

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**No. D-101-cv-2019-01095**

**D. MARIA SCHMIDT, as the Personal  
Representative of the Wrongful Death  
Estate of IAN SWEATT, Deceased, and  
VITALIA SENA-BACA, as the Personal  
Representative of the Wrongful Death  
Estate of CHRISTOPHER BRYANT,**

**Plaintiffs,**

**v.**

**GENERAL MOTORS LLC and  
MANSOOR KARIMI,**

**Defendants.**

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR WRONGFUL DEATH  
AND PUNITIVE DAMAGES**

COME NOW Plaintiffs, D. Maria Schmidt, as Personal Representative for the Wrongful Death Estate of Ian Sweatt, deceased, and Vitalia Sena-Baca, as Personal Representative for the Wrongful Death Estate of Christopher Bryant, by and through their counsel of record, and state the following as Plaintiffs' First Amended Complaint for Wrongful Death and Punitive Damages against Defendants General Motors LLC ("GM") and Defendant Mansoor Karimi ("Karimi").

**I. PARTIES**

1. Plaintiff D. Maria Schmidt is a citizen of the State of New Mexico, and she resides in Santa Fe County, New Mexico. By order dated September 10, 2018, she has been appointed as the Personal Representative of the Wrongful Death Estate of Ian Sweatt, Deceased, pursuant to the New Mexico Wrongful Death Act, NMSA 1978, § 41-2-1, *et seq.*

2. Plaintiff Vitalia Sena-Baca is a citizen of the State of New Mexico, and she resides in Santa Fe County, New Mexico. By order dated May 30, 2019, she has been appointed as the

Personal Representative of the Wrongful Death Estate of Christopher Bryant, Deceased, pursuant to the New Mexico Wrongful Death Act, NMSA 1978, § 41-2-1, *et seq*

3. Defendant GM is a Delaware limited liability company duly organized and existing pursuant to law and is registered to transact business in the State of New Mexico. Defendant GM has transacted business in the State of New Mexico at all times relevant hereto, and it may be served with citation by serving its registered agent for service: Corporation Service Company, 123 East Marcy Street, Suite 101, Santa Fe, New Mexico 87501.

4. Defendant Mansoor Karimi is a citizen of the State of New Mexico, and he resides in Santa Fe County, New Mexico. Defendant Karimi can be served with process at his residence, 709 Dunlap Street, Santa Fe, New Mexico, 87501.

## **II. JURISDICTION, VENUE, AND JOINDER**

5. Jurisdiction over the parties and the subject matter herein is proper with this Court pursuant to Article VI of the New Mexico Constitution and the New Mexico long-arm statute, NMSA, Section 38-1-16. Defendant Mansoor Karimi is a New Mexico resident subject to jurisdiction of the New Mexico courts. Defendant GM consented to jurisdiction in New Mexico's courts through its corporate registration pursuant to New Mexico law. In addition, this Court has specific jurisdiction over Defendant GM based on Defendant GM's contacts with and conduct directed toward New Mexico and through the stream of commerce including, upon information and belief, its marketing and distribution of vehicles in New Mexico, its provision of service on vehicles and parts in New Mexico, its warranties covering products in New Mexico, and Defendant GM's income derived from sales, service, and repair work performed by Defendant GM and its dealers, in New Mexico. Based on this conduct, Defendant GM purposefully directed its activities

toward New Mexico and Plaintiffs' claims arise out of this conduct which led to Plaintiffs' injuries and damages set forth herein.

6. Venue is proper in Santa Fe County, New Mexico because Plaintiffs are residents of Santa Fe County, New Mexico. In addition, venue is proper in Santa Fe County, New Mexico because Defendant Karimi is a resident of Santa Fe County and because Defendant GM's registered agent is in Santa Fe County.

7. Joinder of Plaintiffs' claims against all Defendants in this action is proper under Rule 1-020 NMRA because Plaintiffs' claims: (1) arise out of the same transaction, occurrence, or series of transactions or occurrences; and (2) questions of law and fact common to all Defendants will arise in this action.

