damage, and in reasonable probability will continue to cause her damages for the remainder of her natural life. As a result of those injuries, Plaintiffs should be compensated considering the following elements of damage:

- a. Pain, suffering and mental anguish in the past;
- b. Pain, suffering and mental anguish, which in reasonable probability she will sustain in the future;
- c. Past medical, hospital, surgical, and rehabilitative expenses;
- d. Medical, hospital, surgical, and rehabilitative expenses, which in reasonable probability she will sustain in the future;
- e. Disfigurement in the past;
- f. Disfigurement, which in reasonable probability she will sustain in the future;
- g. Physical impairment in the past;
- h. Physical impairment which is reasonably probable that she will suffer in the future;
- i. Lost earnings and earning capacity, which in reasonable probability she will sustain in the future, after her eighteenth birthday; and
- j. Reasonable and necessary costs for attendant care, which in reasonable probability she will require in the future.

XI.

**DIRECT PERSONAL INJURY DAMAGES TO JENNIFER JARMON AND BYSTANDER CLAIMS OF JENNIFER JARMON AND CASSIUS JARMON**

27. As a direct and proximate result of the Defendants' negligence as above described, Plaintiff Jennifer Jarmon sustained severe personal injuries, which she will endure in the future. Additionally, Jennifer Jarmon and Cassius Jarmon suffered severe mental pain and suffering since the perception of the occurrence made the basis of this suit and of the injuries and harm sustained by their daughters Cassidy Jarmon and Callie Jarmon. In particular, Plaintiffs will show that immediately after the occurrence made the basis of this suit, they have experienced extreme nervousness, distractibility, physical illness, difficulty sleeping, difficulty concentrating, and fear. They have incurred and will continue to incur reasonable and necessary expenses for medical care and treatment of these conditions. Plaintiffs sue for a sum within the jurisdictional limits of this Court for these injuries

XII.

**EXEMPLARY DAMAGES**

28. In addition to and including the above, Plaintiffs would show this honorable Court and the jury that the acts, practices and omissions of Defendant DC constitute clear and convincing evidence, as defined by §41.001 of the Texas Civil Practice and Remedies Code, of gross negligence on the part of Defendant, in that such acts, practices and/or omissions: a) when viewed objectively from the standpoint of the Defendant at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and b) of which the Defendant had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, including Plaintiffs and Cassidy Jarmon, Deceased. It is from these specified circumstances, constituting gross negligence on the part of Defendant DC that the injuries and damages

complained of herein arose. Accordingly, Plaintiffs seek recovery of exemplary damages herein against Defendant DC in an amount equal to the *greater* of two times the amount of economic damages herein, plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000.00; or \$200,000.00.

**XIII.**  
**PREJUDGMENT INTEREST**

29. The above and foregoing acts and/or omissions of Defendant DC have caused damages to Plaintiffs that entitle them to the recovery of prejudgment interest on the damages sustained.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon final trial hereof, Plaintiffs have judgment against Defendants jointly and severally, in an amount in excess of the jurisdictional limits of this Court together with their costs, pre-judgment and post-judgment interest as allowed by law, attorneys fees as allowed by law, exemplary damages as determined by the trier of fact, and that Plaintiffs be granted such other and further relief, at law or in equity, general or special, to which they may show themselves justly entitled.

Respectfully submitted,

**WALTMAN & GRISHAM**

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Lynn A. Grisham  
State Bar No. 08505500  
Robert B. Waltman  
State Bar No. 20822500  
707 Texas Avenue, Suite 106D  
College Station, Texas 77840  
Telephone 979/694-0900  
Facsimile 979/693-0840

**THE COOKE WILSON LAW FIRM, P.C.**  
Christopher C. Cooke  
State Bar No. 00795303  
16 N. Mill Street  
Cleburne TX 76033  
Telephone 817/558-1811  
Facsimile 817/558-1846

**ATTORNEYS FOR PLAINTIFFS**

**PLAINTIFFS REQUEST A TRIAL BY JURY.**

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to TEX. R. CIV. P. 21a, a true and correct copy of the foregoing has been forwarded via hand delivery, telephonic document transfer and/or overnight mail and/or U.S. Mail Certified, Return Receipt Requested, to all attorneys of record on this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Lynn A. Grisham