

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY GA
CLERK OF SUPERIOR COURT
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DIANE B. WEBB
STATE COURT CLERK-13

KENNETH DAVID MELTON and)
MARY ELIZABETH MELTON,)
Individually, and as Administrators of)
the Estate of JENNIFER BROOKE)
MELTON, deceased,)
)
Plaintiffs,)
v.)
)
GENERAL MOTORS LLC,)
THORNTON CHEVROLET, INC.,)
and DEI HOLDINGS, INC.,)
)
Defendants.)

CIVIL ACTION
FILE NO. 2011-A-2652

SECOND AMENDED COMPLAINT FOR DAMAGES

COME NOW Kenneth David Melton and Mary Elizabeth Melton, Individually,
and as Administrators of the Estate of Jennifer Brooke Melton, Plaintiffs in the above-styled
action, and name as Defendants General Motors LLC, Thornton Chevrolet, Inc. and DEI
Holdings, Inc. and show the Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiffs Kenneth David Melton and Mary Elizabeth Melton ("Plaintiffs") are
residents of Cobb County, Georgia. Plaintiffs are the natural mother and father of Jennifer Brooke
Melton and have been duly appointed the Administrators of the Estate of Jennifer Brooke Melton,
deceased.

2.

Defendant General Motors LLC ("GM") is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of Michigan. GM's registered agent in this state is The Corporation Company, 328 Alexander Street, Suite 10, Marietta, Cobb County, Georgia 30060. GM has previously been properly served and is subject to the jurisdiction and venue of this Court.

3.

Defendant Thornton Chevrolet, Inc. ("Thornton") is a corporation organized and existing under the laws of the State of Georgia, having as its principal place of business, 1971 Thornton Road, Lithia Springs, Douglas County, Georgia 30122-2633. Thornton's registered agent for service of process is John W. Thornton, 1971 Thornton Road, Lithia Springs, Georgia, 30122. Thornton has previously been properly served and is subject to the jurisdiction and venue of this Court.

4.

Defendant DEI Holdings, Inc. ("DEI") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in California. DEI is the parent company of Clifford. DEI's registered agent is CSC, 1 Viper Way, Vista, CA 92081. DEI has previously been properly served and is subject to the jurisdiction and venue of this Court.

5.

Venue properly lies in Cobb County pursuant to O.G.C.A. ¶ 14-2-510.

FACTUAL BACKGROUND

6.

Defendant GM distributed and sold the 2005 Chevrolet Cobalt and similarly designed vehicles throughout the United States of America. Defendant GM distributed and sold the 2005 Chevrolet Cobalt driven by Jennifer Brooke Melton ("Brooke").

7.

The 2005 Chevrolet Cobalt, and other vehicles designed, manufactured and distributed by Defendant GM, were the subject of a technical service bulletin in 2006.

8.

Defendant GM identified this technical service bulletin as TSB 05-02-35-007A ("TSB").

9.

Defendant GM announced the TSB in order to address the potential for a driver of a 2005 Cobalt to inadvertently turn off the ignition due to a low ignition key cylinder torque effort.

10.

Brooke was the primary driver of the subject 2005 Chevrolet Cobalt.

11.

On March 6, 2010, Brooke took the subject 2005 Chevrolet Cobalt to Thornton for service because the engine shut off while she was driving. Thornton performed a TBI injection clean on the vehicle. The TBI injection clean was not performed to correct the problem

with the engine shutting off while driving. Thornton, however, told Brooke that it had performed the TBI injection clean in order to address the problem of the engine shutting off while she was driving.

12.

Thornton never performed the work addressed in the TSB and never told Brooke about the TSB.

The Product

13.

The product involved in this action is a 2005 Chevrolet Cobalt, 1G1AL12F557571865 (the particular vehicle involved in the incident is hereafter referred to as the "Cobalt").

The Incident

14.

On March 10, 2011 at approximately 7:30 p.m., Brooke was driving her 2005 Chevrolet Cobalt north on GA Highway 9. She was properly wearing her safety belt and shoulder harness.

15.

As Brooke was driving her Chevrolet Cobalt on GA Highway 9, the key in the ignition moved from the run to the accessory position causing the engine to shut off and resulting in a loss of power. After the Cobalt lost power, Brooke lost control of the Cobalt and crossed into the southbound lane resulting in a collision with a vehicle being driven by Shannon Jones.