### **III. FACTUAL BACKGROUND**

8. All previous paragraphs are incorporated by reference.

9. On the evening of December 16, 2016, Christopher Bryant was driving and Ian Sweatt was riding as a passenger in a 2006 Chevrolet sedan (VIN # 1G1AL15FX67601682) (the "subject vehicle"). Bryant and Sweatt were making a left turn from a stop sign from Plaza Verde onto Camino Carlos Rey, in Santa Fe, New Mexico.

10. The subject vehicle was designed by GM.

11. The subject vehicle was manufactured by GM.

12. The subject vehicle was also assembled and tested by GM.

13. At the same time, Defendant Karimi, who was traveling southbound on Camino Carlos Rey in a 2012 BMW beyond the speed limit, ran a series of stop signs and entered the intersection. Karimi struck the subject vehicle, causing an impact.

14. At the time of the accident, Bryant and Sweatt were properly seated and properly wearing the available seat belts.

15. However, despite being properly seated and properly wearing the available seat belts, Bryant and Sweatt sustained fatal injuries because the subject vehicle violated several crashworthiness principles and thereby failed to protect them.

16. There are five recognized crashworthiness principles in the automobile industry. They are as follows:

- (1) Maintain survival space;
- (2) Provide proper restraint throughout the entire accident;
- (3) Prevent ejection;
- (4) Distribute and channel energy; and
- (5) Prevent post-crash fires.

17. When the National Highway Traffic Safety Administration (“NHTSA”) created the Federal Motor Vehicle Safety Standards (“FMVSS”) in the late 1960’s, the preamble to the safety standards included a crashworthiness definition similar to that referenced above, “that the public is protected against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury in the event crashes do occur.”

18. The National Transportation Safety Board (“NTSB”) has also stated that “[v]ehicle crashworthiness refers to the capacity of a vehicle to protect its occupants from crash forces. This protection—which is achieved, in part, by vehicle structure—includes maintaining a survival space around the occupant, retaining the occupant within that space, and reducing the forces applied to the occupant.”

19. Crashworthiness safety systems in a vehicle must work together like links in a safety chain. If one link fails, the whole chain fails.

20. Vehicle manufacturers have known for decades and have admitted under oath that there is a distinction between the cause of an accident versus the cause of an injury.

21. Indeed, vehicle manufacturers have known for decades that crashworthiness is the science of preventing or minimizing injuries or death *following* an accident through the use of a vehicle's various safety systems.

#### **IV. CLAIMS FOR RELIEF**

##### **COUNT 1: Negligence Against Defendant Karimi**

22. All previous paragraphs are incorporated by reference,

23. On December 16, 2016, Defendant Karimi was operating a 2012 BMW when he ran a series of stop signs, entered the intersection improperly, and struck the subject vehicle.

24. Defendant Karimi had a duty to drive in a reasonable and safe manner, to keep a proper lookout, to maintain proper control of his vehicle, and to follow traffic rules in order to prevent foreseeable harm to others, including Bryant and Sweatt.

25. Defendant Karimi failed to drive in a reasonable and safe manner, to keep a proper lookout, to maintain proper control of his vehicle, and to follow traffic rules.

26. Defendant Karimi knew or should have known that such conduct posed a risk of harm to others, including Sweatt.

27. As a result, Defendant Karimi breached the duty he owed to Sweatt.

28. Defendant Karimi drove in a negligent, careless, reckless, wanton, intentional, willful, and/or grossly negligent manner.

29. Defendant Karimi violated state and federal traffic laws, codes, or regulations without just cause or excuse, and Bryant and Sweatt were in the class of persons intended to be protected by said laws.

30. The subject crash was the direct and proximate result of Defendant Karimi's actions, including but not limited to, the following:

- a) Failure to give his full time and attention to the operation of his vehicle;
- b) Failure to operate his vehicle in a reasonable and safe fashion;
- c) Failure to keep a proper lookout;
- d) Failure to keep his vehicle under proper control; and
- e) Otherwise acting without the reasonable care required of him under the circumstances.

31. As a direct and proximate result of Defendant Karimi's wrongful conduct, Sweatt was killed, and Plaintiff suffered the injuries and damages outlined herein.

**COUNT 2:  
Strict Products Liability Against GM**

32. All previous paragraphs are incorporated by reference.

33. GM is a manufacturer, designer, and/or supplier in the business of putting the subject vehicle on the market and is therefore liable for damages caused by an unreasonable risk of injury and harm resulting from a condition of the subject vehicle or from the manner of its use.

34. An unreasonable risk of injury is a risk that a reasonably prudent person having full knowledge of the risk would find unacceptable, taking into consideration the ability to eliminate the risk without seriously impairing the usefulness of the product or making it unduly expensive. Such an unreasonable risk of injury and harm makes the product defective, regardless of the care taken in the manufacture, design, and supply process.

35. The injuries complained of herein occurred because the vehicle in question was not reasonably crashworthy and, thereby, created an unreasonable risk of injury and harm.

36. Bryant and Sweatt were people whom GM could reasonably have expected to use the subject vehicle.

37. At the time of the collision, the subject vehicle was defective due to the following conditions:

- a) The vehicle failed to provide adequate protection to far sided occupants;
- b) The vehicle failed to prevent a far side restrained occupant from rolling out of their 3-point seat belt;
- c) The vehicle failed to have countermeasures to prevent rollout for far side, restrained occupants;
- d) The vehicle failed to have designs that mitigated against belt rollout for far side occupants;
- e) The vehicle failed to have reverse geometry seat belts;
- f) The vehicle failed to contain a center mounted airbag;
- g) The vehicle failed to evaluate occupant kinematics for far side occupants in a far side impact;
- h) The vehicle was not properly subjected to finite element modeling, finite element analysis and other computer aided designs to evaluate ways to better protect far side restrained occupants from rolling out of their shoulder belt;
- i) The vehicle was not subjected to rigorous engineering analysis;
- j) The vehicle was not subjected to proper testing;
- k) The vehicle's restraint system violated the purpose of a restraint system;
- l) The vehicle was not subjected to computer accident simulations;

- m) The vehicle's restraint system was not subjected to rigorous engineering analysis for far side impact events;
- n) The vehicle violated principles of crashworthiness;
- o) The vehicle failed to provide adequate safety;
- p) The vehicle failed to provide adequate occupant protection;
- q) The vehicle was not subjected to finite element modeling, FEA or LSDYNA testing to evaluate far side impact scenarios;
- r) The vehicle failed to provide proper restraint for far side occupants;
- s) The 3-point restraint failed to keep restrained occupants in their optimum seating position;
- t) The 3-point restraint allowed restrained occupants to move inboard away from their seat belt so that they could rollout;
- u) The vehicle's design failed to protect against occupant interaction with other occupants in the vehicle;
- v) The vehicle's design failed to protect against interior contacts inboard of restrained occupants;
- w) The vehicle's side structure was weak and inferior;
- x) The vehicle's side, roof and underbody structure failed to contain: UHSS, EHSS, AHSS, boron, martensite, ferrite, dual phase, complex phase, and TRIP type steel;
- y) The vehicle's side, roof and underbody structure failed to contain steel that had MPa rating that averaged over 750 MPa;
- z) The safety cell and safety cage were not adequately maintained;
- aa) The survival space was destroyed; and/or

bb) The defects and negligence were the producing, direct, substantial and proximate cause of the injuries and damages in question.

38. At the time of the collision, Bryant and Sweatt were using the subject vehicle for a purpose and in a manner which could be reasonably foreseen.

39. GM could not reasonably expect that the risks of injury set forth herein were obvious or known to foreseeable users of the subject vehicle, including Bryant and Sweatt.

40. Bryant and Sweatt's deaths were caused by a condition or conditions of the subject vehicle which were not substantially changed or unforeseeably altered after GM placed the subject vehicle on the market.