16.

The impact caused Brooke's vehicle to travel off the highway and into a creek. Brooke sustained serious personal injuries that resulted in her death.

COUNT I

**STRICT LIABILITY OF DEFENDANT
GENERAL MOTORS LLC**

17.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

18.

Defendant GM designed, selected, inspected, tested, manufactured, assembled, equipped, marketed, distributed and sold the Cobalt, and its components, including but not limited to, equipping it with an ignition switch.

19.

Defendant GM designed, selected, inspected, tested, manufactured, assembled, equipped, marketed, distributed and sold the ignition switch which was selected and installed in the Cobalt.

20.

Defendant GM sold the Cobalt as a new product within ten years before the filing of this action.

21.

Defendant GM had a legal duty to design, inspect, test, manufacture and assemble the Cobalt so that it would be reasonably crashworthy and provide a reasonable degree of occupant safety in foreseeable collisions occurring in the highway environment of its expected use.

22.

Among other things, the Cobalt is uncrashworthy, defective, unreasonably dangerous and unsafe for foreseeable users and occupants in each of the following particulars:

- (a) having an ignition switch which is inadequately designed and constructed and may result in the key moving from the on to accessory position during foreseeable driving maneuvers;
- (b) having an ignition switch which allows the Cobalt to stall or lose power while driving;
- (c) failing to adequately warn Brooke, other consumers, or the public in general, about the unsafe and defective condition and design of the vehicle known to GM, so that individuals like Brooke could make informed and prudent decisions regarding traveling or riding in such vehicles.

23.

The defective nature of the Cobalt was the proximate cause of the damages sustained by the Plaintiffs, as set forth herein, thus rendering Defendant GM strictly liable.

COUNT II

**NEGLIGENCE OF DEFENDANT
GENERAL MOTORS LLC**

24.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

25.

Defendant GM was negligent in designing, inspecting, testing, manufacturing, assembling, marketing, selling and providing warnings for the Cobalt, as set out in the paragraphs above.

26.

Defendant GM's negligence proximately caused the damages sustained by Plaintiffs, as set forth herein.

COUNT III

**BREACH OF WARRANTY OF DEFENDANT
GENERAL MOTORS LLC**

27.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

28.

Defendant GM breached its implied warranty of merchantability by selling the Cobalt when it was not fit for the ordinary purpose for which such goods are sold.

29.

This breach of warranty proximately caused the damages sustained by Plaintiffs, as set forth herein.

COUNT IV

**NEGLIGENCE OF DEFENDANT
THORNTON CHEVROLET**

30.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

31.

On March 6, 2010, Brooke brought her Cobalt to Thornton for service because the engine shut off while she was driving. Thornton performed a TBI injection clean on the vehicle and led Brooke to believe that this service would resolve the problem of the engine shutting off while driving.

32.

Thornton was, or should have been, aware of the TSB which applied to Brooke's vehicle. Thornton, however, did not perform the work pursuant to the TSB.

33.

Defendant Thornton knew, or should have known, that not performing the TSB work would result in the Cobalt being unsafe to drive because there was the potential that the key could move from the run to accessory position due to the low ignition key cylinder torque effort.

34.

On March 10, just before the collision which resulted in Brooke's death, the key in the Cobalt turned from the run to the accessory position which ultimately caused Brooke to lose control of the Cobalt.

35.

Defendant Thornton's negligence in failing to properly diagnose the source of the Cobalt's engine shutting off, as well as its decision to return the Cobalt to Brooke without having diagnosed and fixed the problem, was a proximate cause of the damages sustained by Plaintiffs, as set forth herein.

COUNT V

NEGLIGENCE OF DEI

36.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

37.

Defendant DEI was negligent in designing, inspecting, testing, manufacturing, assembling, marketing, selling and providing warnings for the Clifford security system.

38.

Defendant DEI's negligence proximately caused the damages sustained by Plaintiffs, as set forth herein.

COUNT VI

DAMAGES

39.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

40.

Kenneth David Melton and Mary Elizabeth Melton, the natural parents of Jennifer Brooke Melton, deceased, have standing to recover for the wrongful death of Jennifer Brooke Melton.