41. The defective conditions of the subject vehicle, either singularly or in combination, were a cause of Bryant and Sweatt's deaths and Plaintiffs' damages outlined herein.

**COUNT 3:  
Negligence Against GM**

42. All previous paragraphs are incorporated by reference.

43. GM, as the designer, manufacturer, supplier, and/or distributor of the subject vehicle, had a duty to use ordinary care in designing, making, testing, and packaging the subject vehicle.

44. GM had a duty to use ordinary care to avoid a foreseeable risk of injury caused by a condition of the subject vehicle or the manner in which it was used.

45. GM's duty to use ordinary care to avoid a foreseeable risk of injury continued after the subject vehicle left its possession, if it knew, or in the exercise of ordinary care should have known, of a foreseeable risk of injury caused by a condition of the subject vehicle or the manner in which it could be used.

46. GM had a duty to adequately and properly test the subject vehicle and similar vehicles to avoid a foreseeable risk of injury.

47. GM had a duty to use ordinary care to warn of a risk of injury about which they knew or should have known.

48. GM had a duty to use ordinary care to provide directions or instructions for use of the subject vehicle to avoid a risk of injury caused by a foreseeable manner of use.

49. GM had a duty to use ordinary care to inspect the subject vehicle for conditions which could expose users to risk of injury. Alternatively, GM had a duty to inspect the subject vehicle before selling it for conditions which could expose users to risk of injury when they had knowledge which would lead a reasonably prudent person to undertake an inspection.

50. GM had a duty to repair or replace the subject vehicle before selling it with conditions which would expose users to risk of injury when they knew or should have known of the need for repair.

51. The duty of care increases with the severity of danger. Thus, GM's duty was especially high given the likelihood of death or serious injury from a failure of the subject vehicle during normal use.

52. GM breached its duties of care, and, therefore, was negligent in at least the following particulars:

- a) The vehicle failed to provide adequate protection to far sided occupants;
- b) The vehicle failed to prevent a far side restrained occupant from rolling out of their 3-point seat belt;
- c) The vehicle failed to have countermeasures to prevent rollout for far side, restrained occupants;
- d) The vehicle failed to have designs that mitigated against belt rollout for far side occupants;

- e) The vehicle failed to have reverse geometry seat belts;
- f) The vehicle failed to contain a center mounted airbag;
- g) The vehicle failed to evaluate occupant kinematics for far side occupants in a far side impact;
- h) The vehicle was not properly subjected to finite element modeling, finite element analysis and other computer aided designs to evaluate ways to better protect far side restrained occupants from rolling out of their shoulder belt;
- i) The vehicle was not subjected to rigorous engineering analysis;
- j) The vehicle was not subjected to proper testing;
- k) The vehicle's restraint system violated the purpose of a restraint system;
- l) The vehicle was not subjected to computer accident simulations;
- m) The vehicle's restraint system was not subjected to rigorous engineering analysis for far side impact events;
- n) The vehicle violated principles of crashworthiness;
- o) The vehicle failed to provide adequate safety;
- p) The vehicle failed to provide adequate occupant protection;
- q) The vehicle was not subjected to finite element modeling, FEA or LSDYNA testing to evaluate far side impact scenarios;
- r) The vehicle failed to provide proper restraint for far side occupants;
- s) The 3-point restraint failed to keep restrained occupants in their optimum seating position;
- t) The 3-point restraint allowed restrained occupants to move inboard away from their seat belt so that they could rollout;

- u) The vehicle's design failed to protect against occupant interaction with other occupants in the vehicle;
- v) The vehicle's design failed to protect against interior contacts inboard of restrained occupants;
- w) The vehicle's side structure was weak and inferior;
- x) The vehicle's side, roof and underbody structure failed to contain: UHSS, EHSS, AHSS, boron, martensite, ferrite, dual phase, complex phase, and TRIP type steel;
- y) The vehicle's side, roof and underbody structure failed to contain steel that had MPa rating that averaged over 750 MPa;
- z) The safety cell and safety cage were not adequately maintained;
- aa) The survival space was destroyed; and/or
- bb) The defects and negligence were the producing, direct, substantial and proximate cause of the injuries and damages in question.

53. At the time of the incident in question, Bryant and Sweatt were foreseeable users of the subject vehicle for a purpose and in a manner which could reasonably be foreseen.

54. GM could not reasonably expect that the risks of injury set forth herein were obvious or known to foreseeable users of the subject vehicle, including Bryant and Sweatt.

55. The negligent acts and omissions of GM, either singularly or in combination, were a cause of Bryant and Sweatt's deaths and Plaintiffs' damages outlined herein.

**COUNT 4:  
Breach of Implied Warranty of Merchantability  
Against GM**

56. All previous paragraphs are incorporated by reference.

57. At all relevant times GM was a designer, manufacturer, seller, supplier and/or merchant who regularly dealt in the sale and supply of vehicles, including the subject vehicle, and held themselves out as having special knowledge or skill concerning the vehicles it sold and supplied.

58. GM impliedly warranted that the vehicles they designed, manufactured, sold, and/or supplied, including the subject vehicle, were merchantable.

59. GM breached the implied warranty of merchantability because the subject vehicle was not merchantable due to its failure to perform under normal conditions as it was reasonably intended and used by the purchaser and foreseeable users of the subject vehicle.

60. GM also breached the implied warranty of merchantability because the subject vehicle was defective and was not fit for the ordinary purpose for which such products are used.

61. GM had reason to know at the time it designed, manufactured, sold, and/or supplied the subject vehicle that it was designed, manufactured, sold and/or supplied for use by persons such as Bryant and Sweatt, who were relying on GM's skill or judgment to design, manufacture, sell, and/or supply a suitable vehicle for use.

62. The breach of implied warranty of merchantability by GM was a cause of Bryant and Sweatt's deaths and Plaintiffs' damages outlined herein.

**COUNT 5:  
Damages**

63. All previous paragraphs are incorporated by reference.

64. As a direct and proximate result of the defective condition of the subject vehicle, the negligence of Defendants, and the breach of implied warranty of merchantability, and Defendants' conduct detailed above, Bryant and Sweatt sustained injuries that resulted in their deaths.

65. As such, Plaintiffs seek damages including the following:
- a) Wrongful death damages to the Wrongful Death Estate of Ian Sweatt;
  - b) Wrongful death damages to the Wrongful Death Estate of Christopher Bryant;
  - c) Pre-judgment interest, post-judgment interest, and Plaintiffs' costs of suit, as allowed by law; and
  - d) All other damages available to Plaintiffs as allowed under New Mexico law.

66. Any damages due to the Wrongful Death Estate of Christopher Bryant from Defendant Karimi are disclaimed and waived herein, and nothing in this pleading shall be construed as a request that the Wrongful Death Estate of Christopher Bryant be awarded any damages from Defendant Karimi.

**COUNT 6:  
Punitive Damages Against GM**

67. All previous paragraphs are incorporated by reference.

68. In addition to placing the unreasonably dangerous and defective subject vehicle into the market, giving rise to strict liability and negligence liability, GM also acted intentionally, maliciously, willfully, recklessly, and/or with wanton disregard for the safety of others.

69. Among others, these intentional, malicious, willful, reckless, and/or wanton acts and omissions of GM, either singularly, in combination, or based on the cumulative conduct of employees of GM, were a cause of Bryant and Sweatt's deaths. Accordingly, GM is liable for punitive damages.

**V. CONCLUSION**

WHEREFORE, Plaintiffs request that judgment against Defendants for their damages, punitive damages, pre-judgment and post-judgment interest at the legal rate, costs, and such other and further relief to which Plaintiffs may be entitled under the facts and circumstances.

Respectfully submitted,

**DURHAM, PITTARD & SPALDING, LLP**

*/s/ Justin R Kaufman*

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