41.

Kenneth David Melton and Mary Elizabeth Melton, as Administrators of the Estate of Jennifer Brooke Melton, have standing to recover the general damages and special damages of Jennifer Brooke Melton.

42.

As a direct and proximate result of the negligence and misconduct of Defendants, as well as the defective, unsafe and unreasonably dangerous Cobalt, Jennifer Brooke Melton was killed, and Plaintiffs are entitled to recover from all the Defendants the full value of the life of Brooke.

43.

As a direct and proximate result of the negligence and misconduct of Defendants, as well as the defective, unsafe and unreasonably dangerous Cobalt, Brooke experienced physical pain and suffering.

44.

As a direct and proximate result of the negligence and misconduct of Defendants, as well as the defective, unsafe and unreasonably dangerous Cobalt, Brooke experienced mental pain and suffering, including shock, fright, and terror.

45.

As a direct and proximate result of the negligence and misconduct of Defendants, Brooke's 's Estate incurred funeral and burial expenses.

COUNT VII

PUNITIVE DAMAGES

46.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

47.

Defendants GM and Thornton Chevrolet, through their conduct in designing, testing, manufacturing, assembling, marketing, selling and failing to adequately repair the Cobalt, demonstrated an entire want of care, evidencing a reckless indifference and disregard to the consequences of their actions. Plaintiffs, pursuant to O.C.G.A. § 51-12-5.1, are entitled to an award of punitive damages to deter Defendants GM and Thornton, and others, from such conduct in the future.

COUNT VIII

ATTORNEYS FEES AND EXPENSES OF LITIGATION

48.

All preceding statements and allegations of Plaintiffs' Complaint are incorporated herein and realleged as if expressly set forth herein.

49.

Defendant GM's actions have been in bad faith and have caused Plaintiffs to suffer unnecessary trouble and expense. Plaintiffs are, therefore, entitled to recover from Defendant GM all expenses of litigation, including attorney fees, costs and expenses pursuant to O.C.G.A. § 13-6-11.

50.

Defendant Thornton's actions have been in bad faith and have caused Plaintiffs to suffer unnecessary trouble and expense. Plaintiffs are, therefore, entitled to recover from Defendant Thornton all expenses of litigation, including attorney fees, costs and expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount which will fully and completely compensate Plaintiffs for the aforementioned injuries, damages and Court costs. Plaintiffs also demand punitive damages against Defendants to deter these Defendants from such conduct in the future. The actions of GM and Thornton have been in bad faith and have caused Plaintiffs to suffer unnecessary trouble and expense. Plaintiffs are, therefore, entitled to recover from Defendants GM and Thornton all

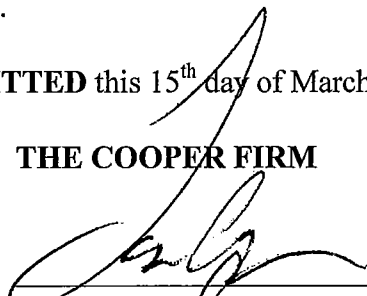
expenses of litigation, including attorney fees, costs and expenses pursuant to O.C.G.A. § 13-6-

11.

Plaintiffs demand a jury trial.

RESPECTFULLY SUBMITTED this 15th day of March 2013.

THE COOPER FIRM



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CERTIFICATE OF SERVICE

This is to certify that I have this day served true and accurate copies of the within and foregoing to the opposing party in the above-styled action by sending an electronic copy via email to counsel of record as follows:

Harold E. Franklin, Jr. Anneke J. Shepard King & Spalding LLP 1180 Peachtree Street, N.E. Atlanta, GA 30309 <i>Attorney for General Motors, LLC</i>	Matthew P. Stone Shawn N. Kalfus Freeman Mathis & Gary, LLP 100 Galleria Parkway, Ste. 1600 Atlanta, GA 30339 <i>Attorneys for Thornton Chevrolet, Inc.</i>
Ian R. Rappaport Law Offices of Ian R. Rappaport 5565 Glenridge Connector Suite 500 Atlanta, GA 30342 <i>Attorney for DEI Holdings, Inc.</i>	

This the 15th day of March 2013.

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